



House of Commons  
CANADA

# Standing Committee on Procedure and House Affairs

---

PROC • NUMBER 049 • 3rd SESSION • 40th PARLIAMENT

---

EVIDENCE

**Wednesday, March 16, 2011**

—  
**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

Wednesday, March 16, 2011

• (1030)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** It being 10:30, let's go ahead and have a start to this meeting. This part of the meeting is televised and in public.

We're here today pursuant to the order of reference of Wednesday, March 9, on a question of privilege from the finance committee.

We do have Mr. Walsh with us today, but I want to do a little bit of chair business before we get started.

As many of you know, we have three issues before this committee right now. We did just have an in camera session on one of the reports. We're not finished it yet, so we'll be back to it. We also have a motion of privilege from the finance committee. Then we have a motion of privilege pertaining to CIDA.

To the committee, it will take all of our full cooperation to get through the next two or three days. We have a full agenda. You've asked your chair and the clerk to work hard on putting together a witness list, and we've done so. We've filled your days, so it will take all of you....

The first order of business for the committee after the Speaker refers motions of privilege to us in the sense of prima facie—that on the surface there is a case, and it comes to this committee—is to determine if there's significant reason to move forward. That is one of the first jobs of this committee. We will ask some of those questions of Mr. Walsh.

Convention has been, of late, that the Speaker would be the first witness we would have. The Speaker was not available to attend this week to be our first witness and to talk to us about his determining of each of these rulings.

As your chair, I did take it upon myself to have a quick conversation with him last Thursday. He shared with me that certainly in the case of the finance committee, the ruling speaks for itself and we should move forward. On the motion of privilege from CIDA, I questioned him on the prima facie case there, as we may have done if we'd had him as a witness. He suggested that he wasn't sure it wasn't just a prima facie case, but that the committee would move forward on it also and make its own determining there.

This committee tends to work in a very congenial and friendly manner, and your chair takes those liberties in order to keep us there.

**A voice:** [*Inaudible—Editor*]

**The Chair:** I know; I'm disappointed from this morning, but no....

**A voice:** [*Inaudible—Editor*]

**The Chair:** I just said I was disappointed; I didn't say why.

It will take all of us...and in good time, and good help, with the witnesses. We'll stick to our usual practices here of doing two different rounds of questions and then trying to get those who haven't yet asked a question of the witness a chance to ask questions in the last little bits of each of the hours of witnesses.

Without the Speaker here to lead this study, we have asked Mr. Walsh to come forward.

Mr. Walsh, perhaps you could just help out your chair. I know you don't have an opening statement—I'll get to you in just a second, Mr. Paquette—but I'm just looking to you to perhaps help the chair out a little bit with the definition of “prima facie”. Then we'll move forward to questions.

Mr. Paquette, did you want to go before the witness?

[*Translation*]

**Mr. Pierre Paquette (Joliette, BQ):** I see that two ministers are accompanied this afternoon by 10 senior officials. And yet we only have one hour to question them. I wanted to be sure that each one's opening presentation will be limited to five minutes.

[*English*]

**The Chair:** Your chair has asked each of the witnesses he's spoken to—he's not yet had a chance to speak to some of the witnesses—to keep themselves to five minutes. Everybody's going to live on a tight timeline today, and we're going to see if we can move forward. All right?

Mr. Walsh, I know you don't have an opening statement, but let's go ahead. Then we'll go to rounds of questioning.

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

I don't have an opening statement because it wasn't clear to me what specifically it was that I was being asked to address today. In the circumstances, I feared I would waste the committee's time going on a tangent that wasn't of interest to the committee.

Your question particularly relates to the status or the meaning of “prima facie” as a ruling by the Speaker. Well, prima facie is one of those nice Latin expressions that can be used for a variety of purposes. I suppose for a close translation, or a rough translation, in English we might say “at first blush”, on a reading through, do you see anything here that could, upon further examination, perhaps constitute a breach of privilege?

Don't forget, part of what's going on here with this practice is for the Speaker to rule out those points of privilege that may at first blush simply give no indication of any merit. So rather than take up the time of this committee or the House, he would not find *prima facie*.

But *prima facie* is not to be taken as conclusive of the question. It's simply saying "at first blush, it would appear". This committee's job now is to examine the question in greater depth and to make a report to the House on whether, in its view, there is or is not a breach of privilege here.

• (1035)

**The Chair:** Great. Then we'll move to the first rounds of questioning from the official opposition.

Mr. Brison, are you going first?

**Hon. Scott Brison (Kings—Hants, Lib.):** Yes.

**The Chair:** All right. You have seven minutes.

**Hon. Scott Brison:** Thank you.

Thank you very much, Mr. Walsh, for being here today.

As you know, the finance committee has requested from the government the costs of 18 of its U.S.-style prison bills. The government claims that this information is covered by cabinet confidence and they have refused to comply with the House order to provide Parliament with the costs and the breakdown of these costs.

Are cost projections covered by cabinet confidence once legislation has been tabled by the government and legislation has been introduced to the House of Commons?

**Mr. Rob Walsh:** Well, I would respond, Mr. Chairman, by saying that this information, whether it ever is or is not covered by cabinet confidence, is information of a kind, as the Speaker indicates in his ruling, that the House is entitled to receive. It may well be covered by cabinet confidence in earlier stages or continuing at the same time, even if legislation were never introduced. Arguably, with the introduction of legislation, to which this information pertains, there is a more compelling reason for the House to obtain it. But the two are not, in my view, connected directly.

**Hon. Scott Brison:** Should MPs be asked to vote on legislation without being provided with the costs of that legislation?

**Mr. Rob Walsh:** I don't know that that's a question the law clerk is competent to answer. It's a judgment for every member of the House to take according to his own understanding of what the legislation is about and whether it deserves to be approved or not approved.

**Hon. Scott Brison:** Is it in the public interest, in your opinion, for the government to provide this information to the House of Commons?

**Mr. Rob Walsh:** I can only speak generally in saying that it is in the public interest that we have a responsible form of government where the government is accountable to the House and, for that purpose, the House seeks information from the government from time to time to enable it to carry out its constitutional function. To the extent that the actions of the government in the minds of some are frustrating that, the carrying out of that function, then arguably it is not acting in the public interest.

**Hon. Scott Brison:** So you would argue that Parliament does have a right to this information.

**Mr. Rob Walsh:** I think as the Speaker himself indicates in his report on this occasion and on the decision of last April pertaining to Afghan detainees, Parliament has the right to receive whatever information it requests from the government as part of its constitutional function of holding the government to account.

However, let's not forget, it's always open to the government to say, "No, you're not going to get it", for whatever reason. And then it takes its chances with the House, because the House may not be happy with that, and it's up to the House to decide what it's going to do about that.

So I'm not saying that the government can never say no. I'm just saying that if they say no, the onus is on them to justify why they're saying no, because the basic principle is that the House should receive whatever information it seeks for it to do its function in holding the government to account or, as you mentioned, in reviewing legislation.

**Hon. Scott Brison:** In December of 2009 you sent a letter to my colleague, Ujjal Dosanjh, which read in part that "the Committee...is at all times to be seen as carrying out its constitutional function of holding the Government to account". You said, "This is fundamental to responsible government..." You went on to say, "The law of parliamentary privilege provides that this relationship operates unencumbered by legal constraints that might otherwise seem applicable".

In your view, are there differences between that situation then and the one we face today? If so, what are those differences?

**Mr. Rob Walsh:** Fundamentally, I don't believe there are differences, if by that you mean where in this case the element of cabinet confidentiality is being invoked, whereas on that occasion the element of national security was being invoked. That difference doesn't, in my view, affect the outcome. The outcome is the same in that the Speaker indicated in his ruling that the House is entitled to receive the information it seeks from the government.

• (1040)

**Hon. Scott Brison:** So you would agree with the two parts of the Speaker's ruling: one, that the government had failed to table the requested documents; and, two, that there was no explanation provided by the government for why the large majority of documents had not been tabled. You would agree with both of those parts of the Speaker's ruling?

**Mr. Rob Walsh:** First of all, I would never disagree with the Speaker's ruling, of course, but those are observations of fact by the Speaker, and I think they're correct that that is the case.

**Hon. Scott Brison:** In *House of Commons Procedure and Practice*, second edition, it lists types of contempt. A couple are "deliberately altering, suppressing, concealing or destroying a paper required to be produced for the House or a committee", and "without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee".

Would you agree that this breach of privilege would qualify as one or both of those types of contempt?

**Mr. Rob Walsh:** Mr. Chair, that's for the judgment of the committee to make, and it's not something on which I should exercise any judgment or venture any opinion. That would be presumptuous upon the task of the committee, in my view, respectfully.

**Hon. Scott Brison:** Mr. Walsh, the government, as you said, during the Afghan detainee debate, claimed national security as a reason, and today they're claiming cabinet confidence in terms of their refusal to provide the costing information of these justice bills to Parliament.

Do you see a difference between cabinet confidence as used to protect information, including cost information, when a piece of legislation is still being discussed by cabinet prior to it being introduced to the House and tabled in the House and cabinet confidence used to deny the House the information on the cost once that legislation has been tabled in the House by the government?

**The Chair:** Mr. Walsh, you have 15 seconds.

**Mr. Rob Walsh:** The obvious difference is, of course, before the legislation arrives, the House may never ask for that information. So when the legislation arrives, that's the occasion on which the House seeks the information, and it's understandable, I suppose, that it would do so and expect to receive the information from the government.

**Hon. Scott Brison:** Thank you very much.

**The Chair:** Mr. Brison, thank you.

Mr. Young, for seven minutes.

**Mr. Terence Young (Oakville, CPC):** Thank you, Mr. Chair.

Thank you for being here today, Mr. Walsh.

Cabinet responsibility for confidentiality is defined under several acts: the Access to Information Act, the Privacy Act, and the Canada Evidence Act. Cabinet confidences are specifically exempt from the Access to Information Act and the Privacy Act. The Canada Evidence Act authorizes the Clerk of the Privy Council to ensure that cabinet confidences are not disclosed. Under those acts, is there a clear definition of cabinet confidence?

**Mr. Rob Walsh:** Under the Canada Evidence Act—and I believe you're referring to section 39—there's no definition of what is a cabinet confidence, I don't believe.

If memory serves, the act does not actually define it because it doesn't have to define it. It simply operates on the certification by the Clerk of the Privy Council. Once that certification is given, then the information is not subject to disclosure to the courts.

**Mr. Terence Young:** Is it fair to say the definition is defined by usage?

**Mr. Rob Walsh:** By usage or by tradition. The court has had occasion to talk about cabinet confidence. There was a case in the Supreme Court of Canada—I'm not sure what the year was; I think it was 1992, but I'm not sure. But it's tradition, practice.

If you go to the oath that persons entering the Privy Council, i.e., cabinet, take, that's an indication of what might be a cabinet confidence, where the person taking the oath says, "I shall keep secret all matters committed and revealed to me in this capacity", as

a member of Privy Council, "or that shall be secretly treated of in Council". That's probably a good indication of what cabinet confidence is meant to cover: all those matters that are committed and revealed to the members of cabinet in the deliberations of cabinet.

• (1045)

**Mr. Terence Young:** Are there any penalties provided for breaches of those rules? Perhaps you can describe what penalties there have been in practice for anyone who breached those rules.

**Mr. Rob Walsh:** I think one of your witnesses later today, Mr. Cappe, might be able to answer this question better than I can. I'm not aware, historically, of anyone being prosecuted or subject to a penalty for breach of that oath. I would think the usual consequence is removal from cabinet for breach of that confidentiality.

**Mr. Terence Young:** What are the historical reasons for cabinet confidence?

**Mr. Rob Walsh:** Historically, going back to when the king or queen was an active player in government, I understand historians would say that when the king announced a decision, it would be unbecoming and unseemly for there to be any evidence of dissent or divided opinion among the king's advisers, and it would undermine his authority for there to be made known that there was a division of opinion because then he would have chosen one side over the other.

More recently, we get to a more principled and responsible government. Fundamentally, the government is accountable to Parliament and the government speaks with one voice. The government is accountable on the whole, not just in parts, so cabinet solidarity and cabinet confidentiality are all part of that system that calls upon the government to speak with one voice and to be accountable to the House as a government.

**Mr. Terence Young:** If the government feels that the requested information is a matter of confidence, what is the challenge to explaining why something is a matter of confidence without revealing what that information is?

**Mr. Rob Walsh:** It is difficult, obviously. You can't say you can't tell someone what it is or you get into that situation we laugh about: "I can tell you what it is, but then I'm going to have to shoot you."

There's a trust element, and the legislation, in section 39, makes it clear that Parliament is saying that if the Clerk of the Privy Council so certifies, that's the end of the matter and the court cannot examine it. There are other sections of the Canada Evidence Act dealing with national security and national defence, and the courts have developed a practice of actually looking at what this sensitive or injurious information is that the government is trying to keep out of the proceedings. This occurs typically in terrorist trials or something like that. The court satisfies itself that it really is something of national security and not just something that may embarrass the government. But there's no opportunity for the court to do that under section 39, and once it's certified by the Clerk of the Privy Council, it's beyond the reach of the court.

But the House of Commons is not a court of law and the House of Commons is not subject to section 39 of the Canada Evidence Act. The certification of something as a cabinet confidence does not, in my view, trump parliamentary privilege or the right of the House to receive information from the government and to hold the government to account.

**Mr. Terence Young:** We're all aware of the recent Speaker's rulings about the rights of parliamentarians to have access to documents, and you mentioned the Afghan information. What our friends in the media and the opposition sometimes forget is what the Speaker has also said, that parliamentarians have a responsibility to protect that information.

How do we balance those two important but sometimes contradictory principles?

**Mr. Rob Walsh:** That's a very valid and important consideration. There is always, obviously, the national interest. I'm sure every member of this committee is cognizant of the national interest in the context of national security or national defence issues. Outside of that, what the national interest is for withholding information or disclosing it, as the case may be, may be the subject of considerable debate.

What can the committee do? It might try to find ways of receiving sensitive information, at least initially, confidentially. I know there have been difficulties with committees maintaining the confidentiality of information they receive, but that's one way of doing it. Upon review of the information, the committee might then decide, as it's entitled to do, which of the information is properly not disclosed and which should be disclosed.

**The Chair:** You have about 30 seconds remaining, Mr. Young.

**Mr. Terence Young:** You would acknowledge, Mr. Walsh, that these requests for documents and information by committees dominated by the opposition coalition is a recent phenomenon of a minority Parliament, would you not?

**Mr. Rob Walsh:** Any questions coming before a committee where the government is in a minority and where the questions come from the opposition parties are more likely to prevail, obviously, when there's a minority government. These questions are likely not to prevail when there's a majority government. In that sense, your comment is well taken. These questions come to the surface, come into effect, if you like, come into the debate and these proceedings of this committee in large part because the opposition parties have a majority in the House and a majority on the committees.

• (1050)

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

Monsieur Paquette, for seven minutes.

[*Translation*]

**Mr. Pierre Paquette:** Thank you, Mr. Chairman.

Mr. Walsh, thank you for being with us today.

I'd like to go back to what Mr. Brison said earlier. My understanding of the Speaker's ruling is that Cabinet discussions remain confidential, but once a bill is introduced in Parliament, all that information becomes available to parliamentarians, including the costs.

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

**Mr. Pierre Paquette:** There is one other point that I find troubling. The government started out saying that all the documentation was confidential because they were Cabinet confidences. Then, following actions taken by the Opposition, the Government Leader in the House of Commons tabled several pieces of information, still inadequate, which contradicted what the government had been saying from the outset.

I don't know whether you can comment on that, but in your opinion, what prompted the government to try and provide only a partial response to the Opposition's requests?

**Mr. Rob Walsh:** The principle, I believe, is that the government has the choice of disclosing or not disclosing the documents. Even if it is a Cabinet confidence, the government can decide that it will or will not disclose documents to Parliament. In this case, the government elected to disclose some documents, but not others. I imagine the rationale is the same—namely that they are Cabinet confidences. That is left to the government's discretion.

**Mr. Pierre Paquette:** What that means is that, initially, the government had a far broader conception of what a Cabinet confidence is, and changed its position along the way according to what it felt was necessary. If parliamentarians need to have access to all the information, but the government, by virtue of the fact that it represents the Crown, does not wish to provide them, it seems to me that it could take a different approach. For example, it could have taken a responsible attitude by inviting the Opposition to sit down to see if there was some way all the information could be made available without compromising the public interest. In a way, we forced the government to do that with the Afghan documents. I admit the process is rather lengthy and cumbersome, but we know it will yield an outcome.

In your opinion, had the government been acting in good faith, should it have proposed to make all the documents available to the Opposition and agree on some mechanism that would ensure that any information that could constitute a threat to the public interest or national security would remain confidential?

**Mr. Rob Walsh:** That question deals with parliamentary relations—in this case, between the government and the Opposition parties. That is really a political issue. It is up to the government to decide whether it should seek a solution with the agreement of the House of Commons. The government sometimes decides not to seek a solution with the Opposition parties, and in other cases, it does decide to do it.

In the case involving the Afghan documents, the government ultimately did seek a solution with the Opposition parties to allow them to be released. This may be an opportunity to do the same thing. It's up to the government to determine that.

**Mr. Pierre Paquette:** Let's just say that this is what the Speaker suggested in his ruling regarding the Afghan prisoners. It seems that, under the current circumstances, one year later, the government could have considered the fact that there are mechanisms whereby the confidentiality of certain information can be protected while at the same time making the documentation available to parliamentarians.

As you know, on an Opposition day, a Liberal Party motion passed that presented a list of all the documents that Mr. Brison had requested at the Standing Committee on Finance, along with my colleague, Daniel Paillé. Based on the documents tabled by the , Government House Leader is it your opinion that the government complied with the order issued by the House?

**Mr. Rob Walsh:** Yes, but according to the Speaker, the government complied without actually explaining why it had not released all the documents and why some of them had not been provided. The Speaker indicated that an explanation had to be provided to the House of Commons, to members of Parliament. I believe that is the reason why he decided to accept the *prima facie* question of privilege and allow the committee to look at the issue more closely. At the various sittings of this committee, the government may provide a more detailed explanation of why it decided not to release the documents.

• (1055)

**Mr. Pierre Paquette:** I believe that, according to this principle, parliamentarians have access to all the information they require when they are examining a piece of legislation or holding the government to account. That is the rule. However, if the government wants to break the rule and not disclose that information, it has to convince the Opposition that national security or the public interest is at stake. If Parliament insists on receiving information, government members then have to sit down with the Opposition to find a mechanism whereby both principles are observed.

Is that an accurate summary of what should—

**Mr. Rob Walsh:** Yes, it is.

**Mr. Pierre Paquette:** Perfect.

My colleague would like to raise a question.

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

You already provided some answers with respect to the matter of confidentiality, but could you tell us, in French, who has the authority to determine whether this or that document should or should not be released? When you read the Minutes of Proceedings of the Standing Committee on Finance or of the House of Commons, it's clear that, in a way, that is the sinews of war. We are fighting about documents or a definition of confidentiality. But our interpretation and the government's are completely different.

Who has the power to decide the matter?

**Mr. Rob Walsh:** Who has that power? Well, no one, specifically, because as soon as the Clerk of the Privy Council determines that this or that document is confidential, it's all over from a judicial standpoint, given what is provided for under section 39 of the Canada Evidence Act.

However, as far as parliamentary affairs are concerned, it's completely different: it is up to you to decide. We are aware of the nature of these documents; they deal with financial issues, I believe, and the costs associated with bills that deal with prisons. You could say that a member of Parliament decided that some things are Cabinet confidences. However, as Mr. Brison stated earlier, you may be able to argue that what was discussed before a bill was introduced

in Parliament does in fact constitute a Cabinet confidence. I imagine the issue was discussed and that it is a confidence.

However, as soon as a bill dealing with that specific subject is introduced, logically, members of Parliament will be asking to have access to all the information in support of that initiative. It is up to members of Parliament to decide whether they have received all the information or not. In fact, members of Parliament could decide not to support the bill. Discussions in committee might prompt members of Parliament to vote against the bill, rather than simply seeking to censure the government for contempt of Parliament. You have the option of voting against the bill.

[English]

**The Chair:** Thank you.

To members, please, very complicated questions, with about two seconds to go, will lead us well past time. This is a seven-minute round, so let's try to keep to our seven minutes. That one went almost two minutes over.

Monsieur Godin.

[Translation]

**Mr. Yvon Godin (Acadie—Bathurst, NDP):** Thank you, Mr. Chairman.

Mr. Walsh, thank you for being here.

For how many years have you been working in Parliament?

**Mr. Rob Walsh:** Twenty years.

**Mr. Yvon Godin:** So, I guess you've pretty well seen it all.

**Mr. Rob Walsh:** Is that enough, Mr. Godin?

**Mr. Yvon Godin:** In your opinion, is there a difference between a majority government and a minority government?

**Mr. Rob Walsh:** There definitely is in terms of numbers.

**Mr. Yvon Godin:** Maybe someone should tell Mr. Harper.

**Mr. Rob Walsh:** There are fewer MPs on the government side than on the Opposition side.

• (1100)

**Mr. Yvon Godin:** If the Opposition holds the majority of seats, normally, the Opposition, because of the number of votes it has, should be in a position to decide certain things in Parliament.

**Mr. Rob Walsh:** That's correct, if the Opposition is not divided.

**Mr. Yvon Godin:** We're talking about finances here. I can understand that there could be a difference when security is involved. It could be argued that if certain security-related information is disclosed, that might put our country and our citizens in danger. That is absolutely clear, decisions have been made and action has been taken in that regard.

Now we are talking about the cost of prisons. Supposing that the government says that cost of building a prison will be \$8 million, and yet we hear rumours to the effect that it will cost more like \$20 million, and we ask the government for the figures and the documents. Do you think that releasing those numbers to us could compromise public safety?

**Mr. Rob Walsh:** It's up to the committee to answer that question. Is it important for the committee or for the House of Commons to have those figures when it reviews the bill?

**Mr. Yvon Godin:** You have 20 years of experience. If the government tells us it's going to cost \$8 million but does not give us the documents—nothing at all—is that government being transparent and cooperating with Parliament; is it being transparent if it hides all the documents?

**Mr. Rob Walsh:** Do you want me to comment on the honesty or transparency of the government? Those are political issues. It's up to the government to determine under what circumstances it will release information.

**Mr. Yvon Godin:** The government includes the Privy Council, the Cabinet, and so on. The government says it won't provide the information and hides behind the Privy Council or the Cabinet. The Minister of Finance obviously had to have a costing done. He prepared a bill. He was told how much it would cost. People in power don't have to try and hide; they can simply say how they arrived at their numbers and be transparent.

We are members of Parliament, elected members of Parliament. I was elected in the riding of Acadie—Bathurst. The people sent me here. They want me to represent them. My mandate and my responsibility are to vote on behalf of the people of Acadie—Bathurst whom I represent. Is it not perfectly normal that I have actual information in front of me before I vote?

**Mr. Rob Walsh:** Yes, it is.

**Mr. Yvon Godin:** If it's normal for me to have all the documents and be told the entire truth about a bill on which I'm going to be asked to vote, then I guess it's also true that it's not normal for me not to have them.

**Mr. Rob Walsh:** The word “normal” can have different meanings in the political sphere. What is “normal”? You have one idea of what is normal and Ms. DeBellefeuille may have another.

**Mr. Yvon Godin:** For me, “normal” means that I can have access to the figures. If I don't have them, that is not normal.

**Mr. Rob Walsh:** The principle remains the same: members of Parliament have a right to receive documents or information.

**Mr. Yvon Godin:** Speaker Milliken was clear when he stated that a parliamentarian who wants to fulfill his responsibilities and represent his constituents must have access to information in order to make a decision.

**Mr. Rob Walsh:** Yes. On the other hand, it is possible for the government to explain to parliamentarians why the information was not provided and that parliamentarians will accept that explanation.

**Mr. Yvon Godin:** In the case of the documents dealing with Afghanistan, the Conservatives gave us a reason; they invoked national security. In this case, how much are the F-35s going to cost? How much are the prisons going to cost? How much are corporate tax cuts going to cost? They have given us no explanation in that regard, and they have just been hiding behind the Cabinet. They will continue to hide, will refuse to tell Canadians anything and, when the bill passes into law, we will get a big surprise and then they will be telling us how much it going to cost.

**Mr. Rob Walsh:** That is your opinion.

**Mr. Yvon Godin:** Yes, that's my opinion.

**Mr. Rob Walsh:** It is not up to me to say so; that is a political judgment.

**Mr. Yvon Godin:** So, over the last 20 years that you have been here, when you had responsibility—

• (1105)

**Mr. Rob Walsh:** Every time you talk about those 20 years—

**Mr. Yvon Godin:** It is 20 years.

**Mr. Rob Walsh:** —I feel a little older.

**Mr. Yvon Godin:** That's what you said. You began working here at the age of 18. So you were really young.

In order for Parliament to work—I'm repeating myself and forcing you to repeat yourself—parliamentarians have the right to receive information; the Speaker himself said that.

**Mr. Rob Walsh:** There is an expression in English that goes [English]

a decision is only as good as the information it's based on.

[Translation]

That could be said of parliamentary decisions. The decisions made by the House of Commons are only as good as the information members of Parliament have to help them make those decisions.

**Mr. Yvon Godin:** Mr. Walsh, I was president of a union for a number of years. Imagine if I stood in front of a meeting of union members and said that I had just negotiated a contract with the company and wanted the employees to vote on it, but I couldn't tell them what the company is actually offering them because the information was provided by the company behind closed doors. That is sort of what we're dealing with here.

That is just a comment. You don't have to answer that; you will say that's my opinion.

What can we do? How can members of Parliament make decisions if they don't have the information? That's not the way Parliament is supposed to work.

**Mr. Rob Walsh:** In exercising your parliamentary responsibilities on behalf of your fellow citizens, you are obviously going to ask to have all the necessary information in order to vote for or against a proposal. It is up to you and your colleagues to ask the government to provide the necessary information. If you do not receive that information, it is for you to determine what you should do next: vote against the bills, raise a question of privilege, table a motion accusing the government of contempt, or request a vote on a non-confidence motion, etc.

[English]

**The Chair:** *Merci.*

We'll go to the next round, five minutes this time.

Mr. McGuinty, you're leading us off.

**Mr. David McGuinty (Ottawa South, Lib.):** Thank you, Mr. Chair.

Thank you very much, Mr. Walsh, for being here today.



I just want to put a few things to you and get your response, if I could.

A lot of Canadians are watching this. They're a little confused about what this is all about. It seems to be very procedural. I want to remind folks who might be watching, listening, or reading just what's happening here. Maybe you can help us communicate this to working Canadians.

First of all, our research, provided by the Library of Parliament, tells us—the top researchers there have told all parliamentarians, and all Canadians, for that matter—that this question of finding a government potentially in contempt really has never happened before in Canadian history. Is that right?

**Mr. Rob Walsh:** It could be. I haven't searched the history books on that particular question.

**Mr. David McGuinty:** That's what they're telling us, and they're telling us that not only has it never happened here—that is, before the Speaker, Mr. Milliken, brought this government to heel over the Afghan documents, which it refused to release, claiming at that time national security, and then agreeing to form a committee so we could deal with this professionally—but on this frontier now, this is groundbreaking. This is all new.

Earlier, you were posed a question about minority governments, as if this minority government was perhaps victimized, I think, but I just want to get the record straight. We've had 13 federal minority governments in this country since this country was founded, and never ever has a government, minority or majority, been found in contempt or undergone this kind of proceeding, since 1867. Is that your understanding as well?

**Mr. Rob Walsh:** I don't know anything to the contrary.

**Mr. David McGuinty:** Okay. That's what we've been told by the Library of Parliament in our research. It has never happened either, Mr. Walsh, in Australia. It has never happened in the United Kingdom. In fact, it has never happened in the Westminster model of government anywhere in the world before, so what we have here now as parliamentarians is something entirely new and entirely unique.

I want to ask you, if I could, about the ruling the Speaker gave. When the Speaker spoke his words and gave the ruling, was he addressing his ruling to opposition MPs or was he addressing his ruling to every MP in the House of Commons?

**Mr. Rob Walsh:** Well, without question, the Speaker's rulings are addressed to every member of the House of Commons. He does not rule...he does not address one part of the House; he addresses the whole House.

**Mr. David McGuinty:** So he's not just addressing opposition parties. He is not just addressing the mover of the motion, Mr. Brison, my colleague. He is effectively addressing parliamentarians, and really what he is doing is talking to 34 million Canadians, isn't he?

**Mr. Rob Walsh:** Yes, although in parts of his ruling his remarks may be evidently directed toward one part of the House or another, but generally the whole ruling is directed to all members of Parliament and, through the process, to Canadians generally, yes.

**Mr. David McGuinty:** Right. So when he says there is an unfettered power of the House of Commons to demand government documents, he's saying that Canadians have a right to documents. Isn't that right?

**Mr. Rob Walsh:** Well, that could be the inference you draw from that. He is speaking to the parliamentary procedural issues and speaking about the rights of this particular institution vis-à-vis the government.

• (1110)

**Mr. David McGuinty:** So if he says there's a prima facie case of privileges being basically affected here for MPs, in plain English it means that in this case MPs really have a right to know. He's not only saying that opposition MPs have a right to know, and a constitutional responsibility; he's saying that government members have a duty and a right to know and a constitutional responsibility, isn't he?

**Mr. Rob Walsh:** Arguably, yes, that's included within the intent of what he's saying.

**Mr. David McGuinty:** So presumably, if MPs of all stripes, of all parties in the House of Commons, were listening to the objective ruling of the Speaker, they would take it upon themselves to take heed and take note of their constitutional responsibility in this case to make sure their constituents in their ridings get the numbers, get the facts, and that they understand what these 18 bills on crime are going to cost. I mean, after all, government members and opposition members who are called upon to vote on these issues are spending Canadians' money.

Couldn't Canadians reasonably conclude that all members of Parliament, including Conservative members, have an obligation to get the numbers and disclose them?

**Mr. Rob Walsh:** I think the Speaker in his ruling, where he commented that there are no reasons provided, says:

It may be that valid reasons exist. That is not for the Chair to judge. A committee empowered to investigate the matter might, but the Chair is ill-equipped to do so.

That's a quote from his ruling. So I think I'm answering your question, Mr. McGuinty. Mr. Speaker was saying that he didn't see reasons for the information not being provided, and in the face of the parliamentary right to have the information, he would expect that if the information is not being provided there would be some explanation, and he doesn't see one. He is not saying there are no such reasons. He's just saying "I don't see one", so it warrants being looked into by this committee more closely.

**Mr. David McGuinty:** Thank you, sir.

**The Chair:** Thank you, Mr. McGuinty. Your time is up.

Mr. Armstrong.

**Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC):** Thank you, Mr. Walsh, for being here.

I find this tremendously intriguing and interesting, and with someone of your background in Parliament... For a relatively new parliamentarian, this is a fascinating event we are passing through here.

The opposition has passed many motions in committee that are of a wide-ranging nature, and in a minority Parliament.... Do you see this happening much more in a minority Parliament, this wide-ranging passing of motions and things, and different committees and different reports?

**Mr. Rob Walsh:** Obviously, the range of subject matter being considered by committees in a majority Parliament might be more limited than is the case in a minority Parliament insofar as the opposition parties might have more influence on what matters are undertaken by committees.

In the House there are the same number of supply days, and the range of subject matter considered in the House in a majority versus minority government might not vary that much.

**Mr. Scott Armstrong:** These motions and reports coming out of committee, when you say you might have seen more lately, do they send public servants sometimes on wild goose chases looking for information that may or may not exist? Do they sometimes have unreasonable timelines, say, five days, to search for information that may or may not actually exist in the first place?

**Mr. Rob Walsh:** I'd hardly want to suggest that any requests for information coming from the House would result in a wild goose chase. However, as I mentioned earlier, your witness, Mr. Cappe, might be able to speak from experience and answer that question. I would prefer to leave that question for him to answer.

**Mr. Scott Armstrong:** Right.

You can correct me if I'm wrong, but there have been previous Speakers' rulings that have mentioned the tyranny of the majority. This goes back to what Mr. Godin was saying. At what point does the tyranny of the majority run roughshod over the ability of parliamentarians from all parties to do the job they were sent here to do?

**Mr. Rob Walsh:** How do I answer that politely? I was here for a number of years during majority Parliaments and there were many who felt there was a tyranny of the majority. Typically members on the opposite side of the House at that time thought there was a tyranny of the majority. Minorities always feel majorities are tyrannies, to some degree. I don't think it's the case here that we're looking at tyrannies that are any more problematic than was the case in a majority Parliament. It's the nature of the beast and it's the nature of the numbers. If you've got the numbers, you win; if you don't have the numbers, you don't win.

**Mr. Scott Armstrong:** So you could say that as a government, when you're going through this under a minority Parliament, sometimes you win and sometimes you lose, when it comes down to these rulings.

**Mr. Rob Walsh:** Yes. The Speaker is neutral. He addresses the issues on the principles.

**Mr. Scott Armstrong:** Right. And when you do lose a decision, the onus is on the government to comply.

• (1115)

**Mr. Rob Walsh:** The onus is on the government to comply with Speakers' rulings for the purposes of parliamentary business, correct.

**Mr. Scott Armstrong:** Thank you.

I hate to quibble with Mr. McGuinty's question, but in light of parliamentarians' quest for documents, does that automatically give them the right to release documents to the public? Is that correct?

**Mr. Rob Walsh:** In legal terms, documents and information that come into the hands of members of Parliament in their capacity as members of a House committee—and I said this earlier to another committee—are subject to whatever rules the committee might make about disclosure of those documents. With respect to other documents that might come into the possession of a member of Parliament—the proverbial brown envelope information—it's up to the member of Parliament what she does with it. But she may run the risk of bringing a lawsuit against herself if she publicly discloses information that's defamatory of an individual or in some other respect contravenes the law. In a proceeding of the House or of a committee, those are privileged and there can't be any legal proceedings flowing from any disclosure in that context.

**Mr. Scott Armstrong:** Thank you.

In previous parliaments it has been traditional, and you would know this from your vast experience here, to have respect for cabinet confidence particularly in matters of national security. Have we seen changes in that recently where we've lost that respect? What can we do to get back that respect, that balance between cabinet confidence and respecting Parliament?

**Mr. Rob Walsh:** In my view, that balance is obtained through trust and confidence. The parliamentary system is based on confidence. If the House has confidence in the government, there are times when the House will take the government's word for things. The theory is, once you lose confidence and you don't trust the government anymore, you vote against it and you go for an election.

Somewhere in between those extremes there is the situation where members of the House may have reservations about the veracity of what the government is saying. Arguably it's within the government's control as to whether it is believed or not believed, depending on whether what it says is credible or not over time. Every government faces that task of maintaining its credibility, yet at the same time not disclosing information of a kind that should not be disclosed.

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

Madame DeBellefeuille.

[Translation]

**Mrs. Claude DeBellefeuille:** Thank you very much, Mr. Chairman.

Mr. Walsh, every time a law and order bill is introduced by the government, ministers and members urge us to support the bill. The government is also asking us to support and understand its decision with respect to the F-35s.

In your opinion, why would they not want to provide the information we have requested? Why do we have the feeling they're trying to hide something?

**Mr. Rob Walsh:** I am not a politician. I do not have the intelligence to ascertain why the government would decide not to disclose information about the F-35s or other types of information. Those are political issues. It is up to the government to explain this. Mr. Chairman, I have no answer that could be of assistance to members of Parliament.

**Mrs. Claude DeBellefeuille:** I'd like to ask a more technical question, Mr. Walsh.

If the conclusion reached were that the government had acted in contempt of Parliament, would that automatically become a matter of confidence?

**Mr. Rob Walsh:** With respect to issue of contempt as opposed to confidence, I believe Mr. McGuinty noted that there have been no previous cases where a minority government has acted in contempt of Parliament.

In my opinion, it has never happened that a government acted in contempt of Parliament because there is the option of stating that the government has lost your confidence. Why would it be a matter of contempt when there is always the option of raising a question of confidence? What exactly are you doing to the government by saying that it has acted in contempt of Parliament? If a citizen is convicted of contempt, you have certain forms of recourse against that citizen, but what can you do against the government? One of the things you can do is introduce a motion of non-confidence. That is the explanation, in my opinion. You move directly to a motion of non-confidence, rather than trying to demonstrate that it's guilty of contempt.

**Mrs. Claude DeBellefeuille:** Thank you.

Since the beginning of the session, various questions of privilege have been submitted to the Standing Committee on Procedure and House Affairs, and there tend to be more and more of them. Based on your experience, what is your assessment of the current institutional issue? What can be concluded from this? In terms of the future, how important is what we are discussing today? Is it an important issue for our institution at this time?

• (1120)

**Mr. Rob Walsh:** That is a very broad question.

In the public domain, there are debates about access to public information and government information. That is the issue under discussion here: access for members of Parliament to government information to help them carry out their parliamentary duties. Outside the House of Commons, the same questions are asked with respect to the private domain in particular. People need information. This is an important matter.

**Mrs. Claude DeBellefeuille:** So, the issue is connected to access to information, so that members of Parliament can do their job.

**Mr. Rob Walsh:** That's correct.

**Mrs. Claude DeBellefeuille:** Could you tell us what options are available to the committee responsible for reviewing this question of privilege?

**Mr. Rob Walsh:** Here we are talking about a question of privilege raised against the government. One option would be to say that the government has acted in a manner that is contrary to the privileges of the House of Commons, period—or a motion could be introduced

stating that the House has lost confidence in the government, or you could criticize the government and leave it at that.

In my opinion, the government remains in office because the House has confidence in it. That is the fundamental and overriding principle. If you do not have confidence in the government, you must put a motion of that nature to a vote.

You could also vote against the bills. In the current context, you could vote against the bills for that reason. You always have the option of voting against government bills.

[English]

**The Chair:** Madame DeBellefeuille, you have about 40 seconds.

[Translation]

**Mrs. Claude DeBellefeuille:** Could you interpret the Speaker's ruling for us? He stated in his ruling that he noted the information had not been produced, but it was the lack of an explanation or rationale that surprised him the most. Why did he say that? I heard him say that and the lack of explanation seemed to have made a big impression on him. Why did the Speaker take the liberty of adding that comment in his ruling?

**Mr. Rob Walsh:** I don't want to put words in the Speaker's mouth. I do not know specifically what the Speaker had in mind, but I believe that, according to his interpretation of the situation, the government had decided not to provide the documents to the House of Commons. As a reasonable man, he believes that an explanation should be given as to the reason why documents are not being provided to Parliament. However, he received no explanation, prompting him to state that the committee should look more deeply into the issue in order to ascertain why no explanation was provided to Parliament regarding the information requested by the committee.

[English]

**The Chair:** Thank you.

Monsieur Godin, for a couple of minutes. We have a couple of other members who would like to get questions in, those who haven't had an opportunity yet.

[Translation]

**Mr. Yvon Godin:** Mr. Walsh, you are the law clerk and parliamentary counsel. If you are asked for legal advice about a bill, even though you haven't had an opportunity to read it, do you think you would be able to provide advice?

**Mr. Rob Walsh:** Yes.

**Mr. Yvon Godin:** Yes?

**Mr. Rob Walsh:** Not now, because I would have to examine the bill.

**Mr. Yvon Godin:** Listen carefully. If you are asked for advice about a bill and have no opportunity to see the bill, will you still provide advice even though you haven't seen the bill?

**Mr. Rob Walsh:** Could you repeat that again?

[English]

**Mr. Yvon Godin:** If I say I want your interpretation of a certain bill but I don't give you the bill, could you make...?

[Translation]

**Mr. Rob Walsh:** No, not at all.

[English]

**Mr. Yvon Godin:** You know why I'm asking that question. It's the same thing here. They're asking us to vote on a budget, and I don't know what it is, so it's pretty hard to do it.

[Translation]

**Mr. Rob Walsh:** Yes, you're right.

[English]

**Mr. Yvon Godin:** You said a little while ago that a decision can only be as good as the information it's based on. Right? Now we have some information and we don't get it. Could we vote that it's a contempt of the House and a breach of privilege to the members?

**Mr. Rob Walsh:** You can vote on anything you may choose to vote on, I suppose. The question is whether that's the appropriate route to take when the information you're seeking pertains to a particular bill before the House. One might suggest you vote against the legislation.

On the other hand, you may vote against the legislation and still think your privileges are being breached, and you still may want to pursue the privilege point because there's a principle here. What you want to do is move this matter, I suppose, to the point where the House affirms its rights. Whether the House takes any further steps beyond that, that's another matter for the House to consider.

• (1125)

**The Chair:** Monsieur Proulx, for two minutes, and then Mr. Lukiwski.

[Translation]

**Mr. Marcel Proulx (Hull—Aylmer, Lib.):** Thank you, Mr. Chairman.

Good morning, Mr. Walsh. Mr. McGuinty pointed out earlier that this is the first time in the history of the Commonwealth that this situation has presented itself. However, the Conservative government has described this, and I will use its actual words, as a “distraction” and a “game”.

We see this as a very serious matter. This is completely irregular. As senior parliamentary counsel—I don't want to harp on your 20 years of service, although I understand that you began your career immediately after kindergarten—but seriously, do you think it's appropriate to use words like “distraction” and “game” in this kind of situation? Do you not think Canadians have a right to be concerned about this?

**Mr. Rob Walsh:** There is another principle in the parliamentary domain which you are well acquainted with, I believe, and that is the freedom to say things in debate, according to what is necessary and as one sees fit. I am not in a position to comment on the words used in parliamentary debate.

**Mr. Marcel Proulx:** Are you telling me that you think it is a game? Do you agree that it's a game or a distraction? I don't think so.

**Mr. Rob Walsh:** I'm talking about parliamentary principles here. My role is not to judge under what circumstances these principles should apply or anything else of that nature. I am only commenting

on the principles. I hope I am making myself clear as regards the principles involved in this affair; however, when it comes to the way they should apply, that is a decision for you to make as members of this committee.

**Mr. Marcel Proulx:** So, we agree that it is a very serious matter.

[English]

**The Chair:** Thank you, Monsieur Proulx.

[Translation]

**Mr. Rob Walsh:** I believe your comment is relevant, but Mr. Lukiwski may also make a relevant comment. I'm waiting to hear it.

[English]

**The Chair:** Mr. Lukiwski, for two minutes, and that should finish us up.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** I know the opposition members are waiting with bated breath for those comments.

Mr. Walsh, thank you for being here. I want to go back to something you said before, which is very, very true, which is that it is the committee's responsibility to determine whether or not privilege has been breached.

It would appear to me that the germane questions to be asked are very simple. They are questions for the ministers who will be appearing before us later today in that they supplied information, the government supplied information, to Parliament, and the Speaker felt the information was not sufficient. It would appear to me that the questions would be best put to the ministers to get their explanation as to why the information they supplied was, in their view, sufficient.

The troubling part is before we've even heard testimony from the ministers, I read in media reports, particularly the *Hill Times*, that Mr. Proulx has been suggesting that the opposition, at least from the Liberal perspective, may be going down a track to finding contempt in the government on this issue before any testimony has been given. I don't know if you have a comment on that.

We've talked about the tyranny of the majority, but it would appear to me that if that is an attitudinal approach of opposition members, and you mentioned before if the opposition is united in their opposition to the government—which is a nice way of saying coalition—really, these committees serve no useful purpose. The testimony serves no useful purpose.

If the united opposition is predisposed before coming to committee that they will find a ruling of contempt or make a motion of contempt on the government, what are we doing here?

**The Chair:** A very quick answer.

**Mr. Rob Walsh:** I heard that question asked many times by members in committee sitting on the opposition side during the years when there was a majority government. It happens that way: too bad, so sad, you don't have the numbers; the government shows up at committee having decided its view on an issue and that view prevails. It's difficult and frustrating for members in the minority. It's just a fact of the numbers.

• (1130)

**The Chair:** Thank you very much, Mr. Walsh.

Thank you, all members, for making this roll along very well today.

We're going to suspend for a few minutes while we excuse Mr. Walsh and have another witness come in and help us with our study.

• (1130)

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

• (1130)

**The Chair:** We'll call the meeting back to order. We'll try to keep our breaks in between as short as possible so that we can keep on our schedule for today. It is full. There's lots of information the members around the table will want.

Ms. Legault, it's great to have you here today. If you have a short opening statement, I'll take it. Please introduce your guests that are here with you, too. Then we'll go to questions from members.

Please, the floor is yours.

**Ms. Suzanne Legault (Information Commissioner, Office of the Information Commissioner of Canada):** Thank you, Mr. Chair.

Good morning, everyone.

Mr. Chair, I do not have prepared speaking notes for the committee this morning, but what we have now distributed to the members is actually a detailed backgrounder in terms of how cabinet confidences are considered by my office, and some of the relevant case law in relation to cabinet confidences and certification of cabinet confidences by the Clerk of the Privy Council.

With me today I have Andrea Neill, who is the assistant commissioner. She's responsible for investigations. She's here because if any of the members have questions in terms of how we look at cabinet confidences, when an institution claims that there's a cabinet confidence inclusion that applies to specific documents, Andrea is responsible for the investigative process and she can walk us through that.

Emily McCarthy is my new general counsel. I'm very pleased to have her as a recent addition to the office. Also, Emily can answer more specific questions about the relevant case law I'll alert the committee members to.

• (1135)

[*Translation*]

I think it's important to mention right at the outset that the entire parliamentary process, and all the discussions that occur in Parliament regarding requests for information made to the government, are really part of a separate and distinct process from the one we use for access to information. It is important that this be well understood.

That said, before coming here today, I re-read the debates that took place in the House of Commons with respect to this matter, and I am here to give you some ideas as to the rationale we ask the government to provide when it invokes Cabinet secrecy, how that works and how this is interpreted in the caselaw. You may find some

interesting parallels that could apply to your own discussions and subsequent proceedings.

I would also like to mention that it would be completely inappropriate for me, in my current role, to make a specific determination regarding a specific request. We conduct our inquiries independently and in private, and I have to secure all the documents and review all the representations from the parties before taking a position.

[*English*]

It's very important to understand that I cannot and will not comment on a specific request for information without having gone through the process the legislation asks me to do, which is to conduct a fair and thorough investigation, review all the documents, get all the representations from the parties, and then make recommendations based on findings.

One thing people have questions about is what is a cabinet confidence. It's a very good question.

A description of cabinet confidence can be found in section 69 of the Access to Information Act. Certain documents are listed there as being cabinet confidences; however, the list is not exhaustive. There's a similar provision in section 39 of the Canada Evidence Act, which has a similar list of documents. However, the section 39 process in the Canada Evidence Act requires the Clerk of the Privy Council or a minister of the crown to issue a certificate certifying that these are cabinet confidences. We'll talk a bit about the case law that surrounds that. Ultimately, by way of policy, it is really the Privy Council Office that decides what is a cabinet confidence.

There are a couple of cases that I think are really relevant to the discussion around what is a cabinet confidence and how one ensures it's a cabinet confidence. There is the case of *Babcock v. Canada*, which was decided by the Supreme Court of Canada. Everything I'm talking about is actually in the paper. In that case the Supreme Court of Canada decided that it has the right to review the decision by the Clerk of the Privy Council to issue a certificate and it lists the criteria that must be looked at to determine whether the certificate was validly issued under the circumstances.

One of the things the court said is that this means the clerk or the minister must provide a description of the information sufficient to establish on its face that the information is a cabinet confidence and that it falls within the categories of subsection 39(2) or an analogous category. Those categories are the same as the ones in the Access to Information Act under section 69. It goes on to say that the kind of description that's required for claims of solicitor-client privilege under the civil rules of court will generally suffice, i.e., the date, the title, the author, and the recipient of the document containing the information should normally be disclosed.

This gives the framework under which we conduct our investigations regarding cabinet confidences. If an institution claims cabinet confidence, the way we conduct our investigation is we seek all the records. The institution will then say that the records are not covered and cannot be disclosed because they're covered by cabinet confidence. Then it will issue a schedule listing all of these details. It's reviewed by the Privy Council Office. Our investigation consists of reviewing the schedule and ensuring that we are satisfied the test that was mentioned in Babcock has been met.

I gave you the statistics, but it's important to understand that in our investigations in the last five years, even though we don't have the right to see the actual documents, on average, in 24% of the cases we investigated, we found that the case had merit, i.e., they were documents where cabinet confidences were claimed and they were not met.

If you look at the table of statistics in the documents, it's important to understand it is a small percentage of our complaints. We're dealing with small numbers, but nonetheless, I think it's instructive to understand what the situation is vis-à-vis our investigations.

With that, Mr. Chair, and given that I have given the committee all the background information, I'll leave it at that.

• (1140)

The only thing I can offer to this committee is a parallel in terms of the process that we follow in order to determine, with government institutions, whether a matter is a cabinet confidence and the justifications that we require of the Privy Council Office in conducting our investigations.

**The Chair:** We will start with Monsieur Proulx, knowing that Madame Legault will have to sometimes talk about procedure rather than actual cases.

Monsieur Proulx, for seven minutes.

[*Translation*]

**Mr. Marcel Proulx:** Thank you, Mr. Chairman.

Good morning, Ms. Legault. Good morning, ladies. Thank you all for being here this morning.

Ms. Legault, we read recently that you had to or were going to have to carry out investigations in three or four different departments or institutions. The RCMP may get involved and there could be charges. What normally prompts you to carry out that kind of investigation? Is it because of abuse? Is it because you have received complaints? Is it because you are not satisfied with the explanations given by certain individuals in the course of your discussions? What prompts you to carry out this type of investigation? There must be something that triggers it.

**Ms. Suzanne Legault:** It's very clear in the Act: my primary mandate is really to carry out investigations when I receive complaints about the handling of access to information requests by federal institutions covered under the legislation. We receive approximately 1,800 complaints each year in the last two years, and possibly more over the last five years. The legislation requires that I investigate. So, I have no discretion, in that the Act is very clear: when I receive a complaint about an institution covered under the legislation, I have to investigate.

[*English*]

I must, I shall, investigate.

[*Translation*]

The law says I have to do it.

Second of all, I also have the option of carrying out my own investigations. To be perfectly honest, I very rarely do it because we still have some 1,900 active files in our inventory. Because we also receive approximately 1,800 per year, I really focus on the complaints we receive. However, I have conducted several investigations in relation to complaints since becoming acting, and then permanent, Commissioner. I did do a number of investigations. I don't have the exact number with me, but I would be pleased to share that information with you.

• (1145)

**Mr. Marcel Proulx:** In order for you to take the initiative of carrying out an investigation, I imagine the cases must deal with specific situations or involve blatant abuse.

I'd like to come back to the topic of discussion today, if you don't mind. You recently stated in a newspaper article that you should be in a position to review the documents in order to determine whether or not they are Cabinet confidences. Has your office noted an increase in the number of complaints with respect to cases where Cabinet secrecy was invoked to censure access to information requests?

**Ms. Suzanne Legault:** No, and I have provided you with those documents. In fact, over the last year, the total number of complaints dropped by 1%. It has fluctuated between 1% and 4% in the last five years and it is declining. In the documents I distributed to you, you will see a graph indicating, in relation to total requests handled throughout the system, how many times institutions claimed documents to be Cabinet confidences. Those are government statistics. You can see that the number dropped over the last year.

**Mr. Marcel Proulx:** Yes, except that it's for a five-year period and it was high in 2008-2009.

**Ms. Suzanne Legault:** Yes, and I can tell you anecdotally, even though I don't have the specific data, that Andrea and myself noticed, when we looked at this year's complaints, that a number of complainants tell institutions they want to consult certain documents, but not those subject to Cabinet confidentiality. The issue is the timeline involved for receiving the information. That is documented in last year's report. For the Privy Council, there are very lengthy timelines involved for the handling of Cabinet confidences.

**Mr. Marcel Proulx:** Have the timelines increased? You seem to be saying that they are very lengthy.

**Ms. Suzanne Legault:** That's correct. However, in this year's performance report, the Privy Council indicated to us that it would be significantly improving those timelines. We will follow up next year to see whether that is the case.

**Mr. Marcel Proulx:** Ms. Legault, when an official examines a memorandum to Cabinet or other document discussed in Cabinet in relation to an access to information request, to what lengths is he expected to go to remove information from the part which is to be disclosed to the public? Is there a template? Is what must be reviewed pre-determined?

**Ms. Andrea Neill (Assistant Commissioner, Complaints Resolution and Compliance, Office of the Information Commissioner of Canada):** Thank you for your question.

As the Commissioner indicated earlier, we review the document provided to us by the Office of the Legal Advisor and the Privy Council. We look at all the details, we check to see whether all the information is there and we compare the documents the institution was authorized to provide us in response to the access request. By looking at all of that, we can be sure the institution has properly applied the rules with respect to excluding Cabinet confidences. The exception you refer to is one of the criteria we would consider. Does the Cabinet confidence go back more than 20 years and is it really covered under the exclusions? That is what we look at when we investigate.

**Mr. Marcel Proulx:** Can those reviews be challenged? Is your decision following that review a final one?

**Ms. Andrea Neill:** We carry out our review and, if necessary, we consult the institution during the investigation and confirm everything with it. We then draw our own conclusions as to whether or not it is justified.

**Mr. Marcel Proulx:** Thank you.

Thank you, Mr. Chairman.

• (1150)

[*English*]

**The Chair:** Thank you, Monsieur Proulx.

Mr. Albrecht, for seven minutes.

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

And thank you, Madame Legault and your team, for being here today.

I just wanted to draw to the attention of members the paper you circulated regarding your role and jurisdiction. Clearly, on page 1, it states, “The mandate of the Information Commissioner—to receive and investigate complaints—is prescribed in sections 30 through 37 of the *Access to Information Act*”. And then you highlight that again in your concluding statement, where you point out that “The Information Commissioner’s jurisdiction extends only to cases where a complaint has been brought pursuant to the *Access to Information Act*.”

My question relates to the total impact of access to information requests that our government deals with across the government, in addition to crown corporations, and so on.

Could you compare for our committee a rough estimate as to the total number of access to information requests that have been handled perhaps in the last two years, 2009 to 2010, and compare it to 1999 to 2000, somewhere in there?

**Ms. Suzanne Legault:** First of all, the collection of statistics and doing any comparative analysis in terms of the volume of requests across the government is the responsibility of the Treasury Board Secretariat. My office does not collect statistics. We don’t have those resources, nor is it our mandate.

That being said—and I don’t have them with me—I know that this past year the statistics are about 35,000, in terms of access to information requests. That has been growing fairly steadily, about 5% or 6%, year over year. As I said, I don’t have those here, but they are publicly available and I can get them for the committee, no problem.

In terms of complaints by crown corporations or the new institutions, it’s a fairly small number. In fact, it’s somewhat statistically irrelevant. It’s about 2% to 3% in terms of requests. In terms of complaints to my office, it is no longer statistically irrelevant because it varied from about 12% to 14%. It’s in my special report that I issued this year. So there are high levels of complaints for new institutions.

**Mr. Harold Albrecht:** Just to follow up on that in terms of the costs to Canadians to process access to information requests, I sit on the ethics committee. I don’t have the exact number, but it seems to me that there was one department that employed 12 to 18 people full time to deal with access to information requests.

I think everyone around this table wants to improve our response time. That’s a given. But I just wondered if you could.... If we were able to meet all of those access to information requests within a very short time, it would mean adding additional personnel and significant costs to Canadians.

I wonder if you could give us an estimate as to what the costs are just for the personnel mandated with the task of responding to access to information requests. We know there are a lot of other costs that departments themselves will be doing with personnel who don’t have that specific mandate, but could you give us an estimate of the costs currently, and of what it would be if we were to improve that and have, let’s say, a 20% improvement?

**Ms. Suzanne Legault:** First of all, I’d like to say that this question is probably not being asked to the right person—

**Mr. Harold Albrecht:** Okay.

**Ms. Suzanne Legault:** —in the sense that I believe that access to information is essential for Canadian democracy and to hold governments accountable. We don’t question how much it costs to issue pension cheques to citizens because we consider that a normal service that we provide to our citizens. I also believe that the information produced by government is public sector information, which taxpayers already pay the government to produce.

That aside, as far as I remember—and that’s from last year—Treasury Board actually does calculate the cost of processing an access request. It’s about \$1,400 per request—from last year. In terms of how many resources there are in each institution, I really could not answer that. That would be for Treasury Board Secretariat.

That said, when we have a system that actually has a lot of inefficiencies, in my view, if we were addressing those, we would reduce costs. If we had institutions where we were really processing access requests within the spirit of the act, which is in favour of disclosure as opposed to applying exemptions, we would save a lot of costs within my office in terms of dealing with complaints.

Canada Post is a good example. In my report cards this year, they have sufficient resources, a low volume of pages, a low volume of requests, and one of the worst records we've seen in the history of report cards. So it has nothing to do with resources, money, persons, or volume of requests. It's a question of leadership.

So when we assign a cost in the system the way it is functioning now, I think I would rather see improvements to the system and then an assessment of costs. I think that would be the best way to do it, particularly since a lot of the cost is generated by searching through large volumes of records, and that has to do with catching up in terms of electronic records management in the government. The government is moving that way, but once we are better at that, we will reduce costs.

By the way, the last thing I have to say is \$5 cheques, when it probably costs more money to the government to process them...? You know, we can save money in access to information, for sure.

• (1155)

**Mr. Harold Albrecht:** I want to assure you, the committee, and in fact all Canadians that the government is intent on moving to more open data. Certainly I think you'll see movement on that.

Just as a clarification for me as well, many times we hear that certain information is redacted or blacked out of documents. Could you confirm for us where those decisions are made? Are they made at the public service level or at the political level?

**Ms. Suzanne Legault:** It must be made by the people who have the delegated authority under the legislation. In each institution, the head of the institution has the authority to delegate within their institutions. Sometimes it's the minister, while in my office I have the authority, and in a crown corporation it would be the president of Canada Post. They have the authority to delegate within their institutions.

**Mr. Harold Albrecht:** Could you just go quickly through some of the exemptions, what information can be withheld, and for what reasons that information could be withheld?

**The Chair:** Very quickly, please, as we have 10 seconds left on this one.

**Ms. Suzanne Legault:** Okay. Why don't I ask Assistant Commissioner Neill to do that one?

**The Chair:** All right.

**Ms. Andrea Neill:** There are some exemptions that deal with national interest: information from other governments, national security information, the defence of Canada, and economic interests of Canada. There are also exemptions that deal with individual private interests, such as proprietary information of businesses, and also personal information.

There is also a mandatory exemption that references a whole list of acts, such as the Income Tax Act and the Statistics Act, which also applies mandatory exemptions to certain types of information.

**The Chair:** Thank you.

**Mr. Harold Albrecht:** It's important that we have that there are mandatory exemptions.

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

**Mr. Harold Albrecht:** Thank you.

**The Chair:** Monsieur Paquette, seven minutes.

[Translation]

**Mr. Pierre Paquette:** Thank you, Mr. Chairman.

Good morning, Ms. Legault. Good morning as well to your colleagues.

I would like you to provide additional details with respect to the table we see here in Appendix 2. Here on the top line, it talks about "total section 69 complaints registered". As I understand it, these are complaints that concern Cabinet or the Privy Council.

**Ms. Suzanne Legault:** No, not exactly. They are complaints related to cases where the institution is alleging that the information must be excluded because it is a Cabinet confidence.

**Mr. Pierre Paquette:** That's the type of excuse the government gave us not to disclose—

**Ms. Suzanne Legault:** It's not just an excuse; it's in the Act. It may be legitimate. It's important to understand that.

**Mr. Pierre Paquette:** On the second line, it refers to complaints as a "percentage of total complaints registered". In the first column, we see that they represented 4% of the 1,800 complaints that were submitted. At the bottom are "complaints closed". Does that refer to complaints for which there were no results?

**Ms. Suzanne Legault:** When we talk about complaints being closed, that simply means that the investigations are closed.

**Mr. Pierre Paquette:** There was no follow-up?

**Ms. Suzanne Legault:** You can see that, in the first column with respect to investigations we completed, we were of the view that in ten of the cases, the information should not be excluded as a Cabinet confidence.

**Mr. Pierre Paquette:** You pointed out earlier that the number of complaints is going down. However, I see that substantiated complaints are increasing in number. You say that ten complaints were deemed to be well-founded last year, so I presume you mean until the end of March, 2011. There may have been fewer complaints, but more of them are substantiated than in the past.

**Ms. Suzanne Legault:** As I stated publicly, it is my deep conviction that, under the Access to Information Act, Cabinet confidences should be subject to an exemption, and not an exclusion with the certificate process laid out in section 39 of the Canada Evidence Act. Similarly, the Office of the Commissioner should have the right to review them independently to determine whether they are in fact Cabinet confidences. That is my own position on how the legislation should be structured.

At the end of the notes that provide additional information, I added national and international benchmarking. It shows us that a number of provinces and territories have already provided for this right of review, and that the same applies at the international level. I believe Canada should also move in that direction.

• (1200)

**Mr. Pierre Paquette:** I noted that, in order to issue a certificate, the Clerk of the Privy Council should theoretically answer two questions. When you receive a complaint, do you contact the Clerk of the Privy Council to ask him if he answered the two questions?



**Ms. Suzanne Legault:** The questions that are found in the reference document really relate to what came out of the Supreme Court ruling in the Babcock case. Following that ruling, the Office of the Information Commissioner developed a procedure to be followed with institutions, the Secretariat and the Privy Council Office to ensure that we would basically be given the certificate content as determined by the court in the Babcock case. Therefore, the document has to contain basic information such as the name, the title, etc., and the specific provision of the Act that applies to the document. It must also specify whether it is a memorandum or working document, for example. That has to appear on our roll. We carry out our investigation based on that information which, according to the Supreme Court ruling, is the very least that should be provided in order for a certificate to be issued.

It is an administrative practice. However, if there is a major disagreement, I could always say to the government that I must see the documents at some point, and I believe I have the power to do that under the current Act. The government or the Clerk of the Privy Council could then issue a certificate. He would essentially have to follow the process we currently follow. That's why the administrative process was developed. The caselaw is instructive because that is really what the court said. So, the government is required to provide that basic information, including the type of document, the title, the name and the specific provision that applies.

**Mr. Pierre Paquette:** In your document, in reference to the Supreme Court ruling in the case you mentioned, it also says here that “the first element of the Clerk's decision requires that her certificate bring the information within the ambit of the Act. [That refers to what you just stated]. This means that the Clerk or Minister must provide a description of the information sufficient to establish on its face that the information is a Cabinet confidence and that it falls within the categories of section 39(2) or an analogous category; [...]”

Is that with respect to the person making the request under the Access to Information Act or the Commission? Personally, what I understood in this particular case is that the government has refused to provide its rationale. Therefore, that is contrary to the spirit of the Supreme Court ruling.

**Ms. Suzanne Legault:** I tried to explain at the beginning that I obviously cannot provide advice or comment on what occurred in Parliament. That involves parliamentary process and procedures, and Mr. Walsh made that quite clear.

What I am presenting today is the process used by the Office of the Commissioner to determine, through its investigations, whether it accepts the government position when the latter says that certain documents must be protected because they are Cabinet confidences. It's the same thing with respect to the Supreme Court ruling in the Babcock case, which lays out the procedure to follow and rationale that must be provided.

I am presenting that to the committee, in case you may consider it useful in your own proceedings as to the rationale or reasons you should be requesting as part of your parliamentary process. If there is a parallel to be drawn there, I leave that in your hands. That is what I felt able to present to you today.

[English]

**The Chair:** Mr. Paquette, you have four seconds left.

[Translation]

**Mr. Pierre Paquette:** I'm going to wrap up.

Mr. Walsh said earlier that there is a difference between the legal domain and that of parliamentary procedure, which is far broader.

In my opinion, the Supreme Court ruling should be a minimum requirement for the government which, on the face of that ruling, should be providing adequate rationale for keeping the information confidential. That has not been done.

● (1205)

[English]

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

I'll just take your time off Monsieur Godin's. I'm sure he'll care for that.

Monsieur Godin, you're up. Seven minutes.

**Mr. Yvon Godin:** Mr. Chair, you're the one to stop him. I hope I don't lose my time on this.

[Translation]

You said you have the power to investigate to determine whether the documents may be made available or not. Is that correct?

**Ms. Suzanne Legault:** Do you mean whether the documents are Cabinet confidences or not? Is that what you mean?

**Mr. Yvon Godin:** Yes, whether they are Cabinet confidences.

**Ms. Suzanne Legault:** I understand. That is my position. To my knowledge, it has not been tested.

**Mr. Yvon Godin:** That is your position?

**Ms. Suzanne Legault:** Yes.

**Mr. Yvon Godin:** You said there are documents you cannot review.

**Ms. Suzanne Legault:** Yes.

**Mr. Yvon Godin:** If you can't review the documents, how do you know whether or not they should be made public?

**Ms. Suzanne Legault:** First of all, that is why I am advocating that I should be authorized to review them. It's an area for legislative reform, but the situation is now such that the Babcock ruling is part of the caselaw. There is also the ruling in the Ethyl case.

The court gave details as to the information the government must provide when the Privy Council certifies that something is a Cabinet confidence. We proceed in that manner in our own investigations—in other words, we base ourselves on what the Supreme Court said in its ruling as to what the government must provide. That is the current state of the law. I cannot do something that is not in the law. I would like the law to be changed but as long as it isn't, I have to operate based on the current legal framework.

Here we have a table showing the document, the name, the title, the date and asking the government to state which provision of the Act applies—in other words, which part of section 69 and what kind of document is involved. That is part of our investigation. Even in cases where we do not review the documents, in 24% of cases over the last five years, we have noted that the documents were not Cabinet confidences.

**Mr. Yvon Godin:** Do you believe that having access to documents in order to make proper decisions is part of a proper democracy?

**Ms. Suzanne Legault:** In my opinion, yes. That's why we talk about government transparency and open government. I think that—

**Mr. Yvon Godin:** That is what the Conservatives were elected on in 2006, on transparency and on change.

How long have you held the position of Information Commissioner?

**Ms. Suzanne Legault:** Like Mr. Walsh, it feels as though it's been 20 years.

**Mr. Yvon Godin:** It feels as though it's been 20 years?

**Ms. Suzanne Legault:** It's been almost a year.

**Mr. Yvon Godin:** Do you find it it's taking longer than previously to respond to access to information requests? You said you have a lot of experience. We won't get into how many years may be involved, but you do say you have a lot of experience. Do you find that it's taking longer to obtain information now than previously?

**Ms. Suzanne Legault:** I believe the government's statistics confirm that it is indeed taking longer than before. And that does not only go back to the point at which the Conservative government took office. This is a trend that has been observed for a number of years now. I often cite these statistics: in 2002-2003, we answered 69% of requests in 30 days, as provided for by the Act, whereas we are now at 56%. We are seeing a constant decline. It goes down by 1% or 2% every year. We have not yet seen any change in that—

**Mr. Yvon Godin:** A little earlier, you said that there were practically no costs associated with this and that people should not have to pay for information about pension funds, for example. It costs a lot of money, but fees are still charged.

**Ms. Suzanne Legault:** I did not say there were no costs. There are.

**Mr. Yvon Godin:** I mean that our decisions should not be based on the fact that there is a cost attached. We should have access to the information even if there is a cost.

**Ms. Suzanne Legault:** That is what I believe.

**Mr. Yvon Godin:** Earlier, my Conservative colleague, Mr. Albrecht, said there are going to be changes in that regard. You read the newspapers just as I do. Do you think it's not getting rid of the \$5 fee that will end up being most costly? Do you not think that imposing much higher fees will actually mean that ordinary citizens will no longer turn to the Office of the Information Commissioner? It seems that the government finds it tiresome to have to give people information. So now, it has found something new. It says it costs \$5, and that's ridiculous. It's going to charge a hefty fee and ordinary citizens will stop making access to information requests.

Do you not think it sends the wrong message to tell people the fee isn't high enough and we're going to raise it, when the fact is that we want information and the government is not interested in providing it? Don't you think this will have the opposite effect and that people will find it too expensive and won't bother making a request? Are you concerned?

• (1210)

**Ms. Suzanne Legault:** I can't really comment on what the government is intending to do in that respect because I was not consulted. I am not aware of any of the details. To be perfectly frank, as Information Commissioner, I would be very sorry to see any increase in the cost of access to information, when the international trend is exactly the opposite.

**Mr. Yvon Godin:** You say that the international trend is the opposite. That means that the international trend is to believe in democracy. People say that representatives should be elected and be accountable to the people. We see in the news everything that is going on in other countries. People don't want dictatorship. They want transparency. They want elected representatives to work for them. But they say that if people want information, it's going to cost them more. At the same time, they are saying they don't want to give out that information. That is a strange message to be sending if the international trend is moving in the opposite direction.

**Ms. Suzanne Legault:** As I said, I cannot comment on what the government is intending to do because I have no details in that regard. The international trend is different, because the Internet really facilitates the whole process.

**Mr. Yvon Godin:** xxxYou have no information about the government's intentions, but if it decides to increase fees for access to information, what is going to happen? That's only "if" the government decides to increase the fee. If wishes were horses, beggars would ride, as they say. If the decision is made to increase the fees to access information, do you think that could have a negative impact?

**Ms. Suzanne Legault:** In my opinion, increasing fees for access to information to \$5 or more is not a good public policy decision. How high will it go? How much will it cost to write a cheque to the government?

I think there are other ways of doing things if we want to have some control over the way requests are made or the number of requests.

**Mr. Yvon Godin:** It would cost less if the government provided the information immediately or within a reasonable timeframe.

**Ms. Suzanne Legault:** This comes back to your colleague's question. The Access to Information Act does not say that you have to disclose every piece of information to everybody all the time. There are certain legitimate exceptions. And they are necessary, because there has to be protection for personal information, national security—

**Mr. Yvon Godin:** They talk about public safety but in my opinion, the price of a plane is not a major public safety issue.

[English]

**The Chair:** Thank you, Monsieur Godin.

[Translation]

**Ms. Suzanne Legault:** Every case is different.

[English]

**The Chair:** Thank you. I did let you go 30 seconds longer, so you know I'm not picking on you in any way.

We're going to have to have about a four-minute round in order to meet our time goal, to finish at the bottom of the hour.

Mr. McGuinty, four minutes, please.

**Mr. David McGuinty:** Thank you, sir.

Madame Legault, thanks for being here. I appreciate it.

I'd like to pick up exactly where you left off. Just a moment ago you were asked by a Conservative MP about costs. What is the total budget for your information commissioner office?

**Ms. Suzanne Legault:** My total budget is roughly \$12 million—

**Mr. David McGuinty:** About \$12 million a year?

**Ms. Suzanne Legault:** —including all the employee benefits and so on.

**Mr. David McGuinty:** Okay. I would suggest that the government, instead of asking about the costs surrounding your mandate, ought to be examining, for example, its \$26 million being spent in nine weeks, right now, on advertising on television; or even better, the \$27 million they spent on 8,500 billboards across this country; or even better, the \$412 million they spent on advertising in four years. Rather than taking it to your office to say we ought to be examining costs, they should look in the mirror first.

Madame Legault, there is a lot of confusion right now for Canadians who are watching this proceeding. They're not sure.... Your office was involved and is involved—according to media reports—in all kinds of investigations. I want to make sure that Canadians understand that this process is different from what your office is undertaking.

For example, the RCMP has been called in to investigate a former Conservative staffer. You're widely reported in the media as saying you're investigating the Department of Foreign Affairs, National Defence, and Public Works. I'm not sure who has initiated this, but it's also reported that your office has launched a government-wide investigation of political interference on access to information requests. Are you in a position to help Canadians understand the difference between what you're doing there and what's going on here? Are the media reports correct, so they understand this distinction?

• (1215)

**Ms. Suzanne Legault:** First of all, what goes on in Parliament is a matter for parliamentary procedure. My responsibility is under the Access to Information Act and complaints that are made and the investigations that I do into these complaints.

What I have on the go now has been a matter in the public domain for about a year, really. I did not issue a report publicly this week. There was a longstanding investigation into a matter of the processing of an access request and the potential interference with the processing of an access request at the Department of Public Works. The complainant was informed by my office of the results of

this investigation on Monday, March 14. The complainant happens to be a journalist with The Canadian Press, and the journalist, who has no confidentiality requirement, decided to publicly disclose details of this.

I am planning to table a special report to Parliament on Monday, March 21. That will be my report about this matter to Parliament, given parliamentary interest. At that time—

**Mr. David McGuinty:** Okay, let me just.... I only have four minutes. Thank you very much for that. Let Canadians find the CP articles and draw their own conclusions, is what you're saying. So I appreciate that.

May I read something to you for a second, Madame Legault? Here is a quote: “Without adequate access to key information about government policies and programs, citizens and parliamentarians cannot make informed decisions, and incompetent”—or worse—“or corrupt governance can be hidden under a cloak of secrecy.”

I would expect that's something you would agree with.

**Ms. Suzanne Legault:** I do agree.

**Mr. David McGuinty:** Because that was uttered by one Stephen Harper, as a member of Parliament, I believe on June 7, 2005, in an editorial in *The Montreal Gazette*.

So we're having a hard time here squaring.... Perhaps you can help us. How do we square Mr. Harper's public pronouncements about hiding corrupt or incompetent governance under a cloak of secrecy and the fact that we're now being forced here in this committee to drag this government kicking and screaming to heel, to abide by the will of Parliament, and share core information with everyday Canadians about things like what a fighter plane is going to cost? They're paying for it, aren't they?

Could you help us understand?

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

I hope we'll get to that answer. Maybe someone else will ask the same one.

Mr. Reid, you're next, for four minutes.

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

Thank you to the commissioner for being here.

I promise not to cut you off in your answers, unlike the past two questioners.

I listened with some amusement to my colleague Mr. McGuinty speaking about the \$12.6 million budget for your office and his concerns about other budget items. Given what his brother has done to the Ontario budget, I as an Ontario taxpayer wish that a similar solicitude for millions, and indeed billions, were shown by all members of the McGuinty family.

However, I want to quickly ask you about your budget. It is \$12.6 million right now?

**Ms. Suzanne Legault:** My budget is not quite \$12 million. I just don't have the correct figure.

The reason I'm saying that is because we did get emergency funding from the government this year in order to deal with our cases.

**Mr. Scott Reid:** So it's \$12 million plus the emergency funding, which is a "one time only".

**Ms. Suzanne Legault:** It is about \$12 million in total—

**Mr. Scott Reid:** Oh, in total—

**Ms. Suzanne Legault:** —including employee benefits and so on.

**Mr. Scott Reid:** But the emergency funding is beyond the \$12 million or is part of the \$12 million?

**Ms. Suzanne Legault:** For this year, it's part of that. I mean, \$400,000; it's either \$12.4 million or somewhere around there.

I can get you the exact figure.

**Mr. Scott Reid:** Okay. But the emergency funding is about \$400,000, I gather.

**Ms. Suzanne Legault:** Yes.

**Mr. Scott Reid:** Okay.

Am I right that in the last year the Liberals were in government your budget was only \$7.6 million?

•(1220)

**Ms. Suzanne Legault:** That's correct. I can say that it was even less than that. The budget has more than doubled certainly since I've been both assistant commissioner and commissioner at the OIC.

**Mr. Scott Reid:** Thank you very much.

Mr. Godin made reference to or essentially complained that a number of the adjustments you suggested weren't included in the Accountability Act. I thought that opened up the opportunity to discuss a little bit some of the best practices that exist at the provincial level in Canada, which seems to me to be the logical place to turn.

Are there any particular practices, if we are discussing policy options for the future, that ought to be considered and that you could point us to, options that are currently in place in the access legislation and in the parallel office to your own office in any of the provinces?

I realize that you have limited time, so maybe I'll give you the rest of it to offer some thoughts on that.

**Ms. Suzanne Legault:** What are the best practices in provincial and territorial institutions? Mr. Chair, it's a very lengthy answer, I'm afraid.

The short answer to the honourable member would be that, in my view, the federal government would be wise to look at the provinces and the territories. Some of the provinces, particularly B.C., Alberta, and Ontario, have had their legislation reviewed many times, and I would say they have much more modern pieces of access to information legislation. I think it would be very wise to look at what's there.

That would be the short answer.

**Mr. Scott Reid:** Those would be the three models you'd recommend of all ten plus the territories, the three best to look at?

**Ms. Suzanne Legault:** Well, they have different models. Some models have order-making powers, some of them don't.

In Canada there hasn't been, to my knowledge, a really good study of the various pros and cons of the various models. You have the Quebec commission, which is a completely different model. To my knowledge, in Canada it hasn't really been looked at in recent years. There have been a lot of amendments to, I think, Alberta's legislation, and B.C. has had amendments to their legislation. There have been a lot of changes since this was last looked at.

Internationally, as well, we have new pieces of legislation. The U.K. and Australia have new pieces of legislation.

So I think there is some very good benchmarking to look at it.

As to whether I can give you a short answer on this beyond what I'm saying now, I can't. Frankly, although I would love to have studied this in depth, I really don't have the time right now with the level of complaints we have.

**The Chair:** I have exactly the same problem: I really don't have the time right now.

Madame DeBellefeuille, four minutes.

[*Translation*]

**Mrs. Claude DeBellefeuille:** Thank you very much, Mr. Chairman. Thank you very much as well, Ms. Legault.

What I understood from your opening comments is that you were explaining your limitations in terms of the investigations you carry out in order to access additional information covered by a certificate. You even said that, in terms of modernizing the legislation, this is one thing we may want to look at more closely. I would really like to get an idea of what is involved and understand the process.

When Mr. Brison made an initial request regarding the costs of 18 law-and order bills, he was told that he could not have any of that information because it was a Cabinet confidence. As citizens or as parliamentarians, how do we know whether the request regarding these costs really is subject to Cabinet confidentiality and that a certificate has been issued to that end? That is my first question.

My second question is as follows: do you not think that multiple refusals under the guise of Cabinet confidentiality could be a way of circumventing the Access to Information Act?

**Ms. Suzanne Legault:** As regards your first question, that is really a matter involving the parliamentary process. There are certain things you can do. That is what you are involved in here today, and that is what the Speaker of the House did when he made certain rulings. It really is up to parliamentarians, based on parliamentary procedure, to decide and take the necessary steps to ascertain how they can access the information they believe they are entitled to receive in order to do their job. It's really about the parliamentary process.

As I was saying, what I am focusing on today is what we do under the current Act in relation to Cabinet confidences. That gives you a potential avenue in terms of justification and basic data that has to be provided, according to the caselaw, to determine whether the documents are indeed Cabinet confidences.

**Mrs. Claude DeBellefeuille:** Pardon me for interrupting you. Initially, the government refused to pass on the information, saying that it was a Cabinet confidence. If, as a member of Parliament, I want to be certain that what the government is telling me is true, I have to lodge a complaint and ask you to verify whether the costing for this or that bill is indeed protected under a certificate. The only way I can do that is to make a complaint so that you can check to see whether it's true.

At the beginning, the government systematically refused, citing that specific reason. After that, the Government House Leader did provide some budget information regarding certain bills, but with no explanation as to the reason for refusing in the other cases. If, as a parliamentarian, I want the answer, I have to make a complaint so that you can investigate and determine whether every request is indeed subject to rules of confidentiality. Is that indeed the way it works?

•(1225)

**Ms. Suzanne Legault:** They are parallel and distinct processes. They can be carried out independently of each other. There is the parliamentary process, with all the procedures and codes that govern what you do. I really am no expert in that area.

Furthermore, as a citizen residing in Canada, you have the right to make an access to information request. If you're not satisfied with the answer you receive, you can make a complaint to the Office of the Commissioner. That has happened in the past. In some specific cases I am aware of, the member of Parliament went through both processes. They operate in parallel and are governed by different procedures. An investigation by the Office of the Commissioner is not the same thing as a parliamentary debate among politicians. They are two completely different avenues.

**Mrs. Claude DeBellefeuille:** Are you not concerned to see that this increase in response time is a means of circumventing the Access to Information Act?

[English]

**The Chair:** Hopefully, we'll get to that answer.

[Translation]

**Ms. Suzanne Legault:** I can't really speculate as to political motives.

[English]

**The Chair:** Thank you.

Mr. Martin, welcome today. Four minutes for you.

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

Madame Legault, the public has a right to know what their government is doing. It's a fundamental cornerstone of our democracy. Yet this government seems obsessed with secrecy. In your own testimony you suggested that enforcement of the ATI Act would be a lot cheaper if the government would in fact err on the side of the spirit of the act, which is to reveal information and to share information, rather than secrecy.

It's the culture of secrecy that allowed corruption to flourish under the Liberal years, and yet this government seems obsessed with

secrecy. It's almost a paranoid obsession to never reveal anything unless somebody, as if pulling teeth, manages to eke it out of them.

Can you expand on your comment? I'm reading from your comments where you say that it would cost a lot less if the government actually followed the spirit of the legislation, which would result in disclosure rather than secrecy. Is it your testimony that the government is not complying with the spirit and the letter of the Access to Information Act?

**Ms. Suzanne Legault:** I think from what we see I can't make a generalized statement that the government is not complying with the spirit of the Access to Information Act. What I can say is if we look at the government statistics year over year in terms of the number of requests where all information was disclosed, that's been in steady decline as well. It was about—

**Mr. Pat Martin:** Although you've now referred one matter to the RCMP—

**Ms. Suzanne Legault:** It was about 40% in the year 2000, and we're now down to 16% in terms of the requests where all information was disclosed.

So this is not just the Conservative government. This is a longstanding matter. What I'm concerned about is that this trend is not being reversed.

In terms of the institutions that don't function well, last year's report card and this year's report card point to 15 institutions where we really have to have a serious look at how they apply the law.

**Mr. Pat Martin:** But I can just point out, five years into this government's regime, that they in fact rode into Ottawa on the high horse of accountability. They were the ones who were going to implement John Reid's open government act. It was the one that was committed to freedom of information.

I heard people say freedom of information is the oxygen democracy breathes, and all kinds of flowery and romantic promises and commitments, and yet their record is no better. In fact, arguably, it's a lot worse.

What I'm getting at is that I think your comment was very revealing, in that if they would only err on the side of open government instead of secrecy they would save us all a lot of money and the general public would be better served. You can't overstate the importance of the public's right to know what their government is doing with their money. It's a fundamental freedom.

**Ms. Suzanne Legault:** My comment was not that this government must do that, but that all governments must do that, constantly. That way we would see a reversal in that trend.

**Mr. Pat Martin:** Cost is only one of the barriers, and I have one example. The Treaty One First Nations, in my community of Winnipeg, were trying to find out about the status of the Kapyong military barracks. They paid their \$5 up front and then there was a \$780 surcharge for research. That's only one example where stalling, delaying, overcharging, etc., are barriers thrown in the way of those who would like to exercise their right to know.

What is the highest amount that you can remember a person being charged for a freedom of information request?

• (1230)

**The Chair:** In under ten seconds.

**Ms. Suzanne Legault:** Certainly over \$10,000, in terms of closed cases.

**The Chair:** Thank you.

Thank you very much, Mr. Martin.

Thank you, Ms. Legault, for your help today.

We've reached the 12:30 period, and we will suspend for one hour. We'll be back here at 1:30.

I thank all the members for their help this morning in keeping us on schedule. For members, there is lunch in the Commonwealth Room.

• (1230)

(Pause)

• (1330)

**The Chair:** I will give a couple of seconds for the room to settle down before we go ahead and start our afternoon session.

We are, of course, still on the same tight timeline we were on this morning.

Minister Nicholson and Minister Toews, it's good to see you both here today. If you have any opening remarks, please share them. Try to be as brief as you can. During your opening remarks please try to introduce the staff you've brought with you, if you can. If not, we'll certainly get to a round of questioning after that, where I'm sure we might get to that.

Documentation is being handed out.

**Hon. Rob Nicholson (Minister of Justice):** Mr. Chairman, just as a preliminary, I presume I will ask your permission to table or distribute the documentation that is being distributed at this time.

**The Chair:** Well, thank you. I'm happy to see it.

Which one of my two favourite ministers wants to go first?

Thank you, Minister Toews.

**Hon. Vic Toews (Minister of Public Safety):** I'll start. Thank you very much.

Thank you, Mr. Chair and members of the committee. I'm pleased to speak to the Standing Committee on Procedure and House Affairs about the costs for cracking down on violent crime. Today I will speak to issues concerning the Department of Public Safety and its portfolio agencies. My colleague, the Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada, will speak to issues pertaining to the Department of Justice.

The potential witnesses here around the table are listed in the witness list. I don't need to introduce each individual, I presume, given that they've already been noted on the docket.

As you are aware, on February 17, 2011, our government tabled a projected cost estimate in response to a motion brought forward by the member for Kings—Hants on December 7, 2010. This estimate was tabled in Parliament. It set out the projected cost of several government bills that address crime, law enforcement, and

corrections. It was our belief that this satisfied the information request in the December 7 motion.

The costing tabled on February 17 represented projected costs. It goes without saying that projections are complex and time-consuming exercises. Today, in front of you, is a binder that provides additional information that elaborates on and helps clarify what was presented to the House on February 17. I believe that the information in front of you fully supports and answers the committee's request. It also clearly states whether there are any limitations on the ability of the government to answer any elements of the request, as framed by the motion. In addition, these documents explicitly note and explain any apparent differences between this package and the February 17 tabling. I urge all committee members to review the information laid before you, as it provides clear and accurate details of the legislative costs associated with this government's crime bills.

We all know that crime has a terrible cost for victims, and indeed for all Canadians. This includes costs related to property damage and loss, costs related to lost productivity, as individuals rebuild their lives, and most importantly, costs related to the medical care and support required in response to the physical and mental harm so often done to the victims of crime. These are costs our government believes victims should not have to bear, which is why we have taken such extensive steps to crack down on crime, to prevent it before it happens, to punish it once it has occurred, and to do all we can to ensure that it does not reoccur.

Our government is working hard to keep Canadians safe and to finally put the rights of victims front and centre in our criminal justice system. There may be much we disagree about here today, but I would like to think that we are of one mind on this: a government has no greater responsibility than to ensure the safety and security of its citizens.

Since we were first elected in 2006, this government has told Canadians that we would make changes to the Criminal Code that would make sure that violent and repeat offenders would be subject to tougher sentences. We promised to crack down on violent, gun-related crime. We committed to putting more police onto our streets and to working to secure our borders. We have passed legislation targeting gang violence and organized crime by addressing issues such as gang murders, drive-by shootings, and additional protection for police officers.

Our government is a government of action and commitment. That's why we are in fact doing what we said we would do. We know that action has a cost, a cost that we are willing to pay. We are willing to pay it, because the cost to society is so much greater, and not simply as measured in dollars and cents.

In the current session we have introduced ten pieces of legislation that await passage into law, including bills to end the use of accelerated parole review and measures to combat the heinous practice of human smuggling, a crime that threatens our communities as well as Canada's generous immigration system.

Victims and law-abiding Canadians alike have told us that these measures are critically important, and I take this opportunity to again urge opposition members, and those on this committee in particular, to consider not only the figures on the pages in front of you but the overall cost of crime to our society. After all, protecting Canadians by providing a safe and secure society is worth the price.

• (1335)

Thank you.

Following the presentation by my colleague, the Minister of Justice, I would be happy to respond to any questions that members of the committee may have.

**The Chair:** Thank you, Minister.

Minister Nicholson.

**Hon. Rob Nicholson:** Thank you very much.

I'm here before this committee to provide additional information and to respond to questions regarding the cost implications of key bills that are critical elements of our law and order agenda. The cost implications to the federal government were of course a consideration as we developed these bills. It's my hope that by being here today with my honourable colleague Vic Toews, the Minister of Public Safety, in addition to providing further information as requested, we can move forward with these reforms.

I hope that honourable members will come to agree that these bills and the accompanying investments are essential to updating our laws and improving our justice system. Most importantly, our bills aim to hold offenders more accountable for their actions and increase Canadians' confidence in our criminal justice system, a system that is envied throughout the world.

I would note, as the information that has been provided indicates, that several of the bills in question do not have cost implications for government. For those that do, we have offered additional information to further explain the cost estimates.

As members know, the motion of the Standing Committee on Finance sought particular information from the relevant departments about specific crime bills. On February 17 our government tabled a document in Parliament to respond to the motion. This document indicated each bill that had cost implications and the overall costs attributed to the identified departments or agencies, broken down by year for a five-year period. The document also noted which bills do not have cost implications and briefly explained why that was the case. The government's intention has always been to comply with the request and provide the information concerning the costs.

We are committed to working with members of Parliament to ensure respect for the role of Parliament, and in keeping with this approach the government respects the Speaker's ruling with respect to the information provided on February 17. Therefore, today we have provided to you detailed information regarding each bill that was referred to in the motion. That information includes a description of the bill, as the elements of the bill are the starting point in assessing whether there are cost implications and the nature of the costs.

I would repeat again that for many of these bills there are no costs, and where this is the case, it is explained.

On the other hand, for some bills there is detailed cost information. For example, for our Bill S-10, our legislation to tackle serious drug crimes, the cost information includes the anticipated impact on the RCMP, the Office of the Director of Public Prosecutions, the Correctional Service of Canada, and others. Each of these agencies based the cost estimates on relevant factors, experience, and assumptions. But as I stated earlier, this level of detail does not exist for all bills, and this is not due to the government's omission or lack of willingness to share the information, but simply because financial impacts are not expected.

Finally, before I wrap up my remarks I would like to share the following with honourable members. In my four years as Minister of Justice I've had the opportunity to criss-cross our country many times to meet with police, Canadians, and victims whose lives have been forever altered or devastated by crime. From across this country the message I have heard has been the same: Canadians want laws that are effective, that hold criminals accountable and responsible for their actions, and that give victims a voice in our justice system.

Our government has heard this message loud and clear. That is why our justice agenda aims at updating our laws to ensure greater truth in sentencing. Like Canadians, we want to see that the punishment fits the crime and that our justice system delivers justice. Victims and law-abiding Canadians understand that there is a cost to crime, whichever way you look at it. They understand that from prevention programs to rehabilitation, treatment, support for victims, and costs associated with keeping criminals off our streets, crime costs money.

• (1340)

They also understand that letting dangerous criminals roam our streets also costs money. We pay a high price, as a society, when some of these individuals are allowed to roam free. In fact, Canadians know all too well exactly what the costs of crime are. There are many terrible examples, too many to list, and Canadians are troubled, and rightly so, when they see that the severity of the punishment does not fit the severity of the crime. They can lose faith in our criminal justice system when the rights of victims are not respected.

That's when they look to us, their representatives in Parliament, and rightly ask, what are you doing to fix this? As parliamentarians, it's our responsibility to update our criminal laws and to work to improve our justice system to catch up with the bad guys, at the very least, and to ensure that justice is rendered. Our record speaks for itself. Under the leadership of Prime Minister Harper, our government has taken serious measures to get tough on crime and to better protect Canadians, and we will continue to make decisions based on what is needed in order to protect the rights of victims and make our communities safer.

Colleagues, I seek your support for our justice and public safety agenda, and I hope that the information we have provided to you today regarding these cost implications will assist you in your analysis.

Thank you very much.

**The Chair:** Thank you very much. Thank you both for being brief.

We will go to a seven-minute round of questioning. Mr. Brison, you're leading off.

**Hon. Scott Brison:** Thank you, Mr. Chair.

Thank you, ministers and public servants, for being here.

I just want to be clear. We were provided with this information scant minutes ago in a data dump that doesn't reflect respect for Parliament or information for Parliament, but instead is an insult to Parliament. There was absolutely no reason you could not have provided this information to us last week, last month, or in fact at the original deadline back in December.

It's March 16. Why has it taken four months to provide this information to Parliament?

**Hon. Rob Nicholson:** I can go first.

First of all, we did indicate, and we did table with Parliament in February, the various costs of crimes. And in fact where there were no costs to the Government of Canada, we indicated that, as we indicated where there were costs.

There was a ruling that the Speaker took on this to provide more information. This is a huge undertaking, as you can see from the information we have left with you—

• (1345)

**Hon. Scott Brison:** Minister, are you saying there is—

**Hon. Rob Nicholson:** —for further information. Presumably this is what you want on each of these. We're providing for that, and even where there are no cost implications you will see that we indicate that.

**Hon. Scott Brison:** Minister, is there new information beyond what you provided on February 17?

**Hon. Rob Nicholson:** This is more detailed information.

**Hon. Scott Brison:** It's more detailed information. Does it include the following, and I bring you back to my motion: a breakdown of incremental cost estimates; a breakdown of baseline departmental funding requirements, excluding the impacts of the crime bills; total departmental annual reference levels, ARLs; and detailed cost accounting analysis and projections, including assumptions, for each of the crime bills, conducted in accordance with the Treasury Board's guide to costing? Does it include all that information, Minister?

**Hon. Rob Nicholson:** Where it is relevant to the questions on the bills you have asked, Mr. Brison, we've done exactly that. You asked with respect to some bills and not other bills that Parliament has passed, and I think you'll be very impressed with the level of detail that you're given.

**Hon. Scott Brison:** Minister Toews, you told us that in fact the cost of one bill, the Truth in Sentencing Act, would be \$90 million. Then the Parliamentary Budget Officer—

**Hon. Vic Toews:** I've never said that.

**Hon. Scott Brison:** You have said that. The Parliamentary Budget Officer came out with costing of \$10 billion to \$13 billion, to which you responded that in fact the cost would be \$2 billion, so the actual cost—

**Hon. Vic Toews:** Yes, that's the correct number, the \$2 billion.

**Hon. Scott Brison:** That's right, but your initial estimate—

**Hon. Vic Toews:** I've never said \$90 million. Just to point out, on the \$90 million—

**Hon. Scott Brison:** Your initial estimate was 5% of—

**Hon. Vic Toews:** —I'd be more than happy to put that on the record, but in fact I'd like you to point out where I said \$90 million, Mr. Brison.

**Hon. Scott Brison:** Today, what are you estimating for all of the 18 bills we have listed in our motion? What is the cost?

**Hon. Vic Toews:** They're set out in the response that we provided to Parliament. I could get the officials to add up the numbers. I don't have the numbers.

**Hon. Scott Brison:** Minister, you don't know the numbers? You don't know the numbers?

**Hon. Vic Toews:** No, I don't.

**Hon. Scott Brison:** We have a \$56 billion deficit, and you can't tell the Canadian taxpayer how much your law and order U.S.-style crime bills are going to add to the national debt?

**Hon. Vic Toews:** Wait, wait. That's a different question. You asked what all of the bills cost.

**Hon. Scott Brison:** That's right, the total.

**Hon. Vic Toews:** Let me answer now. Let me answer now, Mr. Brison.

**The Chair:** If you're going to ask a question, we're going to want an answer, so let's leave a little gap in-between.

**Hon. Vic Toews:** Mr. Brison, you asked what all of the bills cost.

**Hon. Scott Brison:** The 18.

**Hon. Vic Toews:** I can't give you that answer because not all of the bills are my responsibility. Some of the bills are the Minister of Justice's responsibility. I can go through the bills and point out the bills I'm responsible for and what the costs are. Is that what you want me to do, Mr. Brison?

**Hon. Scott Brison:** I want the total figure from both ministers as to what the 18 bills will cost.

**Hon. Rob Nicholson:** The cost for bills that you asked for, per the breakdown here, is approximately \$631 million.

**Hon. Scott Brison:** So we're being told over \$600 billion—

**Hon. Rob Nicholson:** No, no, no.

**Hon. Scott Brison:** —or \$600 million.



**Hon. Rob Nicholson:** Sorry, \$631 million with respect to the bills for which you have asked for the costs. And as I indicated, for many of them there are no federal costs, but where there are costs attributable, in the information you have before you, it totals \$631 million.

**Hon. Scott Brison:** You have said there are no federal costs. So there are other costs. What are the costs to the provinces?

**Hon. Rob Nicholson:** Again, I'll give you an example. With respect to the bill that was recently passed by Parliament, consecutive parole ineligibility, there are no costs for at least 25 years because for the individuals who would be affected by this, their matter doesn't come up for 25 years. Therefore, it's impossible at this particular time to say—

**Hon. Scott Brison:** So you don't have the costs for the provinces?

**Hon. Rob Nicholson:** Again, in the example I've given you, there are no costs to the provinces, in the sense that for somebody who is no longer eligible for parole after committing more than one murder, this won't kick in for 25 years after that individual has been convicted. So you can see why we've indicated that there are no costs at this particular time.

**Hon. Scott Brison:** You've indicated that your U.S.-style mega-prison agenda has no costs to the taxpayers in many of these bills. Is that what you're saying?

**Hon. Vic Toews:** Since you've raised the issue of prisons, could you identify the mega-style U.S. prison you're referring to, please?

**Hon. Scott Brison:** Minister Toews, I want you to answer a question about the—

**Hon. Vic Toews:** I'm just asking because you're asking a question—

**Hon. Scott Brison:** Minister Toews, Minister Toews—

**Hon. Vic Toews:** —and you're putting false information on the record, Mr. Brison—

**Hon. Scott Brison:** Minister Toews, Minister Toews—

**Hon. Vic Toews:** —and if you're going to make those kinds of statements, Mr. Brison, please put it and I will respond fully.

**Hon. Scott Brison:** Minister Toews, do you recognize this document?

**Hon. Vic Toews:** I can't see that far.

**The Chair:** Gentlemen, if for no other reason besides having trouble with the translation, can we try not to talk over top of each other?

Mr. Brison, when you ask a question, leave time for an answer.

Ministers, if possible, please don't talk over when you're being asked a question.

● (1350)

**Hon. Scott Brison:** Minister Toews and Minister Nicholson, your government has steadfastly refused to provide the full costs of your legislation to this Parliament. You've taken four months to provide any fulsome information, and we will have to determine in the course of this week whether or not you've done that. Based on your track record, we don't have a lot of confidence.

Over the last four months you've had lots of opportunities to come clean to Parliament and come clean to the Canadian taxpayer. Why have you been so focused on hiding the costs of your U.S.-style prison agenda from Canadians? Why have you been so reluctant to tell the truth to Canadians, and why has it taken this parliamentary committee just to get you to provide any information to Canadian taxpayers?

**The Chair:** Mr. Brison, your time is up.

Ministers, hopefully under one of the other questions you'll get a chance to answer that.

Mr. Lukiwski, you have seven minutes.

**Mr. Tom Lukiwski:** Thank you very much, Mr. Chair.

Thank you, Ministers, and thank you to your officials for being here.

Minister Toews, number one, thank you for providing the information. Obviously this information is attempting to support, elaborate, and probably clarify the information that was tabled last month in the House. I know that Mr. Brison and others obviously have their own agenda, but it is, in my view, transparency at work.

[Laughter]

**Mr. Tom Lukiwski:** We've heard a lot of numbers. We've heard the number \$2.1 billion over five years. That's to put an end to the revolving door of the justice system and put criminals behind bars, where they belong to begin with.

In information that you tabled in the House or the government House leader tabled in the House on your behalf last month, it showed the government's remaining tough on crime legislation costing approximately \$650 million. I think Minister Nicholson said it's \$631 million—close enough. Canadians obviously are hearing a lot of numbers. I'd like to give you an opportunity to clarify what these numbers mean.

If you take the \$2.1 billion that you had said would be the cost over five years and add the \$631 million or \$650 million, that totals approximately \$2.7 billion.

Is the cost information regarding Bill C-25, the \$2.1 billion, included in this information? And if not, why not? Secondly, if it's not, would it be accurate to say that, fundamentally, the total cost of the crime legislation has already been disclosed?

**Hon. Vic Toews:** Let me say first of all that I'm not aware that any information was requested on Bill C-25.

The \$2.1 billion number comes in respect of the construction of new units for prisons. Presently our capacity in prisons is approximately 15,000. Mr. Head, the commissioner, is here. The \$2.1 billion is for the construction of approximately 2,700 additional units and for replacing some of the aging infrastructure that is required.

Let me repeat, Mr. Lukiwski, that there are no new prisons. These are 2,700 units in existing prisons. That is the estimate we received from Corrections Canada on what we would need with the increase as a result of the truth-in-sentencing laws.

The estimate last year was that by this month this year there would be approximately 1,300 new prisoners. I received the figures this morning, and there are 500-and-some new prisoners. So even on those kinds of estimates, where the department has diligently tried to estimate what the costs are going to be, the costs will not be as much, given the fact that the estimates made by Corrections Canada are about half of what was originally estimated.

The estimates will change from month to month, but in terms of the information we've provided you, of the \$2.1 billion, \$800 million relates to construction costs and \$1.2 billion or so relates to operating costs over five years.

• (1355)

**Mr. Tom Lukiwski:** Specifically, is the \$2.1 billion included in this information?

**Hon. Vic Toews:** No, it's not included in this information.

**Mr. Tom Lukiwski:** And that is because...?

**Hon. Vic Toews:** It's not legislation. The request was for legislation and the cost of legislation.

**Mr. Tom Lukiwski:** Okay, you've clarified it. Thank you. I think that was where a lot of the confusion lay. Right?

**Hon. Vic Toews:** Right.

**Mr. Tom Lukiwski:** So are you suggesting that fundamentally the total cost of the crime legislation has already been disclosed? The criticism is that you haven't been forthcoming and transparent on the cost of our crime legislation. You've given detailed information today, in addition to the information that was tabled last month. Prior to that, are you satisfied and can you assure this committee that the total cost of previous crime legislation has already been disclosed?

**Hon. Vic Toews:** The information that was provided to the House on February 17 is complete, in terms of our estimates of what the costs are for the legislation that Mr. Brison requested. In that sense, we believe we complied fully with the Speaker's ruling.

The Speaker has indicated that there are some deficiencies in the information. The Speaker's ruling doesn't indicate where those deficiencies are, so we have simply provided substance to the disclosure we have already made. This in no way detracts from what has already been made. It's consistent with everything we've already made.

**Mr. Tom Lukiwski:** If I'm interpreting your remarks correctly, would it be fair to say that in your estimation the additional information you've tabled today satisfies the request made by the Speaker?

**Hon. Vic Toews:** Certainly it was our position that the February 17 information did that, and we did that in good faith. Now we're providing this additional information in good faith, even though the Speaker's ruling itself doesn't specify if there are any specific deficiencies. That's not indicated anywhere in the ruling.

It's a lot like facing a criminal charge and someone saying you've done something wrong, but there's nothing specified. A Criminal

Code charge is simply handed to your client that says this is the charge. Well, it's very difficult to respond in that way.

We believe that the information we've provided is fulsome. It was made in good faith, and it honours in every respect the concerns the Speaker may have had.

**Mr. Tom Lukiwski:** Thanks.

How much time is left, Chair?

**The Chair:** Ten seconds.

**Mr. Tom Lukiwski:** That's fine. We'll get to it next round.

**The Chair:** Thank you. We'll save that time and bank it.

Monsieur Paquette.

[*Translation*]

**Mr. Pierre Paquette:** Thank you, Mr. Chairman. Welcome to our two ministers.

My first question is as follows. When the committee made a request to the different departments affected by the motion adopted on November 17, 2010, the government responded this way on December 1:

The issue of whether there are any costs associated with the implementation of any of the government's justice bills is a matter of confidence and, as such, the government is not in a position to provide such information or documents.

So, on December 1, there was no question of providing information regarding the justice bills identified in the motion passed by the Standing Committee on Finance. On February 17, the Government House Leader tabled a document in the House providing a certain amount of information, although that information was obviously incomplete. There was a great deal of detail missing.

What happened between December 1 and February 17 that resulted in information that was considered confidential by your government, because it was a Cabinet confidence, suddenly being released on February 17? It suddenly became possible to release some of those documents. However, they are woefully inadequate.

The proof of that—and you yourself admit this—is that today, you have come here with a document that basically presents the same information that was tabled in the House on February 17, but with additional details.

How do you explain the government's response last December 1?

[*English*]

**Hon. Rob Nicholson:** Again, we're not providing cabinet documents to you, Monsieur Paquette, but at the same time, the information upon which the decision is made and the cost estimates either are tabled in the estimates or we've gone to the trouble of assembling them here for you in considerable detail. So again, the documents that you received earlier this year with respect to the costs are complete in the sense that you got the amounts in terms of the costs.

That being said, you—and in compliance with the Speaker's ruling—want more information, and we're prepared to provide it. So you have quite a bit of information, but of course you're not getting the advice to cabinet. These are not cabinet documents, which of course are protected in our system.

• (1400)

[Translation]

**Mr. Pierre Paquette:** Yes, and that is pretty much the problem. On February 17, the Government House Leader tabled this document in the House. And basically, this document is the same as the other one, but with additional detail.

The Speaker of the House made his ruling on March 7. That means that the Speaker is of the view that this document or the one before it does not comply with the orders issued by the House and that the fundamental principle is that parliamentarians have the right to receive all the information.

Some means must be found to protect national security and the public interest. We are evidence of that because, with respect to the Afghan documents, we were able to find a mechanism that suited both Liberal and Bloc members.

How is it that for the rest of the documentation that you have not submitted, you are unable to carry out the same kind of process—in other words, to have a special committee or some other body become involved so that we are able to see all the documents and ensure that the information made available is indeed adequate and complies with the request made in the House?

For the time being, I am not satisfied, because these documents are pretty much the same. In both cases, there was the ruling by the Speaker on March 7.

Would you be prepared to consider setting up the same type of mechanism as the one used for the Afghan documents? Actually, I should say that, unfortunately, a member of the panel died Sunday. I want to extend my condolences to his family.

[English]

**Hon. Vic Toews:** Let me briefly respond to that. That's certainly a decision the House can make; it's certainly not something that we as ministers can determine.

All the officials can do is provide you with information that is not a cabinet confidence. If the House determines that they want the same system that they did with the Afghan documents, there's nothing stopping this House from making that determination if they so wish.

But I want to point out that even in the context of the Afghanistan documents, those are not cabinet confidences that were released to the committee. As I understand it, the process is that jurists determine whether or not the document is a cabinet confidence. If they determine that it's a cabinet confidence, it's not disclosed to the committee members—

**Mr. Pierre Paquette:** *Oui, mais—*

**Hon. Rob Nicholson:** If I might be of some help to you, what you want is information, and I take you at your word: you want to know

what costs, if any, are attributable to either the various departments or various—

**Mr. Pierre Paquette:** *J'ai beaucoup de misère à comprendre—*

**Hon. Rob Nicholson:** Presumably that's what you want. It's not? Then go right ahead.

[Translation]

**Mr. Pierre Paquette:** I have a lot of trouble understanding why some information that you were prepared to deliver on February 17 was considered to be confidential or a Cabinet confidence, on December 1. That is something I cannot understand and it definitely shakes my confidence as a parliamentarian.

Furthermore, in order to determine whether the information you have provided does indeed reflect what the Standing Committee on Finance and the House were asking for, we need to know on what basis the estimates were developed. How many inmates are you projecting? Also, what is your unit cost per inmate? Once again, we need to know the underlying assumptions in each case. What is the cost per full-time equivalent? Also, what is the cost of the new cells?

So, once again, I am not convinced that we have all the information requested by the Standing Committee on Finance and the House of Commons—I would remind you that a motion was passed on February 17—nor am I convinced that the information you are providing is adequate to allow us to ascertain the veracity of the figures here. We will have an opportunity in the coming days to find out more.

[English]

**Hon. Vic Toews:** Let me just respond to that.

The committee and the Speaker haven't requested anything to do with the prison costs. There is nothing. This is only to do with the crime bills.

If the committee wants information on the cost of the prisons, which I've indicated in the \$2.1 billion figure—the \$800 million in construction costs and the \$1.2 billion in operating costs over the five years—the department can provide that to you, but the motion doesn't relate to those kinds of costs; it relates to the implementation of bills, and that's what we've responded to.

• (1405)

**The Chair:** Thank you. Your time is up.

Go ahead, Monsieur Godin.

[Translation]

**Mr. Yvon Godin:** Thank you, Mr. Chairman.

Welcome to you all.

Why, when the question about these bills was posed in the Chamber, did the Government House Leader say that some documents were Cabinet confidences? Today, you are saying that is not the case, that they are not Cabinet confidences, that we have everything, and that you are giving us everything. Are they Cabinet confidences or are they not?

[English]

**Hon. Vic Toews:** These aren't cabinet confidence documents; this is information that was compiled by public servants in order to respond to the motion and to the ruling that the Speaker made. These are not—

**Mr. Yvon Godin:** Do you feel that on February 17, after you deposited that and the request was made, that's what the committee was looking for?

**Hon. Vic Toews:** We're responding to the Speaker's motion here.

**Mr. Yvon Godin:** Okay. My question is this: do you think that what you're answering to the Speaker of the House is what the committee was looking for too? Do you think that the committee should be satisfied with this?

**Hon. Rob Nicholson:** Well, it was examined very, very carefully. To go back to what Monsieur Paquette said, all the departments associated with this.... As you can imagine, it's very complicated. The costs don't rest just with one particular part of the Government of Canada.

Whether it's public prosecutions or the RCMP, all that information has been assembled in response to the request. They checked every single one of these bills, as you can see. For every bill that was requested, you get a complete analysis of what, if any, the costs are that we are—

**Mr. Yvon Godin:** But do you think the Speaker is going with the requests of the committee?

**Hon. Rob Nicholson:** Are you asking me what the Speaker is doing? I'm sure the Speaker responds in the appropriate way. The Speaker thinks in terms of—

**Mr. Yvon Godin:** Why didn't you respond to the committee when they asked for it? Why did you wait until we had to come here and spend all the taxpayers' money to bring us to Ottawa to give us this and tell us, "Here you go"?

**Hon. Rob Nicholson:** Many of them are already.... Parts of what we are saying are already.... For instance, the National Anti-Drug Strategy is one of the questions we've already announced. These are part of the public record. In February we assembled the costs and gave them to you, to the extent that it's possible to know them or to know if there are any costs.

**Mr. Yvon Godin:** You said you could not give anything because you were under cabinet secrecy.

**Hon. Rob Nicholson:** Again, if you ask for cabinet documents, obviously you know our system. Presumably you wouldn't want that or ask for that, but if you're looking for information with respect to the costs of each of these bills, you've got it all—and you had it, but this is in greater detail.

**Mr. Yvon Godin:** How much is it going to cost for the parole aspect of the crime bill, for example? Mr. Toews, you want to talk about the crime bill, but if the parole—

**Hon. Vic Toews:** Which crime bill?

**Mr. Yvon Godin:** I mean the one about parole, for example.

**Hon. Vic Toews:** All right, let's take a look specifically at that bill. Which bill is it? Is that Bill C-39?

Yes, I see it's Bill C-39, An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts. What do we want to talk about there?

**Mr. Yvon Godin:** For example, if a person stays in jail for 10 years before he is under parole, with the bill he will have to stay for 25 years. Are the next 15 years free for the taxpayer, or do we have to pay for it, and if we pay for it, how much is it going to cost?

**Hon. Vic Toews:** It in fact is set out in Bill C-39 what our anticipated costs are for that particular bill.

Mr. Head, the commissioner, is here. He can explain it. He put the estimates together, and I'm relying on the estimates of Mr. Head.

**Mr. Yvon Godin:** I'd like to give the next question to Mr. Martin.

**The Chair:** Go ahead.

**Mr. Pat Martin:** Thank you, Mr. Chair.

**The Chair:** You have about three minutes, Mr. Martin.

**Mr. Pat Martin:** It seems to me, Ministers, that instead of the Truth in Sentencing Act, we need a truth in budgeting act. It's like pulling teeth trying to get this information out of you.

How could you have compiled this fat a book and failed to include the capital costs of billions of dollars to build new jails, when you knew full well that what we wanted to know was the whole cost of your crime legislation agenda—this suite of bills?

**Hon. Vic Toews:** To that, then, where in the motion, Mr. Martin—and I'm not trying to be difficult here, but—

**Mr. Pat Martin:** No, you are. You're parsing words and splitting hairs—

**Hon. Vic Toews:** No, no, wait. Hold it—

**Mr. Pat Martin:** —to avoid telling people what they need to know.

**Hon. Vic Toews:** No, no; hold it.

There are certain requests for crime bills, very specific bills. We've responded to those specific bills. If you and I want to have that discussion about what the costs of the prisons are, that's another issue. That's \$2.1 billion over five years, but that has nothing to do with—

**Mr. Pat Martin:** That's not in here.

**Hon. Vic Toews:** No, and it has nothing to do with the issue before the committee today.

● (1410)

**Mr. Pat Martin:** It's like the Rumpelstiltskin defence, where if you don't ask the exact right question, you don't get any answer at all.

I mean, poor Scotty there did his best to put together a comprehensive question, and you skated all around it by answering every question except what we need to know—namely, how much is this going to cost us?

**Hon. Vic Toews:** Mr. Martin, if I started answering questions that you didn't ask, you'd say I was evading the question.

**Mr. Pat Martin:** What we know is your guy—

**Hon. Vic Toews:** Why don't you simply ask the questions that you need answered on the basis of the motion that's here?

**Mr. Pat Martin:** You are splitting hairs to avoid what we really need to know.

Mr. Head there is going to hire 4,000 new prison guards, but is that figure in here? Your \$2 billion for building new jails isn't in here. There will be 4,000 new staff persons. Every other government agency is cutting and hacking and slashing every social program by which we define ourselves as Canadians, and his budget is exploding to lock up all these young aboriginal kids—stack them up like cordwood—in prisons.

That's what we're looking at here, and that figure for the 4,000 new staff people for Corrections Canada is not in this book.

**Hon. Vic Toews:** Well, look, we've given you the information that you've requested. If—

**Mr. Pat Martin:** How much will that cost us?

**Hon. Vic Toews:** You mean the prisons?

**Mr. Pat Martin:** I mean the 4,000 new staff persons for Mr. Head here.

**Hon. Vic Toews:** Perhaps Mr. Head can answer that—

**Mr. Pat Martin:** How much?

**Hon. Vic Toews:** —but I don't have those details here.

**Mr. Pat Martin:** No, you wouldn't.

**Hon. Vic Toews:** Perhaps Mr. Head does.

**Mr. Pat Martin:** How much?

**Mr. Don Head (Commissioner, Correctional Service of Canada):** As the minister pointed out, the cost for Bill C-25 is \$2.1 billion over five years, of which \$1.2 billion is staff costs. Our ongoing operating costs for Bill C-25 are \$448 million a year. That encompasses, Mr. Martin, the staff costs that you've been talking about.

**Mr. Pat Martin:** This book doesn't tell us the whole cost of your crime agenda, even though you can hardly lift the damn thing.

**Hon. Vic Toews:** Mr. Martin, these costs have been set out in the estimates. If you had taken the time to read the estimates—

**Mr. Pat Martin:** I read the estimates.

**Hon. Vic Toews:** Well, apparently you haven't.

**Mr. Pat Martin:** Don't tell me what I read and what I don't read.

**Voices:** Oh, oh!

**The Chair:** Thank you, Mr. Martin. I won't tell you what to read, but I'll tell you that your time is up.

Go ahead, Mr. McGuinty, for five minutes. We'll try to do a five-minute round here.

**Mr. David McGuinty:** Thank you, Chair. Thank you, Ministers, for being here.

If I could, Ministers, I'd just like to begin by, on behalf of the official opposition, apologizing to the senior public servants who are here today and to the 480,000-odd Canadian public servants for the slander they received last week at the hands of the deputy House leader, who basically laid blame at the feet of the public servants for not delivering—

**The Chair:** Excuse me, Mr. McGuinty. I have a point of order.

**Mr. Tom Lukiwski:** On a point of order, Mr. Chair, look, I know that the opposition is going to play fast and loose with their political accusations, but that is an inaccurate statement. In fact, when asked directly by a radio interviewer—

**A voice:** [*Inaudible—Editor*]

**Mr. Tom Lukiwski:** Hold on. I'm answering the question.

**The Chair:** I want to hear the point of order and then I'll rule. Thanks.

**Mr. Tom Lukiwski:** When asked directly by a radio host whether I thought that public servants who were compiling this information had not done their job or had screwed up, I said absolutely not. That is part of the record, so to suggest that I was putting the blame on public servants is absolutely false, absolutely inaccurate, and I'd like an apology from Mr. McGuinty.

**A voice:** Hear, hear!

**The Chair:** Thank you.

Mr. McGuinty, let's stick to the point of why we're here today and keep going that way.

**Mr. David McGuinty:** Absolutely. That's why I began by apologizing to 480,000 public servants on behalf of the official opposition. Canadians will make up their own minds, Mr. Chair, when they read the clippings and see the quotes. Trust me, they will, and they already have.

Ministers, I'd like to read for you this definition. This is the definition in the Canadian Oxford Dictionary of the word "contempt": "a feeling that a person or a thing is beneath consideration or worthless, or deserving scorn or extreme reproach".

For the first time in Canadian history, your government—the first of 13 minority governments to do so in this country's history—is now on a slippery slope to potentially being found in contempt by this committee, so let me just read for you the definition of "contempt": "a feeling that a person or a thing is beneath consideration or worthless, or deserving scorn or extreme reproach".

Ministers, I want to ask this. In the context of the definition of the word “contempt”, why is it that it took a gun to the head of your government to force you to appear here today and do a document dump? For more than four months, reasonable Canadians have been watching this drama unfold, not knowing why your government refused to comply with motion after motion after motion and only complied after you were brought to heel by the Speaker in a ruling with respect to Afghan documents, and then subsequently brought to heel two more times: one with respect to your colleague, the Minister of International Cooperation, and another with respect to actually telling the truth to Canadians about the costs.

It's their money, Ministers. We're asking them to eat these costs. I'm sure we have our differences, Ministers, on your approach to law and order. I'm sure we have our differences with respect to Newt Gingrich's views on where we should be going with Republican law and order stuff. I'm sure we do, but I'm sure we would also agree—at least I thought we could agree—that from an accountability perspective, you wouldn't have waited four months to be dragged in here and drop—what is it?—1,000 pages of material on Canadians just 18 minutes before this committee starts, Mr. Chair—18 minutes.

I mean, what is it with this regime, Ministers, that each and every time...? Now, for the first time in Canadian history, you are on the slippery slope to being found in contempt by the people of Canada, through the people who represent them in the House of Commons.

Just before you comment, I'd like to read for you the actual quote from Mr. Harper, when he said:

Without adequate access to key information about government policies and programs, citizens and parliamentarians cannot make informed decisions, and...

—here's the kicker—

...incompetent or corrupt governance can be hidden under a cloak of secrecy.

In the context of the definition of the word “contempt”, in the context of the comments made by your leader, Mr. Harper, and in the context of your conduct for the past four months, how is it possible Canadians are expected to believe that you are playing here in good faith, and how can they possibly trust the numbers that are forthcoming in this budget?

• (1415)

**Hon. Rob Nicholson:** Mr. Chair, Canadians will trust us because we're doing exactly what we promised Canadians with respect to our crime agenda. The bills we have before Parliament... You'll see that when we went to the people in 2004, 2006, and 2008, we made it very clear that we would be reforming the criminal justice system, and we have delivered on that.

One of the things I definitely agree with Mr. McGuinty on is that we have a very different approach on this. Again, it's always for the Canadian people to decide who's got the right approach when it comes to reforming our criminal justice system and standing up for victims and law-abiding Canadians.

We have a record that I—and I know you, Mr. Chair, and my colleagues—are very, very proud of. This is consistent with what Canadians have told us. It's certainly consistent with what victims told me across this country, Mr. Chairman. When we get rid of things like the faint hope clause or we make sure that people who commit multiple murders serve the time that is appropriate for the crime they

have committed, Canadians support us. They realize there's a cost to detaining some of these dangerous individuals. Canadians support us on that.

**Mr. David McGuinty:** Thanks for your comment.

**Hon. Rob Nicholson:** We have that different approach, but you and I will agree on that one, Mr. McGuinty.

**Mr. David McGuinty:** Sure.

There are parliamentarians, Ministers, who want empty jails. Get real. Get real. Stop the nonsense rhetoric and level with Canadians. They're catching up. They're catching up after five years, Ministers. Mark my words, they're catching up.

**The Chair:** Mr. McGuinty, you've passed your time. Thank you.

Mr. Reid, you're up.

**Mr. Scott Reid:** Thanks very much, Mr. Chairman.

I have a technical question to ask, but before I do that, to help folks along who are trying to follow this on TV, I thought I might point out that these hearings are being held in response to a motion that was tabled by Mr. Brison requesting the costs of a series of 18 pieces of government legislation. However, not included among those 18 pieces was Bill C-25, the Truth in Sentencing Act, so I'm a bit perplexed that there are references from the other side, complaints about the fact that costing relating to that bill is not included.

They didn't ask for it. Mr. Brison didn't ask for it; he's free to do so at a future date. I am perplexed at his frustration at not finding cost estimates for a bill he forgot to include in his package being included in the response to the documents he did get.

I didn't want a comment from the Minister. I wanted to have a comment on the question that follows, because we have limited time here.

The chart that was originally submitted in response to Mr. Brison's question in the House back in February contains information. Of course, today we received this very substantial binder of material. Are there any variances between the costs in the chart tabled February 17 and the additional material tabled today?

While answering that question, I'd appreciate it if you could also elaborate on the planning assumptions used both for the document tabled in February and for today's additional information.

● (1420)

**Hon. Vic Toews:** I can indicate that the material was gone through very thoroughly, first of all for the February 17 information that was provided by public servants throughout our respective departments and again in compiling this documentation that was presented here today. If we did a submission a month from now, there would be a variance. That's the nature of this type of documentation, but I am confident, based on my conversations with the public officials, that there are no substantive variances in any respect that would in any way give the committee a false impression of what was submitted on February 17 vis-à-vis what has been submitted today. There will always be variances on a month-to-month basis.

Is all of this material 100% accurate? It's as accurate as my officials could possibly make it. Could there be one mistake in here? I'm not prepared to say there isn't, but I think in overwhelming substance, there is no substantive variance.

**Mr. Scott Reid:** Is there anything officials want to add to that, in particular officials from the other departments?

**Hon. Rob Nicholson:** Again, a lot of work went into this to provide this detail. You can imagine this is as up-to-date and accurate as possible to provide as much detail to the committee members.... As you quite correctly pointed out, we were asked for the details on various bills, and that's exactly what we provided to you. Again, I trust this will be of assistance to the committee. I believe this answers any hesitation there may have been from the Speaker with respect to the estimates.

**Hon. Scott Brison:** I have a point of order, Mr. Chair.

**The Chair:** Certainly. We have a point of order; excuse me.

**Hon. Scott Brison:** Chair, the Minister just said there was no variance between the documents provided today and the documents provided on February 17. I draw his attention to the estimates on Bill C-4 provided on February 17. He said there were no incremental costs for Bill C-4, and today's document says there is a \$358-million incremental cost as a result of Bill C-4.

Given the fact there is a variance and the Minister didn't know there was a variance between the two documents—those provided on February 17 and those provided today—I would ask on behalf of the committee that the ministers return tomorrow morning for two hours of discussions on these figures. There's a lot of information here; I'm certain they would not mind that scrutiny, since we've already identified variances between the information provided February 17 and the information dumped on us a few minutes ago here today.

**The Chair:** Mr. Brison, first off, it's not a point of order. Second, the minister did say “no substantial differences”, and we could argue what that is, I suppose. You have made a request, and when we're done, we'll ask our witnesses and we'll finish your request.

Mr. Reid, you have time left, so I'll carry on with you.

**Mr. Scott Reid:** I'll go back to inviting the minister to finish his response, or one of his officials.

**Hon. Rob Nicholson:** Thank you, Mr. Reid. Maybe we will do that. I'll ask Catherine Kane address that piece, if you don't mind. I think you misread that, Mr. Brison, and I know you wouldn't want to do that or misunderstand that.

**Hon. Scott Brison:** That's why we could benefit from your returning and elucidating as to your numbers.

**Ms. Catherine Kane (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** Thank you.

Very briefly—and I appreciate that you haven't had time to digest the information that's included—the summary information at tab 4 with respect to Bill C-4 indicates that the current cost of the youth justice corrections system in Canada is \$350 million. Those are not the costs that are associated with Bill C-4 in particular; we've included that for context for the committee.

We have attempted in these templates to respond to the very specific questions you had in your motion. In several circumstances it's not possible to respond to incremental costs and baseline costs and so on, but with respect to your request about baseline costs, we have indicated that the current cost to the federal government—because we cost-share those agreements—is \$177.3 million. That is right now, at this moment, and it has nothing to do with incremental costs associated with Bill C-4, so there's no variation between the information on the chart and here.

● (1425)

**The Chair:** Thank you.

Mr. Brison, when it's your turn, we will let you ask another question.

Mr. Paquette, you are up.

[*Translation*]

**Mr. Pierre Paquette:** Thank you, Mr. Chairman. I would like you to signal me when I have one minute left, because my colleague would also like to ask a question.

I would like to confirm what Mr. Brison has just said. There are interesting, if not substantial, differences. We cannot be a party to this masquerade. I looked at the document quickly: 90% of what is here are simply copies of bills regarding which the Standing Committee on Finance requested information. And we are still being served up the same excuses. So, they are not complying with the order from the House. If I'm asked what I think, I can tell you that, having quickly reviewed the document, they are still not complying.

I could cite the example of Bill C-48. It allows judges to order that an accused will not be eligible for parole for 25 years for each offence. In the document you tabled on February 17 with respect to Bill C-48, it says: "The Correctional Service of Canada is not expecting a significant financial impact on the Service. Any future impact will be dealt with as part of the usual reference level adjustment process". So, there is the bill, but it is only two and a quarter pages long. That is the new material. It also says: "Longer sentences could result in increased costs for the Correctional Service of Canada [...]" Before there were no increased costs, but now, there are. I will keep on reading: "[...] but it is not possible to project those costs at this time".

And because those costs cannot be projected, there is no answer being provided to the following questions either: "What is the estimate of marginal costs, broken down by category (capital costs) [...]" and so on. The answer is: "This does not apply. See section 'Explanation for failure to answer questions'." And the explanation is simply: "[...] it is not possible to project costs at this time." And a little further on, it says: "[...] If CSC requires additional resources as a result of this bill, supplementary funding will be requested."

It is fairly normal, for parliamentarians who are looking at bills that have passed, to at least have an idea of what they will cost. I cannot believe that the Department of Public Safety is not in a position to provide a rough estimate of the cost of Bill C-48 over time. In my opinion, they are hiding figures from parliamentarians that the latter have every right to receive. The Speaker was very clear on that point.

I would just like to remind you, once again, that this document was tabled on February 17 and that, after it was tabled, the Speaker handed down his ruling, saying that this was potentially a case of contempt of Parliament. It also raised a question of privilege.

My question is simple: how could the committee's finding possibly be anything other than that the government is guilty of contempt of Parliament? What are your arguments? That certainly is not one.

[English]

**Hon. Rob Nicholson:** Monsieur Paquette, you mentioned Bill C-48. That is the bill that is directed against multiple murderers, meaning individuals who kill more than one person. Instead of their being eligible for parole after 25 years, regardless of the number of people they have murdered, we are now giving judges the discretion to increase that to 50 or 75 years if there's a second or a third murder.

When you ask what the cost is, the public servants, whom I'm sure you respect, have come to the conclusion that no detailed cost information is available because the provision is discretionary. It only applies to multiple murderers, and any impact would only be apparent in future years. That means there will be no apparent cost to this for 25 years, because the individual who was convicted of first-degree murder will be there for 25 years. They're saying that since it's discretionary, it is impossible to guess what the incremental costs will be in 25 or 50 years. That's all I'm asking you to do.

You may disagree and say we shouldn't be coming down hard on multiple murderers. That's your business. You can do that, and we can have these points of disagreement, but if you're asking what

costs there will be 25 or 50 years from now, the public servants who have helped put these together say it is virtually impossible to determine. You're talking about something discretionary and something that won't happen for 25 years.

**The Chair:** Madame DeBellefeuille, you have about three-quarters of a minute.

[Translation]

**Mrs. Claude DeBellefeuille:** Thank you, Mr. Chairman, but I am going to give my time to my colleague.

**Mr. Pierre Paquette:** My colleague wanted to point out that in your document, you say that you are concerned about the safety of Canadians. She wanted to point out that, in the Estrie region, you are currently shutting down border crossings or reducing staff hours, and that this will have an effect on the safety of area residents. I'm talking about border crossings.

You may be tough on crime, but you are not smart on crime.

• (1430)

[English]

**The Chair:** Thank you.

We'll move on to Monsieur Godin for five minutes.

[Translation]

**Mr. Yvon Godin:** Thank you, Mr. Chairman.

[English]

When we look at the motion itself, on October 6, 2010, the House of Commons Standing Committee on Finance passed a motion requesting certain financial information from the government within 10 days. Specifically, FINA requested the Department of Finance Canada to provide it with the adjustments to the fiscal framework to incorporate the costs of Bill C-4, Bill C-5, etc.

**When we look at what you gave us here, it says:** No detailed cost estimates are available because any impact of the amendments would be on the provincial and the territorial corrections costs. The Bill should not result in cost impacts for the Correctional Service of Canada because young persons are rarely held in these facilities.

Are you saying there will be no cost to the federal government, but there will be a cost to the provincial government?

**Hon. Rob Nicholson:** With respect to the Young Criminal Justice Act, there is a cost-sharing agreement. This is where perhaps Mr. Brison misunderstood. The cost of detaining young people is a little over \$300 million. There is an agreement between the provinces and the Canadian government, so if there are any increases with respect to that, they will be negotiated between the provinces and the federal government. You'll see from the information exactly how much money is being given by the Canadian government to the provinces on that.

**Mr. Yvon Godin:** When we're talking about the adjustment of the fiscal costs, you're saying no details of the cost estimates are available.



**Hon. Rob Nicholson:** These individuals aren't being detained at federal expense, but at provincial expense. When we get information from them—

**Mr. Yvon Godin:** They're dumped on the provinces, then.

**Hon. Rob Nicholson:** No. The provinces asked for these amendments, so it's not like.... We have meetings and we move forward on these things. Any additional costs are negotiated between the provinces and the Government of Canada.

**Mr. Yvon Godin:** The provinces asked you at the same time to put money into the communities to make sure our kids don't go to jail.

**Hon. Rob Nicholson:** I agree with you.

**Mr. Yvon Godin:** That's something that your government has cut.

**Hon. Rob Nicholson:** No, no.

**Mr. Yvon Godin:** Oh, yes, yes.

**Hon. Vic Toews:** Absolutely not.

**Hon. Rob Nicholson:** Mr. Godin, the national anti-drug strategy, the national crime prevention strategy—all of them are there to help young people and make sure they don't get caught in the law—

**Mr. Yvon Godin:** If you look at Bill C-21, the information you're giving us here is—

**Hon. Vic Toews:** If I could just respond to that particular issue, the Prime Minister just announced—

**The Chair:** Let's have one at a time, please.

**Mr. Yvon Godin:** I'm sorry, I have another question. It's my question.

Bill C-21 has no detail—

**Hon. Vic Toews:** But you've put some false information on the record, and that's—

**Mr. Yvon Godin:** Sorry, Mr. Toews—

**Hon. Vic Toews:** Mr. Chair, if I could just appeal to you that there has been some false information put on the record—

**Mr. Yvon Godin:** Can't you just be a little bit polite, Mr. Toews? I was not asking you for the—

**The Chair:** Order, order. Let's stop for a second.

Mr. Toews, go ahead very quickly, and then we'll get back to the questioning by Mr. Godin.

**Hon. Vic Toews:** Our government has committed over \$40 million for youth programming and anti-gang programming in this last fiscal year. That's the greatest amount that any government has ever put forward, so to suggest that it has been cut is wrong.

**The Chair:** Let's go back to the question.

**Mr. Yvon Godin:** With regard to Bill C-21, here is the explanation: "No detailed cost information is available because the financing impacts will be minimal."

Because it's minimal, you cannot give us any numbers?

**Hon. Vic Toews:** Well, Mr. Chair, the answer is in the same way as I pointed out in the beginning. Last year at this time, my department said there would be 1,300 new prisoners in the system;

suddenly we only have 500 new prisoners. If you reduce these issues to a smaller scale, it's virtually impossible to determine.

The officials are here. They can answer those questions as to why they made that specific conclusion.

•(1435)

**Mr. Yvon Godin:** Mr. Chair, with respect to the estimate on the F-35 airplane, what's the difference? There is an amount that the government gives, and then we hear something outside that. What is the number?

**Hon. Rob Nicholson:** Again, we're addressing the crime bills. This is why we are here.

Presumably you may have to look at that, but—

**The Chair:** You're outside of the scope of that. Thank you.

**Mr. Yvon Godin:** Do we still have time?

**The Chair:** No, that's it. We are finished at the bottom of the hour, so we'll excuse our witnesses.

**Hon. Scott Brison:** Mr. Chair, given the amount of information provided to—

**The Chair:** Order.

**Hon. Scott Brison:** The committee is still in session, actually.

**The Chair:** We've excused our witnesses, but go on.

**Hon. Scott Brison:** Okay. Given the amount of information provided to the committee and the need for members to review the government's data thoroughly, I move that we invite the ministers to appear back before us between 9:00 and 11:00 tomorrow morning for more thorough questioning. That's based on the binders that were provided to us 17 minutes before the committee started hearing from them today.

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

Your chair has left a gap tomorrow morning for information. Certainly if you want to use the time to look through the information, that would be a great time for it.

**Hon. Scott Brison:** Mr. Chair, my motion was to have the ministers appear before committee between 9:00 and 11:00 tomorrow morning.

**The Chair:** That would of course depend on whether the ministers are available. We would have to ask them to see if we can do it.

**Hon. Scott Brison:** It's a motion. I'm moving that the committee invite the ministers to appear before committee tomorrow morning between 9:00 and 11:00.

**The Chair:** Mr. Brison, we have a fairly long schedule today, and if we stop to discuss a motion now, we will certainly inconvenience the other witnesses we have scheduled. I would take your motion at the end of the day, if we're under committee business.

I will suspend for a moment.

**Hon. Scott Brison:** The motion is in order, Mr. Chair. The motion is in order.

**The Chair:** I am suspending for about two minutes while we change witnesses.

•(1435) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1440)

**The Chair:** I call the meeting back into session. We're making our way through the day, and I thank you for that.

Mr. Cappe, it's great to see you here. You've been in the back watching most of the day, and I know you've been paying close attention, so you know what we're doing and how we're working on it.

What I'll offer you is a chance to give a bit of an opening statement, and then we'll have the members ask you questions. I think you know how this works.

**Mr. Mel Cappe (As an Individual):** Thank you, Mr. Chair.  
[Translation]

Like the ministers, I am here with my entire entourage, although I am only appearing as an individual. I haven't seen *The Mikado*, the opera that focuses on...

[English]

Let me introduce myself. I'm Mel Cappe. I happen to be the president of the Institute for Research on Public Policy for the next month, and I am and will continue to be a professor in the School of Public Policy and Governance at the University of Toronto.

I had a career of over 30 years in the federal public service, culminating as High Commissioner in the United Kingdom, and have been Clerk of the Privy Council and secretary to the cabinet and head of the public service as well as deputy minister in several departments. Lest anyone think that because I was the Clerk of the Privy Council for Jean Chrétien I was somehow partisan, I want you to be aware that the first order in council naming me to the ranks of deputy minister was during the Mulroney government, and I've served seven prime ministers in my time.

Let me offer a disclaimer at the outset. I've been out of Ottawa for nine years and I've been out of government for five; therefore, I am dated. I earned this grey beard and therefore offered to help the committee.

There are two issues I'd like to address. The first is the question of cabinet confidences. I heard the conversation this morning with the law clerk and the Information Commissioner. I want the committee to understand that I'm a big defender of cabinet confidences, and I think that it is necessary for good government to have candour in cabinet exchanges. Frankly, it's been recognized by Parliament. Parliament passed the Access to Information Act and chose not to exempt cabinet confidences, but to exclude cabinet confidences, so when the government claims privilege on cabinet confidences, I think they're doing the right thing. It's recognized by Parliament in section 69 of the Access to Information Act. As well, there's an absolute exception, which I know Mr. Walsh talked about this morning, in section 39 of the Canada Evidence Act, which states that the clerk, with absolutely no review or restriction, can claim confidences of the Queen's Privy Council to be exempt.

Given the wording of Mr. Brison's motion and the finance committee's request for information in which you asked for "documents", I can understand that it could be possible for the

Prime Minister and the government to have interpreted this as a request for cabinet documents. As such the government claimed privilege and said that cabinet confidences will not be released. That was a legitimate response of the Prime Minister.

The committee, I think, was asking not for cabinet confidences; rather, it was asking for information. I heard the Minister of Justice and the Minister of Public Safety just now indicate that they were prepared to provide the committee with information. I think it's much better to view this as a demand for information, which brings me to my second point.

There is no doubt in my mind, and certainly the Speaker made this clear, that Parliament has a right to adequate information on which to pass legislation. Therefore when you parliamentarians come to judgment on legislation, you need to know what the implications of that are and what the long-term costs are.

Citizen Cappe, appearing before you, wants to make sure that parliamentarians have adequate information before they pass legislation.

•(1445)

[Translation]

When I was Deputy Secretary to the Treasury Board in the 1990s, I spent four and a half years appearing before committees such as yours explaining the process for identifying program costs.

[English]

First there is the expenditure management system, which continues now, as far as I understand it. The Treasury Board Secretariat and finance officials insist that all new programs or proposals for programs or for legislation that go to cabinet must have a notional costing of anything for which there will be implications of costs.

However, those costs cannot be put into main estimates until they're elaborated, so this notional costing takes place, and therefore, for instance, the government's tabling of main estimates might not include some of the announcements that were in the budget. They will wait for an appropriation act wherein the costs have been elaborated, so therefore supplementary estimates come to Parliament for approval in an appropriation act.

I bother to elaborate this because I want to distinguish that notional spending estimate from the actual spending required. It's in that context that I want to conclude by saying that cabinet confidences must be protected and, at the same time, Parliament must have adequate information for making judgments on legislation. I'm not going to pass judgment on the binders you've just received that I have not seen yet, but it strikes me that this is the kind of material that parliamentarians need in order to come to judgment and say, "Is this in the public interest?", and pass legislation.

Thank you.

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

Mr. Brison, are you leading for...?

Go ahead, Mr. Brison, for seven minutes.

**Hon. Scott Brison:** Thank you very much for being here, Mr. Cappe.

While legislation is being developed or discussed at cabinet before the legislation has actually been tabled or introduced to the House of Commons by a government, could cost information be considered cabinet confidence at that stage of the development of the legislation?

**Mr. Mel Cappe:** The way I'd like to answer that question is actually by citing Parliament, frankly. If you look at the Access to Information Act, in section 69 that was referred to earlier—I will be quick—paragraph 69(3)(b) says that “discussion papers” introduced in cabinet are not “confidences of the Queen's Privy Council” and should be released if the decisions to which the discussion papers relate have been made public. Those are discussion papers, not the memorandum to cabinet.

• (1450)

**Hon. Scott Brison:** Once the legislation has been tabled by the government, the decision is public.

**Mr. Mel Cappe:** That's right.

**Hon. Scott Brison:** So as such, any costing information that was part of that information provided to cabinet ought to be provided to parliamentarians?

**Mr. Mel Cappe:** Again, this is a distinction that's made in the law between a discussion paper and a memorandum to cabinet, but the discussion paper is a background document that would have been put to cabinet. Now, I should tell you that this has fallen somewhat into disuse, so there may not be discussion papers, but that's what was presaged in the legislation.

**Hon. Scott Brison:** You're saying that once the government has tabled a bill in Parliament, the costs of that bill cannot be covered or ought not to be covered by cabinet confidence?

**Mr. Mel Cappe:** That's right. The documents.... Again, Madame Legault was basing her presentation on documents, and I'm not. I'm talking about information, and I think the information on that is not a confidence. The documents that went to cabinet and the advice to cabinet are confidences.

**Hon. Scott Brison:** On December 1, when Justice Canada said that it couldn't provide this costing information based on cabinet confidence, or when, going back to November, the government initially refused to provide this information to Parliament based on cabinet confidence, you're saying that cabinet confidence ought not to have been used to protect costs and to deny Parliament the information on the costs of the government's legislative agenda.

**Mr. Mel Cappe:** That's right.

**Hon. Scott Brison:** Thank you very much.

I'll draw your attention to the “Guide to Costing” from Treasury Board. You, as a former secretary of Treasury Board, would be familiar with this. This is a March 2008 document, but I don't think a lot has changed since when you were there.

On the costing of a new initiative, it says:

All the costs of a new initiative for a department must be known, including costs of employee benefits and accommodation. For a new initiative that is incremental to existing programs, it is necessary to know the incremental financial impact;

How would you interpret that in terms of the obligation for Finance and Treasury Board to provide the costs of legislation to cabinet?

**Mr. Mel Cappe:** The expenditure management system that calls on the costing guide, and I haven't got it in front of me, requires Treasury Board and Finance to advise cabinet on the costs. In so doing, really Finance and Treasury Board get departments to do the costing.

**Hon. Scott Brison:** Would it be unheard of for a bill to go to cabinet without this full costing?

**Mr. Mel Cappe:** I can't say that it's never happened, but I would say that all of Privy Council Office, Treasury Board, and Finance would have lain down in the trenches to insist that the costing be done and provided to ministers.

**Hon. Scott Brison:** If cabinet made a decision without that costing, that would have been in violation of the Treasury Board's guide to costing.

**Mr. Mel Cappe:** It would, and to the expenditure management system guide as well. That's true, but it doesn't mean that in some emergencies it wouldn't be done.

**Hon. Scott Brison:** You've established without doubt that cabinet would have had all this information, unless it broke Treasury Board guidelines, at the time of the development of legislation. You've also established that once the legislation is provided to Parliament, cabinet confidence cannot be used by the government to deny Parliament the information on the costing.

**Mr. Mel Cappe:** I would say cabinet should have had that information, and that once the legislation was tabled, Parliament should have had the notional costing.

**Hon. Scott Brison:** Mr. Cappe, there are costs to this legislation also on provincial governments. In the same Treasury Board guideline, it says that sound costing cannot be performed in isolation. It says that effective consultation and sound judgment are always required and that consultation with the stakeholders, which may sometimes be extensive, is a fundamental costing principle.

We were told that these programs have provincial costs. Should the provinces have been made aware of those costs during the cabinet deliberations, and should they be made fully aware of those costs by the government?

•(1455)

**Mr. Mel Cappe:** I think that in the process of preparing information for cabinet, provinces should have been consulted according to the expenditure management system process. Those costs would have been known, and they should have been brought to ministers' attention as a federal-provincial-territorial relations issue.

**Hon. Scott Brison:** Mr. Cappe, just to review what you've told us, you've told us that if the government didn't do the costing for cabinet, it broke these Treasury Board guidelines. You also told us that if it followed Treasury Board guidelines and did that costing, but then failed to provide that information to Parliament, it actually wasn't respecting Parliament's right and requirement to have that information.

**Mr. Mel Cappe:** I'm not going to disagree with you, but I'd rather put it in my own words. The Speaker found that.

**Hon. Scott Brison:** So you agree with the Speaker's ruling?

**Mr. Mel Cappe:** As Mr. Walsh said, I always agree with the Speaker.

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

Mr. Lukiwski, you have seven minutes.

**Mr. Tom Lukiwski:** Thank you, Mr. Cappe, for being here. It's good to meet you.

Let me just recap. You said you were Clerk of the Privy Council from 1999 to 2002. Did I hear you correctly?

**Mr. Mel Cappe:** That's correct.

**Mr. Tom Lukiwski:** Okay.

As Clerk of the Privy Council, I assume you would have handled cabinet confidences and top secret documents on a regular basis in your role. Would that be correct?

**Mr. Mel Cappe:** Yes.

**Mr. Tom Lukiwski:** Can you tell me how many times in that period of time you had to provide cabinet confidence documents to either the House or to a committee that had requested them because of a motion that was passed, say, at the committee level?

**Mr. Mel Cappe:** Never.

**Mr. Tom Lukiwski:** Okay.

You can offer an opinion if you wish, but part of that, I am sure, is because during that period of time we were dealing with a majority government. We heard Mr. Walsh talk about that as well: if you have the numbers, great; if you don't, you don't. This means that in a majority government, the government of the day has the majority on committees. In other words, it has the majority number of members at committee.

It would be very difficult, I would suggest, in a majority government regime, for any motion such as the one we see before us today to actually pass at the committee level. Would you agree with that assessment?

**Mr. Mel Cappe:** Again, I'd rather use my own words. What we heard before was Mr. Walsh ducking, so let's be clear, and I'm going to do the same.

The fact is that with respect to cabinet confidences, I come back to this principle that it is not the Queen's public council, but the Queen's Privy Council. It is the government and the cabinet, as the Governor in Council, that is actually discussing and debating what should be done, and if you have that as not private and allow it to be open, you will undermine the candour and credibility of the conversation that takes place inside. Parliament has recognized this over time and it has passed legislation, both in the Canada Evidence Act and in the Access to Information Act, that says there is an exclusion—and an absolute exclusion—for those documents.

By the way, again, Madame Legault kept talking about documents. I want to talk about the conversations, the exchanges. It's all of those things that have to be protected if you want good government. Good government requires openness, as someone earlier said, but good government also requires secrecy.

**A voice:** Hear, hear!

**Mr. Tom Lukiwski:** Thank you.

What our government has done is provide information that flowed out of cabinet, and that information is actually pertinent to the discussion we have before us, on which the opposition motion, a point of privilege motion, stated that they did not have enough information.

What I'm getting at here is that you're saying the government was perfectly within its rights to refuse cabinet documents to be provided, but it also afforded the opposition members the opportunity to get the information contained from cabinet confidence documents or cabinet discussions by providing the information that was tabled in the House back in February. Do you think that's the appropriate method for governments now and in future to handle situations like this?

**Mr. Mel Cappe:** Again, I would rather use my own words. I would not necessarily say that what happened on February 17 was or was not adequate, but I would say that the approach you have described is correct: you don't reveal the cabinet confidence, but the information that was presented and that went into the decision-making is now relevant to Parliament and should be disclosed. We heard both the Minister of Justice and the Minister of Public Safety say that the binders do not contain cabinet confidences, but they do contain the information you need. I'm not passing judgment on whether that's the right information, but that's what they said, and I think that's the right approach.

•(1500)

**Mr. Tom Lukiwski:** I appreciate that.

Let me ask you, then, again based on your experience, and even though you didn't have any practical experience in dealing with requests such as we have before us today, hypothetically what would happen if a parliamentary committee had passed motions asking for documents that, if made public, could be harmful to Canada's national security? If you were Clerk of the Privy Council at that time, how would you respond?

**Mr. Mel Cappe:** We had many such requests. There were always those kinds of requests, and they were always refused.

I want to be clear: they were the application of the access to information.... I have to be very careful here, Mr. Chairman, because I am actually in the Supreme Court still with a decision pending from a case from 2001 in which the access to information commissioner has taken us on appeal to the Supreme Court of Canada. We're waiting for a judgment. Nothing I say is relevant to that case *sub judice*.

That said, whenever we received requests for those kinds of documents, we would apply the Access to Information Act, so insofar as they were confidences, they were excluded; insofar as they dealt with national security, they were exempted, and those sections would have been redacted and the clean document, if you will, would have been released.

**Mr. Tom Lukiwski:** You said you had a number of those requests during your time as the Clerk of the Privy Council, but you also said that if there were any requests that could have harmed or could have been interpreted to harm national security, you would have refused, flat out, so I'm a little—

**Mr. Mel Cappe:** I would have applied the act, which is to redact those sections and release the rest of the document.

**Mr. Tom Lukiwski:** Can you just give a rough estimation of how many times that situation might have occurred during your tenure as Clerk of the Privy Council?

**Mr. Mel Cappe:** Don't hold me to the numbers—it is very dangerous for a witness to guess—but it would be hundreds.

**Mr. Tom Lukiwski:** In all of those hundreds of cases, did you follow the scenario that you've just outlined to us a few moments ago?

**Mr. Mel Cappe:** I did, always.

Again, we're talking about the Access to Information Act, section 69, as I was applying it, or section 21, which was advice to ministers, or section 16 on investigations, etc.

There were also cases in which defendants in court or parties to a court case were asking for evidence for cabinet confidences in relation to processes before court, and using section 39, we excluded cabinet confidences as well.

However, basically, that's right.

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

Monsieur Paquette, you have seven minutes.

[*Translation*]

**Mr. Pierre Paquette:** Thank you, Mr. Chairman. And thank you, Mr. Cappe, for accepting our invitation.

I would like to come back to the questions we asked you, because they are at the heart of the issue before us.

If I understood correctly what you and Mr. Walsh said, the difference between a Cabinet confidence and information that can be passed on to parliamentarians relates to the process. Everything that leads to the decision-making process is confidential, but once the decision has been made, the information regarding the subsequent steps can be made public. Did I get that right?

**Mr. Mel Cappe:** Yes and no. Everything regarding the process is confidential and all the information relating to what has been disclosed to Cabinet is confidential. I make a distinction, under the current legislation, between a discussion paper, which is a reference document, and a memorandum to Cabinet. That is an important distinction. It may not exist; I don't know. In terms of the information that is there, it is obviously up to the government to decide whether or not to disclose the information.

I can give you an example. People always wonder whether a copy of *La Presse* on the Cabinet table is a Cabinet confidence. The answer is no; however, any discussion with respect to an article in that newspaper is confidential.

• (1505)

**Mr. Pierre Paquette:** When there is discussion of a specific program or legislative measure, from what point on do the costs begin to be calculated?

**Mr. Mel Cappe:** When a memorandum to Cabinet is being prepared, officials do research and prepare estimates of the cost of that program and any programs that will follow. They provide the Cabinet with the estimated and notional costs of these initiatives.

**Mr. Pierre Paquette:** When the memorandum is presented to Cabinet, it obviously includes estimates prepared by officials—

**Mr. Mel Cappe:** According to public documents on the Treasury Board's website—the Cabinet Expenditure Management System—cost estimates have to be provided to Cabinet.

**Mr. Pierre Paquette:** Based on what you said earlier, these are not Cabinet confidences.

**Mr. Mel Cappe:** The documents and the actual submissions with all the estimates are Cabinet confidences, but information with respect to these issues can be disclosed, just as the ministers probably did. I don't yet—

**Mr. Pierre Paquette:** That is what they would have us believe.

**Mr. Mel Cappe:** In any case, I believe that information on the process followed to gather the necessary information to make a decision, when there is a vote in Parliament, must be available to all members of Parliament.

**Mr. Pierre Paquette:** When a bill is introduced in the House, there is a costing that should be made public for the purposes of debate.

**Mr. Mel Cappe:** Yes, certainly, it can and must be made public.

**Mr. Pierre Paquette:** As Ms. Legault was saying earlier, there is a difference between the Access to Information Act—which falls within the legal domain, as Mr. Walsh was saying—and the parliamentary domain. The Speaker ruled that parliamentarians should have access to all the information they feel is necessary to—

**Mr. Mel Cappe:** —make their decisions.

Once again, I would like to make a distinction between Cabinet confidences and the information which is the basis for their decisions or for yours.

**Mr. Pierre Paquette:** Supposing we are debating enhancements to the Employment Insurance Program, for example. Everyone will expect there to be a costing for that specific measure and that the costing will be made public before the House of Commons is asked to vote on it.

**Mr. Mel Cappe:** As I was saying, as a citizen, I would like members of Parliament to have access to all the necessary information in order to make an informed decision.

**Mr. Pierre Paquette:** Thank you very much. That was very enlightening.

[*English*]

**The Chair:** Thank you.

Monsieur Godin.

[*Translation*]

**Mr. Yvon Godin:** Even though you left several years ago, Mr. Cappe, I gather you are still following the work of Parliament?

**Mr. Mel Cappe:** Yes, as you can see.

**Mr. Yvon Godin:** When we discussed documents relating to Afghanistan, the government said it could not release some of them for national security reasons. In this case, it simply refused, saying that they were Cabinet confidences.

I'm not sure I fully understood what was said earlier. When Cabinet would decide not to disclose certain information because it was a Cabinet confidence, would you provide the public or Parliament with the rationale for not disclosing that information—for example, for reasons relating to public safety or national security?

**Mr. Mel Cappe:** We would generally say why certain information was not disclosed.

**Mr. Yvon Godin:** However you saw that in this case, they did not say why.

• (1510)

**Mr. Mel Cappe:** Apparently. I did not see the response issued by the government on February 17.

**Mr. Yvon Godin:** According to what you were saying earlier, when Cabinet meets, there are discussions, and if everyone feels comfortable and openly discusses the issues with a view to making the right decision, that makes for good government. Is that correct?

**Mr. Mel Cappe:** Yes.

**Mr. Yvon Godin:** It's like everywhere else. A political party may hold caucus meetings behind closed doors, but if it decides on a certain policy after that, it is preferable to make Canadians aware of that, rather than keeping it a secret. How was that policy arrived at? That is something that could be decided internally. It's the same with Cabinet: people talk, without anyone from the outside being there to listen, and a decision is ultimately made.

Yet the motion says: "That the committee request the Department of Finance Canada to provide it with the estimated cost of the F-35 aircraft per airplane, and how these costs fit into the fiscal framework [...]" Do you see that as a Cabinet confidence?

**Mr. Mel Cappe:** Probably not, although certain pieces of information could be.

**Mr. Yvon Godin:** All right, and what about the "original estimates and the final costs of hosting the G8 and the G20 summits"?

**Mr. Mel Cappe:** No. That should be disclosed.

**Mr. Yvon Godin:** There they cannot claim it's a Cabinet confidence.

**Mr. Mel Cappe:** No, probably not, but that depends on exactly what the question is.

**Mr. Yvon Godin:** I understand. You have a lot of respect for Cabinet and for Parliament.

**Mr. Mel Cappe:** Yes, of course.

**Mr. Yvon Godin:** Parliamentarians require accurate information in order to make decisions.

**Mr. Mel Cappe:** Since Charles I was decapitated, people have been very respectful of Parliament.

**Mr. Yvon Godin:** I'm going to turn it over to Mr. Martin.

[*English*]

**Mr. Pat Martin:** Thank you.

I would just like to correct or clarify things. The people of Canada use the Access to Information Act to get information about what their government is doing. Parliament is not subject to the act. We tell the government what to do. Parliament is not subject to the Access to Information Act.

If it's the will of Parliament to know something, we have a right to know it. We don't have to stand in line to the Access of Information Act, cap in hand—no pun intended—and wait for it to grant us information.

**Mr. Mel Cappe:** Aside from using my name in vain, I think you're right to a point, when it is the will of Parliament. My source on this is the Speaker. The Speaker has explained that, and I think correctly so. That's different from an MP who wants certain information.

**Mr. Pat Martin:** Yes. If it's the collective will of Parliament that this information shall be released, even if it isn't in the best interests of the country, frankly, that's when you would have to hope that Parliament uses its collective wisdom to not put the country at risk under national security or reveal cabinet confidences. You have to have—what is that term now—a public interest override to some of this stuff, do you not?

**Mr. Mel Cappe:** This is an important point, Mr. Chairman. There is no public interest override on cabinet confidences. I think that's really important. Some elements of this have a balancing and other elements of the act do not. Cabinet confidence is one of them that is an absolute exclusion.

**Mr. Pat Martin:** It is excluded rather than exempt.

**Mr. Mel Cappe:** Exactly.

There's one other thing on the point Mr. Martin is raising about the role of Parliament in this situation. In the U.K.—and I spent four years there—the Intelligence and Security Committee is a committee of parliamentarians, but not a committee of Parliament. MPs from all parties are represented on the committee, and their office is inside 70 Whitehall. That would be similar to being in the Langevin Block. You would be sworn to secrecy as privy councillors and not allowed to divulge what you've seen, which means that you are privy to information that you can't use in question period. We have no such system in Canada.

**Mr. Pat Martin:** That's except for our current ad hoc committee on the Afghan papers.

**Mr. Mel Cappe:** It was modelled, in effect, after that for a special purpose. The U.S. model in which committees are sworn, the U.K. model in which you have a committee of parliamentarians, and the Afghan model are not of general application.

• (1515)

**Mr. Pat Martin:** That's interesting.

Thank you.

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

Mr. Brison, let's try four minutes. I think we'll fit it all in if we do a four-minute round here.

**Hon. Scott Brison:** Thank you, Mr. Chair.

Mr. Cappe, earlier Mr. Lukiwski was asking questions on national security and on the potential, for national security reasons, to justifiably deny providing information to Parliament from time to time based on national security.

Do you see any reason that a national security consideration should apply to the costing of this government legislation, meaning the 18 bills specifically covered by the motion?

**Mr. Mel Cappe:** I haven't studied the bills and I don't know what they really relate to, but given the conversation, I would say that national security would not be an element of it, not to my knowledge. You might be able to construct such a case, but I think it would be hard to do.

**Hon. Scott Brison:** We're aware as well that the national security argument put forth by the government on the Afghan detainee issue was rejected by the Speaker in his earlier ruling.

**Mr. Mel Cappe:** I've endorsed the Speaker on other things; I would disagree with the Speaker on that one.

**Hon. Scott Brison:** You would disagree on that one, but on this one we have agreed—as you said earlier this hour—that Treasury Board guidelines would force the government to have this cost information calculated during cabinet deliberations leading to the legislation, and that once the legislation was provided to Parliament, it would not be a cabinet confidence.

**Mr. Mel Cappe:** The information is not.

**Hon. Scott Brison:** Exactly.

In your opinion, does a member of Parliament have a responsibility to demand the costs of legislation that he or she is asked to vote on?

**Mr. Mel Cappe:** Again, Citizen Cappe thinks you should. I think the answer to that is yes.

**Hon. Scott Brison:** Once the government has tabled legislation in the House, should those costs, as calculated for cabinet, be provided to Parliament?

**Mr. Mel Cappe:** Right.

**Hon. Scott Brison:** And using cabinet confidence as a reason not to provide those costs to Parliament once the legislation is tabled is wrong?

**Mr. Mel Cappe:** I've let you put words in my mouth up until now; I'm going to back up on this and say that I think it's unjustified.

**Hon. Scott Brison:** You'd say “unjustified”.

In your experience, has there been a time—any time—that these types of Treasury Board guidelines were not followed and that legislation was developed by a government without providing the costs?

**Mr. Mel Cappe:** There may have been, but I'm not aware of any. Officials in Finance, Treasury Board, and PCO would not have been doing their jobs if they allowed cabinet to consider legislation without a cost estimate.

**Hon. Scott Brison:** Do you believe that the Parliament of Canada and members of Parliament have a fiduciary responsibility to demand the costs and to receive the costs?

**Mr. Mel Cappe:** I believe in responsible government. You are the people we've delegated to be responsible for us as Canadians and I want you to have the information necessary to make the decision. You can have differences of view; you can thrash it out among yourselves, as you do, but you need the information. That's the role.... I actually was against the Parliamentary Budget Officer being established because I think we should rely on government officials to provide Parliament with that kind of information.

**The Chair:** Thank you.

If there was more time, I would go to Mr. Proulx because I love hearing from him, but right now you're out of time.

Mr. Armstrong, you are up for four minutes.

**Mr. Scott Armstrong:** Thank you, Mr. Cappe, and welcome to committee this afternoon. Again, I'm finding this tremendously interesting.

On cabinet confidences, when you were Clerk of the Privy Council, if Mr. Chrétien as Prime Minister had come to you and asked to see cabinet materials from the Mulroney or the Campbell periods, what would you have advised him? Would he have had access to those?

**Mr. Mel Cappe:** It's a very interesting question and I'm glad you've asked it, because I was the custodian of all previous prime ministers' papers. I used to deal with the previous prime ministers on a regular basis as requests for their documents came in. Each of those previous prime ministers had designated someone who would review the documents on their behalf, who was a privy councillor, sworn, etc.

The answer is clearly no. Those cabinet documents, the day of the election, become secret to the new government. That is the tradition in Westminster parliamentary democracy.

• (1520)

**Mr. Scott Armstrong:** He would not have had access to previous prime ministers' documents.

**Mr. Mel Cappe:** Absolutely not.

**Mr. Scott Armstrong:** Why should today's parliamentarians have access to cabinet documents that maybe the sitting Prime Minister would not have? Can you explain to me the problem that presents?

**Mr. Mel Cappe:** I've already said that I don't think parliamentarians, with the greatest respect for MPs, should have access to cabinet confidences, *point finale*.

**Mr. Scott Armstrong:** You would call yourself as a previous clerk a strong defender of cabinet confidences.

**Mr. Mel Cappe:** I think I actually said I am a big defender of cabinet confidences. Those were my words and my remarks.

**Mr. Scott Armstrong:** You also said there are some times and some decisions where we have to protect information because it's for the good of the country.

**Mr. Mel Cappe:** Exactly. As Mr. Godin said, even in caucus you recognize that it's important to have some secrecy.

**Mr. Scott Armstrong:** I want to ask about questions on the order paper now, so I'm going to switch topics. How much time, effort, and resources go into preparing order papers? Is it a huge amount of time?

**Mr. Mel Cappe:** Order papers?

**Mr. Scott Armstrong:** Yes.

**Mr. Mel Cappe:** Do you mean questions on the order paper?

**Mr. Scott Armstrong:** Questions on the order paper, yes.

**Mr. Mel Cappe:** It depends; each department does it differently.

**Mr. Scott Armstrong:** At times, on some of these, thousands of pages may have to be reviewed. Is that correct?

**Mr. Mel Cappe:** Sure. It's the cost of democracy. You, ladies and gentlemen, are MPs and need to receive that kind of information. When there's a request, there's a whole phalanx of officials who review the documents to provide you with answers to your questions.

**Mr. Scott Armstrong:** There are some new rules that require responses to these questions within 45 calendar days, and the matter goes to committee if it's not answered in time. Did you know that over 1,000 of these questions have been written by staff in the opposition research offices and tabled? What kind of burden would that put upon the public officials?

**Mr. Mel Cappe:** I don't know the answer to that, but it would be a lot.

**Mr. Scott Armstrong:** A huge burden. With these new rules and constant questions being asked and constant inquiries being done, many times not by MPs but by staff, this is going to stretch the resources of our public service to the limit, do you think?

**Mr. Mel Cappe:** Mr. Armstrong, I mentioned that my new role is professor at the School of Public Policy and Governance at the

University of Toronto, and it's like asking me if you think education is expensive. Education is expensive, but the alternative is worse.

**Mr. Scott Armstrong:** My last question is on redactions. When you were the clerk, you were responsible for doing redactions. What type of criteria were set? How were they set? How did you apply them?

**Mr. Mel Cappe:** For redaction, it's pretty straightforward, actually, in the act. Every now and then you'll see a document come out of two departments and it will be the same document slightly differently redacted, but the same criteria are being applied. It's human beings who are applying them. They make judgments, and sometimes they're different, but they aren't dramatically different. There is guidance in this, and one puts one's mind to asking, is this a true challenge to the national interest, to national security, for instance? Is this going to compromise an investigation under 16.1? Is this going to reveal advice to ministers?

Under section 21 it says you do not release advice to ministers. I think the release of the document of CIDA's president's advice to Minister Oda was wrong and shouldn't have been released. I know the Department of Justice thinks differently, but that was advice to a minister. I think what happens is there is a chill that comes out to public servants if they see their advice coming out in public. It is not desirable and it's better to keep it secret.

**The Chair:** Thank you, sir. I know that time flies when you're having fun.

Madame DeBellefeuille, are you taking this four minutes?

[Translation]

**Mrs. Claude DeBellefeuille:** Thank you, Mr. Chairman.

Good afternoon, Mr. Cappe. You are our first witness today to enjoy tremendous freedom, given that you no longer have to be accountable to anyone but yourself. It's a great privilege to have you here today. Your expertise will be extremely valuable.

We are confronted with a government that likes to control information, be it in relation to reporters, citizens or parliamentarians. When you are Clerk of the Privy Council, are you ever told to make a very restrictive selection of Cabinet documents deemed to be secret or confidential, which, in a way, is a way of circumventing the Access to Information Act? Can you be directed in such a way as to end up aligning yourself with the ideology or approach of the government in office?

• (1525)

**Mr. Mel Cappe:** I would say no. As I mentioned earlier, the criteria are relatively clear. Of course you do have to form a judgment, but clerks' interpretation of Cabinet confidences has not varied over the years.

**Mrs. Claude DeBellefeuille:** As you stated in your introduction, you served several different prime ministers. Did you ever experience something similar to what we are currently facing?

**Mr. Mel Cappe:** Not really. Never.



**Mrs. Claude DeBellefeuille:** You have experience as a clerk, but you also have in-depth knowledge of the democratic institution. What is your political analysis of our current situation? In your opinion, what possible explanation is there for our having to deal with this issue today or this afternoon?

**Mr. Mel Cappe:** To be perfectly frank, I don't think it's because of the minority government. Personally, I would have thought that such things would be more likely to occur with a majority government. I find it odd that you are all angry about these Cabinet confidences when there is a minority government.

**Mrs. Claude DeBellefeuille:** Please explain why you are so surprised by that. I'm curious.

**Mr. Mel Cappe:** The power of a minority government is challenged by the Opposition. That is more important now than it was before.

**Mrs. Claude DeBellefeuille:** So, under normal circumstances, we should have access to what we are requesting, when there are unanimous motions.

**Mr. Mel Cappe:** I would think that, under normal circumstances, a government could more easily abuse its privileges when it has a majority.

**Mrs. Claude DeBellefeuille:** Is your impression that there has been an abuse of privilege even though we currently have a minority government?

**Mr. Mel Cappe:** I will let you make your own determination in that respect.

**Mrs. Claude DeBellefeuille:** You are free, so you can say what you like.

**Mr. Mel Cappe:** Yes, absolutely.

**Mrs. Claude DeBellefeuille:** Reading between the lines, I'd say that you think what we are currently going through is abnormal with a minority government. At least, that is what I understood.

Indeed, under normal circumstances, a government that respects the democratic institution of Parliament should comply with its wishes when it demands certain documents through various means, including via motions, and now through an order of the Speaker.

**Mr. Mel Cappe:** Yes, absolutely. So, if the ministers were able to provide documents and disclose figures today, I imagine they could have done that previously—earlier in the process.

**Mrs. Claude DeBellefeuille:** In political terms, how do you see the fact that we received them today?

**Mr. Mel Cappe:** That's not my job; it's yours.

**Mrs. Claude DeBellefeuille:** It's not your job!

**Mr. Mel Cappe:** It's yours, Ms. DeBellefeuille.

**Mrs. Claude DeBellefeuille:** Well, all right!

**A voice:** He is with the Public Policy Research Institute.

**Mr. Mel Cappe:** Yes, it's "public policy", not politics.

[English]

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

Monsieur Godin, you have four minutes.

[Translation]

**Mr. Yvon Godin:** Mr. Speaker, if I'm not mistaken, Mr. Armstrong was saying earlier that members of Parliament could get more documentation from a former prime minister. However, in this case—and I want this to be clear—we are not talking about documents connected to the former government. These are documents connected to the current government. We are talking about bills put forward by the current government and information held by the current government. There is a difference between the two, because he is suggesting—

**Mr. Mel Cappe:** Yes, a bill is before you.

**Mr. Yvon Godin:** It's a bill that is before us. So, Mr. Armstrong is mixing apples and oranges.

The request we are making is justifiable. Now here it has to be decided whether this presents a risk for public safety, for this or that. Otherwise, why not disclose the information? We're really not asking for much. One bill in particular costs this much and we want to know where they get their numbers. We're not asking for much.

As far as they are concerned, we are asking for a lot because I don't think they have an answer. The Conservative government just knows that it is bringing in law-and-order bills, but it doesn't even have the figures to allow Canadians to know how much this is going to cost them and it is unable to provide them to us. It doesn't know where to hide anymore; so, it hides behind the Cabinet.

• (1530)

**Mr. Mel Cappe:** That is your political analysis and I cannot challenge it.

**Mr. Yvon Godin:** I know I'm repeating myself, but in terms of the question we are concerned with today, even all the documents we were given today were not covered as Cabinet confidences.

**Mr. Mel Cappe:** Apparently not.

**Mr. Yvon Godin:** Earlier, I asked several questions about the F-35s and the G8 and G20. We are asking for the original estimates and the costs of hosting the G8 and G20 summits.

Is there something to hide in terms of the original cost estimates?

**Mr. Mel Cappe:** Well, the original estimates may be Cabinet confidences. If you want to obtain the best estimates or the estimates at the time, and that sort of thing, you are entitled—I believe—according to the Speaker's ruling, to have access to them.

**Mr. Yvon Godin:** At the outset, you said that you were like Mr. Walsh—in other words, you always agreed with the Speaker.

**Mr. Mel Cappe:** Absolutely.

**Mr. Yvon Godin:** So, it is legitimate for a member of Parliament to want to receive these documents. There is a difference between—

**Mr. Mel Cappe:** You're talking, not about documents, but about information.

**Mr. Yvon Godin:** Information, yes—what we need to fulfill our responsibilities.

Thank you, Mr. Chairman.

[English]

**The Chair:** Thank you.

Mr. Cappe.

**Mr. Mel Cappe:** Could I have just one last word?

**The Chair:** I'll give you the last word. You've become one of my favourite professors, so carry on.

**Mr. Mel Cappe:** Thank you, Mr. Chairman.

It was really just that since I've been Sir Humphrey, I thought I should give you the wisdom of Sir Humphrey, when he is telling his Prime Minister that it is faster to do things slowly, it is costlier to do things cheaply, and it's more democratic to do things secretly. I actually believe that.

**The Chair:** Thank you very much. Please don't let word get out to Professor Russell that I've found a new favourite professor.

Thank you all.

We're going to suspend for half an hour. We're back at four o'clock.

• (1530) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1600)

**The Chair:** We're back.

It's four o'clock. We have witnesses with us. Alister Smith is with us today.

Alister, you have an opening statement. If you'd like to do that, Mr. Smith, and introduce the person with you, then we'll go to questions.

**Mr. Alister Smith (Associate Secretary, Treasury Board Secretariat):** Thank you, Chair and members of the committee.

We are pleased to be here to answer your questions.

[Translation]

With me today is Donna Déryger, Acting Senior Director, Office of the Comptroller General. Ms. Déryger is responsible for the Treasury Board Secretariat *Guide to Costing*.

[English]

We'd be happy to answer your questions on the guidance we provide to departments on the costing of initiatives or on the role of the Treasury Board in approving funding for the implementation of government initiatives.

Departments are expected to prepare cost estimates in memoranda to cabinet and Treasury Board submissions on the basis of the guidance provided by the secretariat through the TBS guide on the preparation of TB submissions and the TBS "Guide to Costing". Cost estimates provided by the departments are the responsibility of the deputy head and require the sign-off of the department's chief financial officer. Treasury Board's role is focused on the assessment of submissions prepared by departments for funding when initiatives are ready for implementation. Funding decisions are then compiled into the estimates documents tabled in Parliament. Departments report to Parliament annually on their planned spending and on their actual results.

[Translation]

We would be pleased to elaborate further on these processes.

[English]

Thank you very much.

**The Chair:** Super.

Thank you very much.

Mr. Brison, for seven minutes.

**Hon. Scott Brison:** Thank you very much.

I welcome Mr. Smith and Madam Déryger here today.

I was a member of the Treasury Board committee of cabinet. I worked with Treasury Board during that period of time. In fact, I want to commend Madam Déryger, who was one of the authors of the "Guide to Costing". Obviously, she will know it very well.

On page 10 of the "Guide to Costing" of Treasury Board, for the costing of a new initiative, incremental funding, it says:

All the costs of a new initiative for a department must be known, including costs of employee benefits and accommodation. For a new initiative that is incremental to existing programs, it is necessary to know the incremental financial impact; that is, the costs that change as a result of the decision.

For cabinet to render a decision on a piece of legislation, it is required, based on this Treasury Board guide, for Treasury Board and Finance to work with the specific department—in this case it would be Justice and Public Safety—to provide that information, correct?

**Mr. Alister Smith:** Let me start, and I'll turn to Ms. Déryger on this.

The costing is done by departments based on our guidance, based on the guidance that Donna and her folks provide to the departments. When any item or a new initiative is presented in a memorandum to cabinet or a submission, it is supposed to follow the principles in the "Guide to Costing".

**Hon. Scott Brison:** So in the case of the government crime bills, these 18 bills, this information was provided to cabinet in each case?

**Mr. Alister Smith:** Yes, if a memorandum to cabinet is presented, then cost information is prepared as part of that.

**Hon. Scott Brison:** The reason I ask is that earlier one of the Conservative members, Mr. Armstrong, was questioning whether this information even existed. I just wanted to make sure my Conservative colleagues were aware that not only does this information exist, but it is required, based on Treasury Board guidelines, to exist and to be provided to cabinet.

Once the legislation is tabled in Parliament, what is the policy relative to cabinet confidence around the costing of that legislation—that is, once it's provided to Parliament?

**Mr. Alister Smith:** The information on the bill is presented by the minister tabling the bill. It's up to that minister to determine what information he provides on cost at that time.

As bills progress and change and as we move toward implementation of the actual initiatives, the costs themselves change. As the ministers were explaining earlier today, there is high-level cost information provided when bills are tabled, and as the initiatives evolve over time and come closer to implementation, sometimes those costs evolve and become more precise.

•(1605)

**Hon. Scott Brison:** But according to the ATIP act—we had Madam Legault here earlier, and also Mr. Cappe was here—that kind of information provided to cabinet during cabinet's deliberations about a particular piece of legislation, once the decision is rendered, is no longer cabinet confidence.

**Mr. Alister Smith:** I realize Mr. Cappe was talking about discussion papers under section 69 of the Access to Information Act. Those discussion papers, if they existed, could be exempt, as I understand it. But that is not the way cost information is presented. Cost information is presented as part of a memorandum to cabinet, and therefore it's a cabinet confidence when the bill is being studied by cabinet.

**Hon. Scott Brison:** Would you agree that members of Parliament need to have, are required to have, to fulfill our jobs, the information on the costs of the legislation we are voting on?

**Mr. Alister Smith:** Yes, and I believe the ministers have provided that information.

**Hon. Scott Brison:** When, today or on February 17? Because it's two separate sets of information.

**Mr. Alister Smith:** Well, the information provided today I think.... Listening to the testimony earlier today by ministers, I believe they said the information provided today elaborates on the information they provided earlier.

**Hon. Scott Brison:** The original deadline was in November, in fact. Why would the government have waited four months to provide this kind of information to Parliament? Can you remember...? First of all, answer that question, please.

**Mr. Alister Smith:** I'm sorry, I wouldn't be able to answer that question.

**Hon. Scott Brison:** When legislation goes to Parliament.... Can you think of other examples in your—how many years have you been in government?

**Mr. Alister Smith:** Twenty-seven.

**Hon. Scott Brison:** Can you give us some other examples where cabinet confidence has been used to deny Parliament the costs of legislation when Parliament asked for it, in your 27 years?

**Mr. Alister Smith:** First of all, I'm not an expert on access to information or cabinet confidences and really cannot address those kinds of issues in a professional way. Those are questions more for my colleagues at the Privy Council Office.

All I can say is what we require when bills are presented to cabinet, or later on in particular, which is our focus in Treasury Board, when initiatives are implemented. A full costing is required and provided.

**Hon. Scott Brison:** You provided full costing. So the government had the full costing information on this legislation before a decision was rendered, before the legislation was tabled in Parliament.

**Mr. Alister Smith:** Let me go back to what I said earlier. When a bill is considered by cabinet, you do have high-level costs. As a bill gets closer, after consideration by the House and approval and implementation, those costs can evolve, so the costs do tend to become more precise over time.

**The Chair:** Mr. Brison, I'm sorry, but your time has completed.

Mr. Reid.

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

Thank you, Mr. Smith and Madame Dériger, for being here.

Just to follow up a little bit on what Mr. Brison was saying in his question, he asked about when the costs are put in place, and you said the costing becomes more precise as the bill moves its way through the process. Where would the very first attempt at costing take place? Would that be at the time that an MC is prepared or after that? I don't know.

•(1610)

**Mr. Alister Smith:** No, at the time an MC is prepared, we and Privy Council Office require costs to be provided, so there would be at least high-level costs provided at the time legislation, a new bill, is being considered.

**Mr. Scott Reid:** That's at the time and actually forms part of the memorandum to cabinet. There would be a cost estimate.

**Mr. Alister Smith:** That's correct.

**Mr. Scott Reid:** When you say “high-level costs”, is that another way of saying costs that are not yet very precise, that are ballpark, and as time goes on what we're really talking about is a process of making them more precise?

**Mr. Alister Smith:** Absolutely. As more and more of the implementation details fall into place, it becomes easier to identify, break down, and be very specific about the costs. When we get further in the life cycle to a submission being prepared for Treasury Board, the costs become very detailed and very precise and may be segmented for different phases of the initiative. So at that stage there's a great deal of information, and quite detailed information, provided to Treasury Board.

**Mr. Scott Reid:** Such as, for example, the kind of information we're seeing in some of the submissions given here today?

**Mr. Alister Smith:** Yes, and it becomes even more precise as some of these bills that have not been passed yet become law. As initiatives are rolled out, the information on cost becomes much more specific because you know the phasing, you know the components, you know all the players involved, all of whom are putting together their individual costs, and you get a much more precise picture of the costs.

**Mr. Scott Reid:** I actually may be wrong about this—I'm not sure—but I'm imagining that when a bill goes before a parliamentary committee and expert witnesses come there, in some cases they may provide testimony that is germane to the question of costs, that may actually help to illuminate things. Is that correct?

**Mr. Alister Smith:** That's correct.

**Mr. Scott Reid:** Okay. So in a sense, until a bill has gone through the House of Commons and the Senate and made its way on and received royal assent, until that moment, the costing process could potentially be adjusted?

**Mr. Alister Smith:** Exactly. Those costs can evolve, and of course the bill can be amended and there can be other changes before it becomes law.

**Mr. Scott Reid:** Right. Okay.

When you get a bill that is reintroduced from one Parliament to the next, does it get re-costed? In asking this question, the bill that comes to my mind—although it's not one that's under consideration here, it's just one that I've followed with interest—is Bill C-6, an act respecting the safety of consumer products, which came back as Bill C-36. I think I have it backwards. It started off as Bill C-36 and wound up as Bill C-6. But at any rate, for a bill like that, would there be a re-costing that would go on?

**Mr. Alister Smith:** I think there is continual refinement of costing. I'm not sure about that particular bill. It could be that there were changes introduced in the policy and the approach and that may have affected the costing or re-costing when the bill was reintroduced. I presume there would have been some changes from the initial bill to the bill that was reintroduced and that would have affected the costs.

**Mr. Scott Reid:** Right. I just pulled that one out of thin air, so perhaps that's not fair. You didn't come prepared to comment on that bill.

Private members' bills, as you know, unless they receive a royal recommendation, which never happens, cannot, under...

I'm sorry, Mr. Proulx is correcting me. But it doesn't happen in the normal course.

At any rate, they are required to be items that would not impose costs on the federal government. Are there ever bills that originate with the ministry that have no costs associated with them?

**Mr. Alister Smith:** Certainly. And some of these bills, as you mentioned, do not have easily identifiable costs.

**Mr. Scott Reid:** That would be true of some of the 18 bills that Mr. Brison referred to in his original motion?

**Mr. Alister Smith:** That's my understanding, yes.

**Mr. Scott Reid:** Okay, thank you.

I think that's all I have to ask.

Thank you very much.

**The Chair:** You have two minutes left, sir.

**Mr. Scott Reid:** Actually, there might be another member who's interested in raising something.

**The Chair:** Mr. Albrecht.

**Mr. Harold Albrecht:** Thank you, Mr. Chair.

I want to follow up on that, in terms of the estimates process, as those estimates come to committee. It's my understanding, at least, that all of the estimates from each department need to come to the appropriate committee. Can you just tell us a bit about what is the role of the individual MPs at that committee? Can they reduce the estimates based on what the committee decides? Can they increase them? What are the options that are open to committee members in terms of having control over the estimates process?

Earlier today, one of our colleagues was implying that some of these figures have not been public, and in fact they are in the estimates. I think it's incumbent upon MPs to do their homework and if they have questions to look at the estimates. But just help me through that process.

•(1615)

**Mr. Alister Smith:** Yes, committee members can recommend and the House can reduce estimates for particular items. They cannot increase the ask for funds, but they can reduce the amount of money that is provided for a particular purpose, for a particular vote.

**Mr. Harold Albrecht:** What is the typical cycle for that process? We see the main estimates and then we have supplementary estimates. Could you just enlighten the committee and the Canadians who may be watching this as to how that process works?

**Mr. Alister Smith:** Sure.

From policy initiatives we'd be talking about memoranda to cabinet. From policy initiatives we move to submissions to the Treasury Board. Once Treasury Board has made a decision on funding, all those funding decisions are compiled into the estimates, and they do affect the reference levels of departments. Those changes in reference levels, again, form part of the main estimates. The main estimates have just been tabled and provided to Parliament for approval, and once approved the funding is provided to departments. Departments also have to report back to Parliament on the results of the spending; they have to report on plans and on results.

**The Chair:** We'll put you down for the next round.

Monsieur Paquette.

[Translation]

**Mr. Pierre Paquette:** Thank you, Mr. Chairman.

Mr. Reid asked you earlier what you mean by “high level cost”. You said that it was very approximate. Does that mean that once a costing process is underway, you opt for the most expensive scenario? Is that the case?

[English]

**Mr. Alister Smith:** Perhaps I can turn to my colleague on the principles we apply in costing and she can explain. We certainly don't go to the most costly alternative; that's not the way the costing is done. A set of principles are employed, and they do follow best practice.

Perhaps I can turn to Donna on that.

**Ms. Donna Déryger (Acting Senior Director, Financial Management Strategies, Costing and Charging, Financial Management Sector, Office of the Comptroller General, Treasury Board Secretariat):** A lot of professional judgment is required to be exercised during the estimation of costs. Whatever the accountants consider, in consultation with the program managers, who are the most knowledgeable about the program and the activities to be performed, they would arrive in concert at a reasonable cost estimate.

[Translation]

**Mr. Pierre Paquette:** So, it is not a high level estimate.

[English]

**Mr. Alister Smith:** Perhaps I can explain what is meant by that.

Initially with any policy item, but particularly with a new bill, a lot of details need to be sorted out. So the first cost estimates are necessarily going to be high level. They're only going to take some factors into account. As more and more pieces of the puzzle fall into place, as the bill becomes law, as the initiatives under the bill become fleshed out, as you determine how many FTEs you need, as all those details become fleshed out, the costs become more precise. So from a high level to a more detailed level is really what I was trying to explain. We don't have all the details in the beginning. You do the best you can on the costs involved and then you end up with something that is very detailed for consideration for funding and for approval in Parliament as well.

[Translation]

**Mr. Pierre Paquette:** You are trying to explain the fact that, as the process unfolds, the closer you get to implementing a government decision regarding a new piece of legislation or a new program, the more accurate is your estimate of the cost, which is perfectly normal.

Is it possible for a bill or program decision to be submitted to Cabinet without any prior costing? Because it's approximate, Cabinet might consider that it doesn't need to know the cost in order to make a decision.

• (1620)

[English]

**Mr. Alister Smith:** I think many considerations go into a cabinet decision as to a bill, cost being one of them. I think all members of any cabinet would want to know as much as they possibly could about the potential costs. That being said, it's sometimes very difficult to determine what those costs are. They're really highly contingent. So it may be very difficult for them to try to calibrate that cost, especially if it's many years out.

[Translation]

**Mr. Pierre Paquette:** If Cabinet needs to know what bills or programs are going to cost, it is perfectly natural that, before making its decision, the House of Commons would also have access to that information, even though it may be approximate. That is part of the debate.

You are right to say that it is not the whole debate, but I would like to cite the example of employment insurance.

Every time we propose enhancements to employment insurance, the Conservative government says that it will be too expensive, and that option is completely ruled out. However, if we need information about costs in the context of parliamentary debate, it would also be perfectly normal for us, like Cabinet, to be given that information, even if the cost is approximate.

[English]

**Mr. Alister Smith:** I can't disagree that having cost information improves decision-making; it certainly does. You have the role of the standing committees, House debates; you have opportunities to ask for that information to decide whether you're going to vote for a bill or not.

[Translation]

**Mr. Pierre Paquette:** I imagine there are significant differences between a costing process involving a program or legislation that has already been in effect for some time, as opposed to a process

involving a new program. I'm talking about the process. I certainly understand that, in terms of information, you would have more available once implementation is underway. Ms. Déryger told us that this is done in relation to the affected department.

[English]

**Mr. Alister Smith:** With regard to process, I think there is a difference, in that new initiatives typically need policy approval at cabinet first. You need to go the memorandum to cabinet route. You need to explain why you need a new program, a new policy, a new initiative.

Existing programs tend to be more in the Treasury Board ambit. They tend to be changes to existing parameters of a well-known program, so you don't need the policy cover, new policy approvals. However, you do need funding approvals, and the funding approvals require Treasury Board scrutiny. It tends to be treated differently internally in that way.

[Translation]

**Mr. Pierre Paquette:** In closing, I would like to specifically address Bill C-48, which is intended to allow judges to refuse parole before an inmate has served 25 years in prison. A costing was necessarily prepared in relation to this bill. Yet the Minister says that he didn't want to provide that information because it was too uncertain. If I understood what you said, the decision not to disclose the cost of the bill was the Minister's. That costing does exist somewhere.

[English]

**Mr. Alister Smith:** Let me respond quickly to this. The deputy heads of these organizations are responsible for the cost estimates. The chief financial officers sign off on the cost estimates, and they are accountable for the cost estimates. If they can't come up with a cost—if they don't feel there is a true cost—then they will inform their ministers accordingly, that there is no cost that they can calibrate there.

**The Chair:** Thank you.

Monsieur Godin.

[Translation]

**Mr. Yvon Godin:** Thank you, Mr. Chairman. I asked some questions earlier. I'd like to know whether there are bills that you will say involve no cost. I can cite the following example: No cost estimate is available because amendments would have an impact on correctional costs at the provincial and territorial levels. The bill should not have any financial implications for the Correctional Service of Canada since there are very few young offenders in its institutions.

If we amend laws, we have to include costs for the Federal Court. The fact that young offenders are not in federal institutions does not make it a provincial court.

• (1625)

[English]

**Mr. Alister Smith:** It's very hard for us to second-guess the department on costs for some of these bills. They are accountable for preparing the cost estimates based on the guide that we require them to use. Also, their chief financial officers sign off on the costs. If they cannot identify a cost in some cases, they will not be signing a document saying that this is going to cost  $x$  millions of dollars and we're going to need funding for it.

We have to take their word for those cost estimates, since they are accountable. They've done their calculations. They have done their analysis. We will see later on if there is a problem because they have underestimated the costs. Then they will certainly have to come to us, and we will have a look at that point. But it is not in their interests to underestimate the costs. If they underestimate the costs, there won't be any funding for it.

[Translation]

**Mr. Yvon Godin:** Allow me to continue. With respect to Bill C-16, it says here that detailed information on costs is not available because CSC is expecting the financial repercussions to be minimal. A bill is drafted, we vote on it, and the expectation is that costs will be minimal; then afterwards, we get a big surprise.

[English]

**Mr. Alister Smith:** As I was mentioning, they are accountable. They are signing off on these costs. If they say there is no cost involved, it is very difficult for them to come to Treasury Board, for example, and ask for funding. Because they said there was no cost involved, they would have to absorb the cost. It is not in their interests to underestimate these costs, so they should identify any costs that they can up front.

[Translation]

**Mr. Yvon Godin:** It seems to be pretty well the same thing for all the bills. They seem to be moving forward with their eyes shut when it comes to their law-and-order bills, assuming that it won't cost anything.

Mr. Paquette referred to Bill C-48. There again, no detailed costing has been provided, because the decision is discretionary and does not apply to multiple murderers. The impact will only appear in subsequent years.

But bills are being passed. However, you say the opposite—that there is a responsibility to provide accurate information and tell people how much this will cost.

[English]

**Mr. Alister Smith:** I'm saying that it's the responsibility of the department—the deputy head and the chief financial officer—to identify the costs. They essentially are signing off on this. That is an important accountability, and we don't second-guess them on that. That's not to say that costs can't evolve. As I was saying, it's very difficult, for some of these bills, to identify long-term costs. But they have every interest in being accurate, because if funding depends on it down the road and they have underestimated those costs, it's very difficult to get the funding for those initiatives.

[Translation]

**Mr. Yvon Godin:** Ms. Déryger, you wrote a paper on this, to explain how a costing is prepared. In this case, is it normal for a whole series of bills to be drafted without our actually receiving this information?

[English]

**Ms. Donna Déryger:** The “Guide to Costing” is principles-based. It recognizes that reasonable assumptions need to be made. Cost estimates are often based on a variety of reasonable assumptions and other data that is known. The “Guide to Costing” explains how to cost; it does not instruct what to cost.

[Translation]

**Mr. Yvon Godin:** A study should be done, if a bill is going to mean that people will be kept in prison longer than usual. We know how many people are in prison now or what percentage of people in prison. That is one way of determining the costs.

[English]

**Mr. Alister Smith:** Again, the departments you talked to earlier today have done a fair amount of work in these areas. They know these areas very well. They know these areas better than we do, and they've come up with an assessment of what will cost them, among the many bills you've been looking at, and what will not cost them.

If they say they don't think this is going to cost them anything, they are signing off on that and are not asking for funding for it, so they have a fair amount of confidence.

• (1630)

**Mr. Yvon Godin:** It's still within the same government. I mean, if they pass the bill, and they want that bill, what power do you have to say, “You didn't give us the amount, it's too much, and we're saying no”? Who are you to say no? I mean, even the Treasury Board is still the government. It's the government's bill.

**Mr. Alister Smith:** The Treasury Board very frequently says no to all kinds of initiatives, and it also reduces the cost of initiatives. It provides a fair amount of scrutiny of the cost of initiatives when they get to the point where they are very well articulated and are ready for funding.

**Mr. Yvon Godin:** Does it get to a point where it goes against a bill that passes in the House of Commons? If you pass a bill in the House of Commons, then it is the law. If it comes to cost more, how does the Treasury Board say they're not going to build jails? When the judges say they are putting him in jail, he's not going to go to a hotel somewhere; he's going to go to jail.

**Mr. Alister Smith:** You make a good point, because the Treasury Board's job is to do due diligence on these sorts of issues and these costs. Indeed, there may well be disagreement with the department over how many prisoners there will be or how many jail cells, or what have you. We will apply a certain amount of challenge to the department to ensure that the right costs are provided.

**Mr. Yvon Godin:** If the judge has no other choice, by law, than to put people behind bars, and it's not up to the judge, then I don't know how the Treasury Board can come and say that it costs too much and you're not building that jail, even if the judge says he is going behind bars.

**Mr. Alister Smith:** We will be questioning many aspects of the analysis that is undertaken.

**Mr. Yvon Godin:** There is a difference between questioning and agreeing.

**The Chair:** Monsieur Godin, your time is up. There will be another round.

Mr. McGuinty, you're up for five minutes.

**Mr. David McGuinty:** Thank you, Chair.

Thank you very much to both of you for being here this afternoon.

Mr. Smith, in your opening remarks you said you would be happy to answer questions on the guidance provided to departments on the costing initiatives. I want to get your insight for Canadians on the guidance or support that Treasury Board provides to the Parliamentary Budget Officer.

I just want to remind everybody what the mandate of the PBO is. He'll be joining us here shortly to give us his insight. It's to provide independent analysis to Parliament on the state of the nation's finances, the government's estimates and trends in the Canadian economy, and, upon request from a committee or parliamentarian, to estimate the financial cost of any proposal for matters over which Parliament has jurisdiction.

We would agree that's the mandate.

Mr. Smith, the Parliamentary Budget Officer, who was appointed three years ago next week, has repeatedly publicly decried that Treasury Board, the Department of Finance, PCO, and line departments are regularly shutting him down in his overtures for information so he can do his job. It's not a surprise to anybody here. We've all heard it repeatedly. After being appointed by Parliament in a post created by Parliament to enhance trust in our country's finances, it has gone from him reminding people that he should have access to this information to, on several occasions, senior members of the government disparaging his credibility.

Can you help us understand? You're the associate secretary of the Treasury Board of Canada. You have access to all the numbers. The Canadian people are confused because they hear the Parliamentary Budget Officer say, for example, that 65 stealth fighter jets are going to cost some \$29.2 billion over a fixed period of time. First the government says they're going to cost \$9 billion, then they're going to cost \$13 billion, then they're going to cost \$15 billion, and then they're going to cost \$16 billion.

Most deficit projection numbers put out by the Minister of Finance have proven to be wrong, when in most instances they have been proven to be right in terms of the PBO's work.

Why is this happening? Why is the PBO not getting access to all the information he needs so we can do our jobs and Canadians can have more trust in the state of the country's finances?

● (1635)

**Mr. Alister Smith:** You've asked a number of questions there. Treasury Board has provided information to the PBO based on the requests we've received from him. They are consistent with the provisions of the Parliament of Canada Act. Where he has asked for information that is deemed to be cabinet confidence to which he does not have access under the Parliament of Canada Act, we have not been able to provide it to him. We have tried to be as forthcoming as possible in providing information we can provide to him.

**Mr. David McGuinty:** Today is a good example. It took putting a pistol to the head of the government to comply, after four months of requests, to deliver up some information on the costs of 18 crime bills. Now that we have dragged at least partial information out of the government, and we know it's incomplete from a quick perusal of 1,000 pages, Parliament is now in a position to provide the information to the PBO and he can do his job. But if he had requested this information from the Treasury Board, he would have been told he was not entitled to it as an officer—not a full officer but a quasi-officer of Parliament—because of cabinet confidences. Is that right?

**Mr. Alister Smith:** His entitlements are spelled out pretty clearly in the Parliament of Canada Act, and they don't include information contained in cabinet confidences.

**Mr. David McGuinty:** Okay.

Can you help us understand why there's such a gap? For example, let's take the F-35s. The report was issued last week and there's a \$14 billion or \$15 billion difference. We know the government is relying on faulty information from the manufacturer of the plane, which was rejected by the Pentagon three months ago.

Why are Canadians having to suffer through this kind of story line when the PBO was set up precisely to help Canadians come to grips with the real numbers—not hidden—so they could know where their money was...? Why are we facing this?

**Mr. Alister Smith:** We have some differences of opinion, no doubt, between DND, which does its cost assessments, and PBO on these matters. I am really not qualified to talk about the PBO study on the F-35s and the quality of the methodology, the application of the model that was used. DND would be. But these differences are not unfamiliar when people are trying to assess very long-term, large projects of this kind.

**Mr. David McGuinty:** My last question, Mr. Chair, reminds me of debating one of my teenagers over some kind of university lecture course and my kids regularly reminding me that everybody is entitled to their own opinion but not to their own facts.

How is it possible that we have two sets of facts? We have an officer of Parliament telling Canadians one thing and we have a government, the most secretive in Canadian history, saying another thing. How is it possible that Canadians are still suffering through a situation where they can't get access to information about what they're paying for?

**Mr. Alister Smith:** In the case of the F-35s or some other analyses that are done by PBO, there are also differences of assumption and differences of models used. Those also need to be factored in. It's not just a matter of facts and differences on the facts.

**Mr. David McGuinty:** Perhaps what we need, Mr. Chair, is an arbiter who can sit down and moderate the differences between the Government of Canada and the PBO. This is crazy. We're supposed to be overcoming this by having the PBO precisely to deliver up numbers that are warranted, that are bankable, that are understood, that are serious. Part of the problem is he's not getting information.

**The Chair:** Thank you.

Mr. Albrecht, for five minutes.

**Mr. Harold Albrecht:** Mr. Chair, I'm going to try to follow the line of questioning I had earlier.

First of all, Mr. Smith, thank you for being here. I'm really glad that you have 27 years of experience in the estimates process. As a fairly recent parliamentarian, I can say it is probably going to take me at least 27 years to begin to understand even part of what you know.

You earlier indicated, in terms of the committee process, that the committee can reduce but not increase the estimates. We've had some assumptions here that perhaps the government is spending money that hasn't been approved. Does the federal government spend any money without the approval of Parliament as it goes through the estimates process?

• (1640)

**Mr. Alister Smith:** No, it doesn't.

**Mr. Harold Albrecht:** It is important that Canadians understand that. Every expenditure has to find its way into those estimates or supplementary estimates and be approved by a committee and subsequently by the Parliament of Canada. Is that correct?

**Mr. Alister Smith:** Yes, unless there are statutory expenditures.

**Mr. Harold Albrecht:** Right.

I want to go back for a minute to the Treasury Board "Guide to Costing". I understand there are seven steps in that process. I'm not sure you'll have time to go through all of the seven steps, but there's one in particular that is perhaps a little confusing. That's step five, where it states that there is costing, pricing, and funding. It says these are three distinct functions. It would be helpful if you could explain the difference in those terms—costing, pricing, and funding—as they relate to step five of the Treasury Board costing guidelines.

**Ms. Donna Dériger:** I'd be happy to answer.

There is often a blurring of those concepts.

On costing, we try to keep to the pure concept of what does it cost, what did it cost, or what do I estimate it is going to cost. Pricing can then come into play if, for instance, there is an aspect of cost

recovery in which a department might be involved. Establishing the price, or the amount to cost recover, often does not recover full cost. So there's a policy decision that it would be reasonable to recover  $x$  dollars as opposed to the full amount.

**Mr. Harold Albrecht:** Could you give me an example of that, just to help me understand? One that comes to my mind is passports, but I'm not sure if that's a legitimate one.

**Ms. Donna Dériger:** Passports would be a very good example of a revolving fund that is on full cost recovery. Whatever their full costs are, they are expected to recover those full costs through the price charged for a passport.

I'm trying to think of another example, and one is just not coming to mind at the moment.

Funding is a separate issue altogether. You can estimate that something is going to cost something, but if the funding is not forthcoming, then you're going to have to reassess what it is you plan to do.

**Mr. Harold Albrecht:** I'm probably not much better off than I was before, because I'm still having difficulty understanding. I can understand the difference between the costing and the pricing, but when you come to the funding, it would seem to me that's it's simply a matter of taxation or of some implementation of some policy to recapture the costs.

**Mr. Alister Smith:** When you get to the funding stage, you are relying on those costs. You are relying on those costs to determine how you should fund, and how much, and what kind of source of funds you need, as well as to determine the duration of your funding for that particular initiative. The fact that good funding depends on a good assessment of costs is basically the bottom line there.

**The Chair:** Thank you.

Madam DeBellefeuille, is there anything from you?

Mr. Godin, do you have anything further? No.

Do I have anybody else on my speaking list?

We thank our witnesses for this section. Thank you very much. We will suspend for about 15 minutes.

Thank you very much for coming today and sharing your knowledge with us.

• (1640)

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

• (1650)

**The Chair:** Order.

We have Kevin Page, the Parliamentary Budget Officer, with us.

Mr. Page, I understand you have a short opening statement. If you would introduce your guests with you, we will move on and finish our last hour of what seems like a fairly long day today.

**Mr. Kevin Page (Parliamentary Budget Officer, Library of Parliament):** Thank you, Chair.



Actually I have a few introductions. With me today are Sahir Khan, assistant parliamentary budget officer for expenditure and revenue analysis, and Dr. Mostafa Askari, assistant parliamentary budget officer for economic and fiscal analysis.

Good evening, Mr. Chair, vice-chairs, and members of the committee. Thank you for inviting me and my colleagues to speak to you today about fiscal transparency in the context of your specific review of the existence or extent of government compliance.

[Translation]

I have a few brief opening remarks based on the Parliamentary Budget Officer report dated February 25, 2011 entitled *Analysis of Government Responses to a Motion of the House of Commons Standing Committee on Finance*.

My views on the provision of financial information and analysis to Parliament are shaped by three points. First, the Parliament of Canada owes a fiduciary duty to the Canadian people to control public monies on their behalf. Canada's Constitution established and affirms this duty. Second, to assist in the fulfillment of this duty, the Parliament of Canada, through the Accountability Act in December 2006, created the position of the Parliamentary Budget Officer and tasked him or her with providing independent and transparent analysis on economic trends, the nation's finances, the estimates, and costing. In order to provide such analysis to Parliament, the Parliamentary Budget Officer needs access to financial and related information and analysis contained within the government's Expenditure Management System. This information and analysis is routinely collected, generated, and presented by government departments and central agencies.

PBO analysis of documents provided by the government to the House of Commons Standing Committee on Finance, and tabled on February 17, 2011 in the House of Commons, addressed three issues: first, the estimated costs of the planned reduction of corporate income tax rates; second, the incremental costs to the fiscal framework of the government's justice legislation; and, third, the estimated cost of the F-35 aircraft.

[English]

From a PBO perspective, with respect to corporate profits and tax revenues, the government has provided an adequate response to the finance committee request. In addition to projected income components such as corporate profits, personal income, etc., parliamentarians are advised to ask the government to provide underlying assumptions in all future annual budgets and updates.

Second, with respect to justice legislation, the government has not provided an adequate response to the finance committee request. Again, Chair, we have not seen the information tabled today, but the government has not provided an adequate response to the finance committee request.

Full compliance with the request requires clarity around the projected cost estimates, such as whether they are incremental or presented on a cash or accrual basis; a breakdown of costs between operating and capital for all information provided; details of the government's underlying methodologies, assumptions, cost drivers, and risk; and basic statistics, such as head counts, annual flows, and unit costs per inmate, per employee, and per new cell construction.

A modest example of the nature and extent of such compliance might be found in the PBO report entitled "The Funding Requirement and Impact of the 'Truth in Sentencing Act' on the Correctional System in Canada".

Third, with respect to the proposed acquisition of the F-35 joint strategic fighter, which was included in the original FINA motion, the government has not provided an adequate response to the finance committee request. Full compliance with the request requires details of the government's underlying methodologies, assumptions, cost drivers, and risks; documents related to acquisition and life cycle costs; and an explanation as to why new or unplanned sources of funds from the fiscal framework will not be needed to fund the new purchase.

A modest example of the nature and extent of such compliance might be found in the PBO's report entitled "An Estimate of the Fiscal Impact of Canada's Proposed Acquisition of the F-35 Lightning II Joint Strike Fighter".

• (1655)

Thank you for the opportunity to speak. We would be happy to take your questions.

**The Chair:** Thank you very much, Mr. Page.

I want to remind the committee that the point of reference on privilege that came to us doesn't mention the CF-35s. We'll talk about the crime stuff and go that way. I'll give some leeway, but for the most part, that's not part of the point of privilege that brought us here.

Mr. Brison, you are up for seven minutes.

**Hon. Scott Brison:** Thank you, Mr. Chair.

And thank you, Mr. Page, and to your team, for your important work on behalf of Canadians.

My question, first of all, is, have you had an opportunity to read the data that was provided to committee 17 minutes before the ministers appeared before committee earlier today?

**Mr. Kevin Page:** No, sir, I have not seen the material.

**Hon. Scott Brison:** So you do not believe that the time provided this afternoon provides an adequate time to study, in a substantive—

**Mr. Kevin Page:** Sir, again, I have not seen the material.

**Hon. Scott Brison:** If I can help you a little with the opening statement of the minister, Minister Toews explains that the material does not provide baseline funding, nor does it provide annual reference-level funding for all the bills.

Our order to the government required a breakdown of incremental cost estimates—and you referred to this earlier in your statement—a breakdown of baseline departmental funding requirements, total departmental annual reference levels, and detailed cost accounting analysis and projections. If the government did not provide in today's binders or data dumps to committee baseline funding or annual reference-level information for the bills, would you agree it has not met the requirement of our motion to comply with the Speaker's ruling?

**Mr. Kevin Page:** Sir, we would agree. Just to emphasize, when we produce our work, our estimates, our starting point is we would like to know whether this money is in the fiscal framework or not. All cost estimates are based on methodologies. We need to know what the methodology is. We need to know what the underlying assumptions are. We need to know the breakdowns between what is operating and what is capital.

If you are talking about crime legislation in particular, I think there are statistics like head counts, the amount of time spent in prison, the number of new prisons that need to be provided. I think parliamentarians need to know that in order to do their due diligence function.

**Hon. Scott Brison:** So you would agree that if the government has not provided baseline funding and annual reference-level funding information, then it would not have complied with the requirements of the motion.

• (1700)

**Mr. Kevin Page:** Agreed, sir. I would highlight as well that when we look back, the only information available to parliamentarians right now on crime legislation—and I'm not aware of any specific paper that has been drafted other than the material that was provided today, which I have not seen—that has been brought together in a consolidated fashion would be the report on plans and priorities for 2010-11. There are no specific breakouts provided for Bill C-25, the Truth in Sentencing Act, or any other legislation.

Again, in the budget documents, which are planning documents, we have not seen reference to specific crime legislation, so we don't know how the baselines have been adjusted or whether or not they should be adjusted.

**Hon. Scott Brison:** On February 17 the government House leader tabled information in Parliament to respond to our motion claiming that it had provided all the information. In fact the Prime Minister said that the government had provided all the information, and the parliamentary secretary to the House leader said that.

In your report after that, you said the government did not provide the finance committee or the PBO with the analysis, key assumptions, drivers, and methodologies behind the figures presented. Today you are telling us that because of the government's failure to provide baseline funding information and annual reference-level information, the government continues to fail to come clean to the finance committee to meet the requirements of our motion.

**Mr. Kevin Page:** Sir, again, we have not seen the binder, so it's very hard for us—

**Hon. Scott Brison:** But if the information does not provide baseline funding or annual reference levels, you will agree it's not adequate to meet—

**Mr. Kevin Page:** That was one part of the information we required. Again, as I've said, we wanted the five-year...we wanted the breakdowns of O and M, capital.... I'm referring to the report the PBO did in February, which was released to parliamentarians and to the House finance committee on February 25. We produced a table as to what was provided and not provided. We ticked off the boxes.

So there's a lot of information, particularly in those breakdowns, that may be in the report today. I have not seen them before.

**Hon. Scott Brison:** You will endeavour now to provide the same analysis of the current information. Given the strict timeline the committee is on this week, when can you bring that analysis back to committee? We have to make a decision on whether or not the government is in contempt by the end of the week. Can you report back to us and provide similar analysis in that time period?

**Mr. Kevin Page:** In terms of analysis, it would not take us long to go back to the original request and tick off the boxes to say what's in and what's not in. That's not a hard thing to do.

As you know, when we undertake our own costing and provide independent cost estimates, that takes a long time. So not having seen what's in the binder, it's difficult for us to provide a test of reasonableness as to whether the numbers that were provided are reasonable in terms of magnitudes.

But certainly from an information point of view, we could tick off the boxes to see whether or not, from a transparency point of view, the information was provided.

**Hon. Scott Brison:** So your office will provide that information to this committee before Friday, which compares the information that our motion requested from the government with what the government provided today and also with what the government provided on February 17?

**Mr. Kevin Page:** Again, without seeing the content, we will certainly do our best. If that is the wish of the committee, we could undertake that work. Certainly from an information perspective, what's in, what's been met, and what's not been met, we can do.

But again, to emphasize, it's a test to reasonableness: do the magnitudes make sense in the context of the proposed legislation? That would go beyond a 24-hour period. As an example, we took many months to do the work we did on the Truth in Sentencing Act.

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

Mr. Lukiwski for seven minutes, please.

**Mr. Tom Lukiwski:** Thank you very much.

Thank you, Mr. Page, for being here today.

First I want to go to an incorrect assumption that our colleague, Mr. Brison, has been floating here today, and that deals with the committee's request about, number one, information on baseline funding, and, number two, annual reference levels. If Mr. Brison had taken the time to read the explanatory notes—and I understand, Mr. Page, you haven't seen the documents that came today so I'm certainly not suggesting that you should know what's contained here. But in the explanatory notes...and I'm just going to read a couple of sections here for you very quickly.

The committee requested, of course, “the baseline departmental funding requirement excluding the impacts of the bills and Acts broken down by Capital, Operations and Maintenance and Other categories.” In the explanatory note the government states, “For some bills...the baseline funding can be identified and is recorded in the appended answers.” So that information is provided. Mr. Brison says it isn't, and it has been today.

The explanatory note goes on to say that “For some bills, however, baseline funding does not exist because implementing a bill may involve new activities that were not previously funded and as a result, did not have an existing baseline funding level.”

It goes on to say, “Finally, for some bills there is no clear answer to the request because baseline funding is not categorized in a manner that directly relates to the object of the bill.”

I'm not going to ask you to comment on that, sir, only because you haven't had a chance to examine the entire document and it would be unfair of me to ask that. Suffice it to say that in response to Mr. Brison's allegations that we have not provided proper information, in fact the government has done exactly that, and I'm sure this will certainly be identified by you, sir, once you've had an opportunity to read these documents.

But let me go back to some testimony we just recently heard from the associate secretary to the Treasury Board of Canada, Mr. Alister Smith. Mr. Smith commented just a few moments ago that many times a difference in opinion between cost estimates from your office and the Department of Finance may not be differences in fact but differences in the assumptions made by both your office and the Department of Finance. Would you agree that this would be an accurate statement, generally speaking?

● (1705)

**Mr. Kevin Page:** Sir, in the work we tend to do as budget officers, we are projecting forward and providing cost estimates, so we are dealing with assumptions. That's why it's so important to have information on assumptions. My office needs to be transparent about assumptions, as does the Department of Finance or the Treasury Board or Correctional Service Canada.

**Mr. Tom Lukiwski:** Understood, but would it be fair to say that if the assumptions are different between your office and that of the Department of Finance, there will quite conceivably, and probably most likely, be a difference at the end of the cost projections?

**Mr. Kevin Page:** I agree. I think your point highlights the importance of both the PBO and the government being transparent on assumptions.

**Mr. Tom Lukiwski:** So let's go to a specific example and see if we can square a circle a little to see why there may be some differences of opinion on cost.

Much of the criticism about some of our crime bills revolves around your report alleging that the actual cost of crime legislation will be far higher than what is expected or projected by the government. I think that is a fair statement. However, I would point out that on February 17, during an exchange between Madam Mourani and Correctional Service Commissioner Don Head, an important point was made. This all goes down to my initial question on assumptions.

Your office operated on the assumption that housing a female inmate costs \$340,000 a year, when Mr. Head confirmed that in reality it is far less than that; it could be as low as an average of \$113,974 a year. So the assumption you were using, as opposed to the assumption CSC was using, at the low average could be a difference of over \$200,000 per inmate. Could that possibly be a reason why some of your projections could be considered to be grossly overestimated?

**Mr. Kevin Page:** I think what we're probably talking about are differences in definitions. That's slightly different from saying differences in assumptions.

On those types of costs, we took the information from testimony that Mr. Head, the commissioner, had made to various committees. We were able to extract that type of information from the Correctional Service of Canada. So it's probably about whether we are talking about inclusive costs, operating and capital, direct and indirect, or some smaller definition of it. But you can definitely get significant ranges.

Sahir, do you want to add anything?

**Mr. Sahir Khan (Assistant Parliamentary Budget Officer, Expenditure and Revenue Analysis, Office of the Parliamentary Budget Officer, Library of Parliament):** On some of the main drivers of costs, if you look at the low end of the PBO range, to some extent it's not that different from the estimate of the government. The biggest assumption difference is when capacity constraints are hit, and the extent to which the government will accommodate that by increasing density versus construction. We've made it quite clear in the paper when that tipping point occurs. That's why if we understood where those constraints were from the government side, we could be in a better position to reconcile differences.

**Mr. Tom Lukiwski:** Again I would point out that Mr. Head himself was disputing the projections or assumptions that your office was using. They were the ones you testified provide the information your office requires to make an accurate report and cost projections. Mr. Head himself, the source of the information, was disputing your projections at committee.

● (1710)

**Mr. Kevin Page:** Again, we would have to go back to how he was using information. We got the information from Correctional Service of Canada. I think you were talking about whether we were using a partial figure for those sorts of costs for women's prisons or whether we were using the full figure that included operating and capital costs.

**Mr. Tom Lukiwski:** But suffice it to say that's where there could be severe differences of opinion. It does not necessarily mean the Department of Finance facts are wrong or that yours may be wrong. The differences in cost projections could in many cases be simply put down to different assumptions being used.

**Mr. Kevin Page:** I agree that we need to be really clear on assumptions. From the work we did, particularly with respect to crime, I think the bigger issue we found to be the fundamental factor was whether or not we were going to change occupancy rates. As Mr. Khan just said, that would really drive higher capital costs.

So if the government is prepared to double-bunk, triple-bunk, or what have you—and there's a lot of information in the report we prepared last year on this issue—most of your costs would be operating. You could avoid a lot of the capital costs.

**Mr. Tom Lukiwski:** Based on that, let's go back to another piece of information that came out on February 17 of this year. That's when the Minister of Public Safety appeared at the public safety committee, talking about a number of inmates—

**The Chair:** You're going to have to wait until the next round. I'm very sorry about that.

Monsieur Paquette.

[*Translation*]

**Mr. Pierre Paquette:** Thank you, Mr. Chairman.

Mr. Page, I'd like to welcome you and your colleagues to the committee.

With respect to corporate profits and tax revenues, you stated in your presentation that the government has provided an adequate response to the Finance Committee request. However, you are advising parliamentarians to ask the government to provide not only the projections, but the underlying assumptions.

In the document you prepared for the Standing Committee on Finance on February 25, you said that you believe the government is underestimating the impact of tax cuts on tax revenues. Were you able to access the government's assumptions or did you manage on your own to extrapolate the models or assumptions it used in order to arrive at those results?

**Mr. Kevin Page:** Yes, certainly. When I said today that I considered the response to be adequate, it was in a context of transparency. We received all the information requested in the motion, but there is a difference. It is possible to compare that analysis and the PBO projections prepared by my office, and those of the Department of Finance. That is very important, particularly in a situation where there is a great deal of uncertainty surrounding economic and fiscal projections. There is definitely an analysis in our February 25 report regarding business and corporate profits.

**Mr. Pierre Paquette:** Were you able to access the government's assumptions or models?

**Mr. Kevin Page:** No, I did not have access to those models. Mr. Askari may want to add something. As far as we are concerned, comparing our estimates with those of the Finance Department was enough. However, Mr. Askari may want to briefly address the importance of having this information.

**Mr. Mostafa Askari (Assistant Parliamentary Budget Officer, Economic and Fiscal Analysis, Office of the Parliamentary Budget Officer, Library of Parliament):** The information dealt only with the projection, and not with the underlying assumptions or models the government used to develop those estimates.

**Mr. Pierre Paquette:** Basically, the government gives us figures, and we practically have to take it at its word. Of course, you did your own analysis, and that has already put us on the right track to a certain extent. However, if we wanted to have a serene and informed debate on this, we would need more information than the simple table we were given on February 17 by the Government House Leader. That is what I understood from your comments.

**Mr. Kevin Page:** Allow me to clarify certain points in English.

[*English*]

Even more, perhaps, it was very helpful for us to get the corporate profits projections and to get estimates of the effective tax rates for corporate income taxes, because that allowed us to compare Department of Finance projections not only with ours but actually even with the private sector's. There, what we found was that when you look at corporate profits as a share of income, the Department of Finance was relatively optimistic in terms of a strong recovery in corporate profits—optimistic relative to an average private sector forecast and relative to PBO assumptions.

Their effective tax rates weren't fundamentally...they were a little bit higher than what we were carrying at the PBO. We were a bit surprised by how low, given those assumptions, the impacts were that were provided through the motion, in terms of the magnitudes of the corporate income tax reductions.

That information allows us to do that type of analysis, to put it in a report, and to make it available to all parliamentarians so that all of you collectively have a better understanding of what the planning framework is for the next five years. So it was very valuable. We are appreciative that we received that information. But we didn't get access to the detailed models.

• (1715)

[*Translation*]

**Mr. Pierre Paquette:** With respect to its justice bills, you developed a table which appears on page 6, "Criminal legislation: financial information and analysis: a comparison between what was requested by Parliament and the information provided by the Government of Canada". I would have liked to hear your explanation of this table. In your presentation, you said that the government did not provide an adequate response to the finance committee request. Can you explain this table on page 6?

**Mr. Kevin Page:** Yes, I have a copy of the table.

**Mr. Pierre Paquette:** Can you explain the information on it?

**Mr. Kevin Page:** Yes. Perhaps Mr. Khan could provide an explanation.

**Mr. Sahir Khan:** In order to establish a fairly objective base, we simply compared the information the committee received with what it requested. That reflects some of what we had begun to discuss in terms of comparing our estimates of the costs of justice legislation with those of the government, for example. Without having its methodologies or assumptions, it becomes almost impossible to correlate the figures. For parliamentarians, it's very different and it becomes extremely difficult to understand the sensitivity of certain estimates and factors. So, it's very important to have all the information that was requested by the committee.

**Mr. Pierre Paquette:** You say there is a summary of estimated cost projections over a five-year period for five bills, but you point out in one note that there no definition of what is meant by "estimated cost projections". You have to know what it includes in order to make a proper assessment.

For all the other bills, absolutely no information was provided by the government—in other words, there is no summary of estimated cost projections over five years, no breakdown of operating costs, capital costs or any other costs. Are the data consistent with the Guide to Costing? We don't know. The basic assumptions are not identified, the detailed analysis and projections are not available, the costing methodology is not provided and, finally, the costs reflected in the financial planning framework and annual departmental reference levels are not known either.

Basically, this table shows that we are still in the dark as to the overall costs of the various bills you have targeted, which are also partly targeted in the motion passed by the House.

**Mr. Kevin Page:** Yes. That may be what Mr. Brison is driving at. It might be important to look at the information that is now available and update that table. That way, we could see whether there is a difference between the information that is now available and what we are able to obtain through an access to information request.

**Mr. Pierre Paquette:** Thank you.

[*English*]

**The Chair:** Monsieur Godin, seven minutes, please.

[*Translation*]

**Mr. Yvon Godin:** Thank you.

Is it possible that the government simply doesn't have an answer for the Standing Committee on Finance, and that it has no information to provide? Is it possible that the government drafted a bill without concerning itself with the cost? The Conservatives are very obstinate; they bring forward their crime legislation without even considering the costs.

**Mr. Kevin Page:** I agree. All committees need information.

[*English*]

**Mr. Yvon Godin:** No, I asked if it was possible that the government has.... I mean, they're coming out with bills, and they don't even have the information about how much it's going to cost?

**Mr. Kevin Page:** We would expect, in all normal circumstances, that the government would have carried out its requirements under Treasury Board policy—that the costs would be estimated, all of the front-end due diligence would be done before, and moneys would be set aside in the fiscal framework—and that this information should be made available to parliamentarians.

**Mr. Yvon Godin:** All of the information has to be made available, but you didn't receive this, for example, on Bill C-22:

No detailed cost information is available because the Office of the Director of Public Prosecutions cannot predict the number of prosecutions that will result due to this new Act. The penalties provided in the Act are fines, and, in some cases, a maximum 6 month sentence. As a result, the Correctional Service of Canada will not incur additional costs.

Do you believe that makes sense?

• (1720)

**Mr. Kevin Page:** We would want to see the information that's contained in that binder to understand why their assumption is that there would be no additional costs. If they say there is to be no additional cost, then I think....

Again, we would like to assess it from the point of view of risk. At some point in time, they may find themselves in a position where they have to go back to Parliament and seek additional appropriations.

**Mr. Yvon Godin:** Yes, but again, look what it says with regard to Bill C-4:

No detailed costs estimates are available because any impact of the amendments would be on the provincial and territorial corrections costs. The Bill should not result in cost impacts for Correctional Service of Canada because young persons are rarely held in these facilities.

That means a young person goes into a provincial jail instead of a federal one, so it's not a federal cost. At the same time, as the minister said today, any costs will be negotiated with the provinces. There will be a cost somewhere. I'm sure the provinces will say, "Look, you in Ottawa are not going to dump onto us the cost of all of those bills you're bringing in; somebody has to pay for it."

Shouldn't the government estimate how much it will cost and not just say no, no, this is going to provinces, so it's not costing us anything?

Are you satisfied with those answers?

**Mr. Kevin Page:** I think it would be incumbent upon the government and upon the public service, when they are doing their estimations, to look at all costs and to estimate all the costs if, as in this case, they're changing the Criminal Code and it's going to have an impact not just at the federal level but also at the provincial level. I think it would be just fair practice to share that information with the provinces so that they would have it available.

When we did our study on the Truth in Sentencing Act, it was clear to us that there would be significant costs at the provincial level of government. Just because of the way the system is designed, there would be a large impact as well on the provinces. We did not have baseline information to estimate what the fiscal impact per se would be on the provinces, but we can get a sense of what the overall fiscal requirements would be, and we did try to provide an estimate of that.

I think in a country where fiscal federalism plays a large role, you'd expect that there would be a strong dialogue between provinces and the federal government.

**Mr. Yvon Godin:** Yes, but for us as parliamentarians, when we make decisions here that will put a cost to the provinces, shouldn't we know that cost? We're voting on it. We have to go back home. We don't live in Ottawa. We come in to make bills and laws and that, but we still have to go home. We still have a province we answer to.

**Mr. Kevin Page:** Sir, I think you should have information on that cost at both the federal level and the provincial level, and that information should be made public when you're voting on it.

**Mr. Yvon Godin:** Then, really, for Bill C-4—as I said, they've said here that because it's the provinces, they cannot give us the costs—you're saying that we should have the costs.

**Mr. Kevin Page:** You, as one taxpayer.

**Mr. Yvon Godin:** Yes. It's the taxpayer who is paying. They're all paying.

According to what you're saying, we should have had those costs. That means what we have here is not enough, because the finance committee wants to know what it's going to cost, even if it's not federal and it's going to be provincial, because at the end of the day it's probably going to be federal anyway, because they're going to negotiate the costs.

**Mr. Kevin Page:** That's right, sir. Again, when we did our costing on the Truth In Sentencing Act, we did our very best to provide estimates at the provincial level.

[Translation]

**Mr. Yvon Godin:** With respect to justice legislation, you say that the government must provide specific information about its underlying methodologies, assumptions, cost drivers and risks, and that the government has not provided an adequate response to the committee request.

Are you still of the view that the government has not provided the committee with the information it needs?

**Mr. Kevin Page:** There again, Mr. Godin, I did not have an opportunity to see the binder, but as I was saying, there is a need for information about methodologies, as well as estimates of fiscal and operating costs, capital costs and exemptions—in other words, the important numbers.

**Mr. Yvon Godin:** Are you of the opinion that the government gives you enough information to allow you to do your job and fulfill your responsibilities?

**Mr. Kevin Page:** You have to have information.

[English]

**Mr. Yvon Godin:** The question is, do you feel that you get enough information?

[Translation]

Are you receiving enough information from the government to fulfill your responsibilities?

[English]

**Mr. Kevin Page:** I find, in general, in terms of our experience costing different projects—like Afghanistan, the cost of Canada's engagement in Afghanistan, aboriginal educational infrastructure, crime legislation, and F-35—we struggle to get information. It has been a struggle.

We're trying to build bridges with the public service in order to create a culture of more openness and transparency, but I think the process continues.

• (1725)

[Translation]

**Mr. Yvon Godin:** The government created your position in the fall of 2006, and since then, you have been saying that you don't have the necessary information to correctly serve parliamentarians and Canadians. That must be frustrating. Please explain. We and every other Canadian out there would like to understand.

**Mr. Kevin Page:** There is certainly some frustration there, but the most important thing, in my opinion, is to provide you with meaningful and adequate service.

**Mr. Yvon Godin:** I understand that your role is to provide service and that this is what matters, but if you don't have the information you need to fulfill your responsibilities, that just confuses people more than anything else, in my opinion.

[English]

**The Chair:** Yvon, thank you.

Mr. McGuinty, for five minutes.

**Mr. David McGuinty:** Thank you, Chair.

Thank you very much, Mr. Page and team, for being here. Thank you for your good work.

I want to explore where my colleague Monsieur Godin left off.

I put to the assistant secretary of the Treasury Board, before your arrival here today, a question with respect to your office's access to information. The government will have us believe and regularly will put forward the idea that this is simply a difference in assumptions—not in facts, but assumptions.

All right, let's say there are varying degrees of assumptions. We can talk about that.

I want to ask you a question about something I don't think there is a varying degree of assumption about, or for that matter subjectivity about. Are you getting access to the information you ask for from this government?

**Mr. Kevin Page:** Sir, on some occasions we have received access to information. As a result of the motion, we now have information we've been actually asking for since I think the fall of 2008, the information on corporate profits projections, so that we can actually do a reconciliation.

What we've said today, sir, was that this should just be standard practice. As we have shared this information in the past with the private sector, we should be doing this now.

I think, sir, that's what we said in our report on February 25, because we now have that information.

We definitely struggled on crime legislation to get information. We got some information in a recent report on F-35, but none sufficient for us to actually reconcile estimates because we don't understand the methodologies behind it.

**Mr. David McGuinty:** Let me get this right. The Conservative government comes into power. Parliament decides to create the Office of the Parliamentary Budget Officer. You're appointed and you're telling Canadians you've been asking for information, for example, on the corporate tax side. You began asking for information three years ago.

Then you just told us that you finally got access to some information on the question of costing crime bills because we put a gun to the government's head through a Speaker's ruling to tell them to deliver up the information to the Parliamentary Budget Officer, so Canadians can know what's happening to their money.

You're confirming here for Canadians, in simple, plain language, that you're not getting the information you need to do your job. Are you?

**Mr. Kevin Page:** Well, sir, I mean, we struggle, but we struggle on your behalf. I guess we—

**Mr. David McGuinty:** No, you're struggling on Canadians' behalf, not on our behalf.

**Mr. Kevin Page:** Well, we want parliamentarians to have this information so that when they're voting on it... On the question of the crime bill in terms of Bill C-25, we still don't have any paper with respect to outlining the roughly \$2 billion over five years. We saw some information in the main estimates, but that's only one year...

We haven't seen anything in a budget document, so we don't understand what their methodology is. We've been told that's a cabinet confidence in terms of how they're providing this information, but we're hoping that perhaps some of this information is in the binder today.

**Mr. David McGuinty:** So are we.

I'm going to raise with you right now a piece of paper that was distributed today on estimated provincial costs on one bill, Bill C-4. The government now says they're going to ask provinces to eat \$2.467 billion in costs over the next five years. That's the cost to the provinces in five years to implement youth justice.

The costing requires consultation and judgment, right? Are provinces stakeholders? Shouldn't provinces know that this is coming down the line? Shouldn't we as parliamentarians know, on behalf of Canadians, whether or not provinces can afford \$2.467 billion on one bill over five years before giving this government the authority to spend more money on Bill C-4 at the federal level?

How is it possible that we could be expected to do that unless we exercise our responsibilities and ask where the provincial money is going to come from?"

• (1730)

**Mr. Kevin Page:** Well, sir, I think you need to know what the estimates are and what the methodologies and assumptions are in terms of what those provincial costs are.

As I understand it, today a former clerk of the Privy Council said that it's standard practice in the expenditure management system to look at different levels of government, costing of different levels of government. I should have said that to Mr. Godin. I'm sorry, I should have highlighted that point.

They need to know. When we did our work on crime bills, we went to the provinces, actually, to get information on their systems. Effectively, we had to work that way.

**Mr. David McGuinty:** In your correspondence with the government, Mr. Page, in your efforts to wrestle information from them—now you've established a pattern over four years of not being able to get what you need—I would proffer to you in your negotiations with the government a quote from Mr. Harper, which I'll read again into the record for you: "Without adequate access to key information about government policies and programs, citizens and parliamentarians cannot make informed decisions, and incompetent or corrupt governance can be hidden under a cloak of secrecy".

**An hon. member:** Who said that?

**Mr. David McGuinty:** We agree with Mr. Harper's statement. We offer that to you in your good works and in your negotiations in trying to get the information you need to do your job so that Canadians can have more confidence in how the money is being spent and in Parliament.

Thank you very much, Mr. Page.

**The Chair:** Thank you.

Mr. Lukiwski, for five minutes.

**Mr. Tom Lukiwski:** Thanks.

I'm just going to make a comment on something and not ask for your response, since we only have five minutes. It goes back to a discussion we were having earlier about costs of prison construction. You talked about whether the assumptions are for single bunks, double bunks, triple bunks, and things like that.

One of the things that came into account here was the estimation that the Correctional Service of Canada and prison officials had. They estimated that over the course of the last fiscal year approximately 1,280 new inmates would be incarcerated. The actual number was 519. So there are more than 700 inmates who were projected to be incarcerated and were not, at an estimated cost by your office of \$340,000, at least for female inmates. Clearly that would result in projections being way out of whack. So again, I put that to my colleagues opposite. But my question for you is not on that—that's a fact—because there were differences between forecasts and actual numbers.

I want to go back to follow up a little bit on what my colleague Mr. McGuinty was talking about. I find it quite incredible. He keeps going to the same well again. Let me just ask you: what statute specifies what information your office is entitled to?

**Mr. Kevin Page:** Sir, the Accountability Act created that. Again, the legislation that created this position, the position I hold...it was created through the Accountability Act. It amended the Parliament of Canada Act—

**Mr. Tom Lukiwski:** Right.

**Mr. Kevin Page:** I don't have the statute in front of me, sir, but—

**Mr. Tom Lukiwski:** That's fine. I'm not asking you to give chapter and verse. But it's the Parliament of Canada Act, right? Now, did all Parliament approve that act? Yes...? That statute?

**Mr. Kevin Page:** Actually, I don't know what the voting structure was on the Accountability Act.

**Mr. Tom Lukiwski:** It was approved by Parliament. The reason I bring that forward is that while you are entitled to information, without question, there are exceptions. I think you understand that as well. The exceptions talk about subsection 79.3(2), which says “does not apply in respect of any financial or economic data...that are information, the disclosure of which is restricted under section 19 of the Access to Information Act...”.

We heard about that earlier, from former Clerk of the Privy Council Mel Cappe, and also that exceptions are made to information “that are contained in a confidence of the Queen's Privy Council for Canada described in subsection 69(1)” of the act.

So my point is, there are exceptions, and at any time has your office been requesting information that might be included in one or more of these exceptions?

**Mr. Kevin Page:** I'd like to talk about the first point, in terms of the facts and the numbers as they've come in so far. In terms of information on exceptions, actually, sir, I worked for Mr. Cappe at the Privy Council Office. I spent more than 25 years in mostly central agencies. I've been in cabinet rooms with both this government, including this Prime Minister, and previous prime ministers in different governments.

It's clear to us that with that kind of background we should not get real cabinet confidence information, and we should not be given personal information on Canadians, their financial states, what have you. I think we have a pretty good sense of where the line is.

We've been told on multiple occasions that corporate profits projections were cabinet confidences, even though we know that in fact they were shared in the past. Having worked many, many years in finance at Treasury Board and the Privy Council Office doing the same costing work I'm providing to you, sir, I don't understand... I've been in cabinet rooms. Those conversations and those methodologies and those assumptions, like corporate profits, are not associated with a cabinet discussion. This is information that's the normal course of business. We have lots of people working on methodologies. It cuts across multiple departments in many cases. It's not really a small circle of people who work on it.

For me, the extension of this information as to a cabinet confidence we've challenged on multiple occasions. I think there is a debate that needs to take place as to what is truly cabinet confidence.

• (1735)

**Mr. Tom Lukiwski:** Mr. Cappe also stated this morning that in his opinion, and I don't know if it was a recommendation perhaps or just an opinion, he didn't believe there should be an Office of the Parliamentary Budget Officer, which was an interesting comment coming from someone who was a former clerk of the Privy Council.

**Mr. Kevin Page:** Sir, I had to be pretty much forced to take the job in the first place. Nobody was really keen on being Parliamentary Budget Officer, for multiple reasons.

**Mr. Tom Lukiwski:** I want to go back to the statute again. You talked about what is defined as a cabinet confidence and what is not. You would agree, however, that information that would be contained

in a cabinet document would be exempted from any request from your office, yes?

**Mr. Kevin Page:** Again, there's information that's contained within the actual memorandum of cabinet. There's information that sometimes could be attached to a cabinet document. Again, the question is was this information presented just to cabinet, or was this information circulated widely? Was there an effort to keep this information truly secret?

Most of the costing that I've done, sir, and in fact we see here—and my staff as well have worked at these central agencies—this information is broadly circulated in order to generate estimates.

**The Chair:** Thank you.

Madame DeBellefeuille, for five minutes.

[*Translation*]

**Mrs. Claude DeBellefeuille:** Thank you very much, Mr. Chairman.

Good afternoon, Mr. Page. This is the first time we've met.

I want to say right away that although I did not study either finance or economics, I have everything I need to understand exactly what is going on this afternoon. From what I understand—and you'll tell me if I'm mistaken—on the one hand, we are being told that the government gave all the necessary information to parliamentarians to allow them to accurately assess its law-and-order bills. On the other hand, some people—including you—are questioning how anyone can say that the government is right when we are unaware of its working assumptions, methodology, analytical models or scenario. We cannot compare your analysis with the government's because we don't know where the government got its figures or what analysis it is basing itself on. In financial or social research, the working assumptions are very important in terms of understanding the results you're seeking to achieve or believe you will achieve.

Earlier, Mr. Lukiwski told you that under your mandate, there are some exceptions when it comes to documents. There are documents that you are unable to access from the government or Privy Council. Do you believe that the government's assumptions and analytical models are part of the documents that you are unable to access because of the various exceptions identified for us?

**Mr. Kevin Page:** Madam, estimates were prepared for the crime bills and the F-35s. They are important documents which explain methodologies, all the assumptions, elements of risk and confidence in the numbers. I can hardly believe that these documents were included in the memorandum to Cabinet. It is possible, but it's difficult to believe.

**Mrs. Claude DeBellefeuille:** According to what you're saying, the government's working assumptions and analysis should not normally be Cabinet confidences. In that case, they should be released or made public.



As I see it, if the government believes in its bills, feels it is on the right track and is truly anxious to secure the unanimous support of the House for its bills, it is in its interests to be transparent and make its working assumptions public, in order to convince us that it is indeed on the right track. However, it is doing exactly the opposite. It is keeping its assumptions and methodology under wraps and failing to provide us with the tools that would enable us to develop an informed opinion about the tables and figures.

Since this morning, they would have us believe that we have in front of us everything we need to make a proper assessment. I'm sorry, but I do not share the opinion of Mr. Lukiwski, who seems so positive and optimistic, because you have convinced me that neither you nor we have the analytical grid used by the government that would allow us to compare figures. It seems to me it would perfectly normal for the government, in order to convince us that it's on the right track, to make its figures and scenarios public in order to make Quebecers and Canadians aware of its approach to crime law.

Do you agree, Mr. Page?

• (1740)

**Mr. Kevin Page:** I believe it's absolutely necessary to have a good understanding of the methodology, assumptions and estimates.

I should also say that in other situations, the government has been transparent. On the security costs for the G8 and G20 summits, the government was transparent. It also was very transparent about questions surrounding the stimulus program, in its 2009 budget, in terms of economic estimates, jobs and outcomes. However, in the cases connected to this motion, on questions relating to corporate profits, crime bills and the F-35s, it has not been very transparent.

[English]

**The Chair:** You have 30 seconds.

[Translation]

**Mrs. Claude DeBellefeuille:** Do you agree that it is perfectly normal for people to have doubts about the government's good will when it voluntarily holds back information? If it's holding back information, it has something to hide. If it was very transparent on other issues, why is it holding back information with respect to its law and order agenda? The Opposition is absolutely right to be wary of a government that hides this information.

**Mr. Kevin Page:** You definitely need that kind of information and analysis.

[English]

**The Chair:** Thank you.

Monsieur Godin.

[Translation]

**Mr. Yvon Godin:** Thank you, Mr. Chairman.

It's interesting to look at your experience in Parliament and with various governments. It suggests that you had no choice but to take on the responsibility of Parliamentary Budget Officer. It's almost as though this job was forced on you.

**Mr. Kevin Page:** No, I'm happy to hold this position. But it's not easy. You have to have the information and be able to work with

good analysts like Mr. Khan, Mr. Askari and the entire team; but there certainly are major challenges involved.

**Mr. Yvon Godin:** You were appointed in 2006, correct?

**Mr. Kevin Page:** In 2008.

**Mr. Yvon Godin:** Did you think that the government would cooperate more than it actually has?

**Mr. Kevin Page:** I know that the question of accountability is difficult for everyone. It's difficult to have a different point of view in Ottawa, or data that differs from those produced by the Department of Finance. That sometimes leads to controversy.

[English]

**Mr. Yvon Godin:** Well, okay. With your experience, and with the people working with you, do you think you could go through this pretty fast and give us tomorrow maybe a small résumé and send it to the committee—I don't know if the chair or the committee will want to bring you back—to say “I'm satisfied with this and that's what parliamentarians should have”? Do you think you could give us an idea if this is good...?

**Mr. Kevin Page:** Sir, what we could do is go through the binder and effectively—as we did in our February 25 document—explain what's been provided and what has not been provided, so you understand the gap—

**Mr. Yvon Godin:** Could you do that, then?

**Mr. Kevin Page:** We can do that. But what we cannot do, sir, which is what we would prefer to do as well, is give you a sense of whether those estimates are reasonable.

**Mr. Yvon Godin:** Reasonable or not reasonable, we should decide that, but do we have enough information to decide if it's reasonable or not? Could you give us an idea and send your opinion to the committee?

**Mr. Kevin Page:** We would certainly do our best, sir.

[Translation]

**Mr. Yvon Godin:** Very well. I have no further questions.

Thank you.

[English]

**The Chair:** That finishes all of our rounds. If there's anybody who wants a one-off question, I would entertain one or two.

Mr. Brison, you've had questions. I was thinking of people who didn't get a chance to ask questions.

Mr. Albrecht? No?

Seeing none, I will thank you for coming out today.

Mr. Brison, we're going to deal with your motion and we're going to.... Thirty seconds, go.

• (1745)

**Hon. Scott Brison:** Thank you.

Mr. Page, just to help Mr. Lukiwski with his question on the definition of cabinet confidence, once legislation is tabled in Parliament by cabinet, the cost of that legislation is not covered under cabinet confidence. Is that correct?

**Mr. Kevin Page:** No, sir. I think, again, under our Constitution and our Financial Administration Act, it's Parliament that signs off on appropriations, not the government. It's Parliament that needs this information to sign off on appropriations.

**Hon. Scott Brison:** So it's not cabinet confidence. Thank you very much.

**The Chair:** Thank you, Mr. Page and guests. Thank you for coming and sharing with us today.

If you've promised something to Monsieur Godin, we look forward to it. Thank you.

I will suspend for a couple of minutes to allow our witnesses to leave, and then we have a couple of things to discuss. We must go in camera, as we have some committee business and some budgeting that we have to do.

• (1745) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1745)

**The Chair:** Order.

A point of order, Mr. Proulx.

**Mr. Marcel Proulx:** Very briefly, I'd like the clerk to explain something to us. At 4:44 this afternoon we received an amended notice of meeting saying that the honourable Laurie Hawn was going to appear tomorrow afternoon. He's the Parliamentary Secretary to the Minister of National Defence. Then we were told that he's not going to appear. What's the score here?

**The Chair:** I'll share that as we work today we've been trying to fulfill the requests of all parties for witnesses. My understanding is that at one point we had a yes and now we don't have a yes. We were trying to work something out and it wasn't able to be done.

**Mr. Marcel Proulx:** So he's turned down the committee.

**The Chair:** I won't say turned down; it just maybe did not get there.

**Mr. Marcel Proulx:** So he's refused our polite invitation.

**The Chair:** I don't believe he was on a witness list; he was being nice. As I said, we're trying to go over the top to try to find replacements for some witnesses who have been requested. I think we're about to talk about a motion that may fill that very period of time anyway, so let's go that route.

**Mr. Marcel Proulx:** I see. Okay, thank you.

**The Chair:** Mr. Brison, you had a conversation that we would try to have the staff that was here with the ministers back tomorrow, after we've spent some time looking at this, so with some knowledge we could ask some more questions. Is that what you're suggesting, that we have them back?

**Hon. Scott Brison:** Respectfully, Mr. Chair, no. I was suggesting that we, as a committee, ask the ministers to return tomorrow to this committee. We have between nine and eleven tomorrow for a more thorough discussion on the Speaker's decision, but also on their information provided today. My motion would request that the

committee ask the ministers to return to committee tomorrow to continue this discussion.

• (1750)

**The Chair:** I can share with you the amount of work it has taken to get people to this committee in a short period of time. We've had fairly long witness lists. I can't speak for the ministers, yes or no. Obviously the committee can't compel them to attend either, but—

**Hon. Scott Brison:** But the committee can ask.

**The Chair:** Ask is a good word.

Mr. Reid, on that same motion, and let's not go too far away. We'll do the semantics once we get the go-ahead.

**Mr. Scott Reid:** Actually I think we should have the semantics first, because that is the motion, and then we can debate the motion. That is what I was about to ask for.

Mr. Brison, do you care whether it's "invite" or "request"?

**Hon. Scott Brison:** "Request" I think is fine. I don't think anyone would—

**Mr. Scott Reid:** So it's Minister Toews and Minister—

**An hon. member:** Nicholson.

**Mr. Scott Reid:** Minister Nicholson. Thank you. He was my direct boss at one time. He'll be alarmed that I forgot his name, even for a moment.

If that's the motion, then maybe I could speak to it.

**The Chair:** Sure, speak to it.

**Mr. Scott Reid:** Okay.

I would just suggest that we come to a decision quickly, to either adopt the motion or not adopt it, because time is moving on. It's going to be pretty darned hard as it is—it's now 6 p.m.—to arrange something just to hunt these guys down.

**The Chair:** Okay.

A short comment, Monsieur Paquette?

[*Translation*]

**Mr. Pierre Paquette:** These people are being asked to appear when we know full well that they will be unable to. On the other hand, having seen the document they tabled, we will certainly have questions for them. I think it would be appropriate to ask them to come back, and I hope they will.

[*English*]

**The Chair:** All right. Great.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** I have no problem with the motion, but I would like to ask Mr. Brison, since I don't know whether the ministers will be available or not, if he would like to include an addendum to that motion—that is, regardless of the ministers' appearance or not, we should invite the public officials to come back, since it was apparent that they put most of the information together that we have before us today.

**Hon. Scott Brison:** Respectfully, Mr. Lukiwski, no, because I think ministerial accountability is absolutely essential.

**Mr. Tom Lukiwski:** I thought we were after getting the correct information, and the information could be provided by public officials. Not wanting to have public officials appear I think speaks to a larger issue here: why do you only want the ministers?

**Hon. Scott Brison:** If Mr. Lukiwski is assuming that his ministers cannot provide correct information, then I would agree, but perhaps I have more faith.

**The Chair:** I think his assumption was that if they were not able to attend, but....

All right, members, we have that on the floor: ministers only, no one else.

On timeframes, we have a couple of gaps tomorrow: from 10 a.m. to 11 a.m., and from 1 p.m. to 2 p.m.

**Mr. Tom Lukiwski:** On a point of order, Mr. Chair, I have a motion from our side as well, and that would be to invite the public officials to appear.

Can I move that now, or after the—

**The Chair:** Unless Mr. Brison wants to take that as an amendment to his motion, I'll have to take it as a separate one.

Mr. Brison, will you take the inviting of the officials as an amendment to yours?

**Hon. Scott Brison:** I assume that Mr. Lukiwski means “with” the ministers.

**Mr. Tom Lukiwski:** Chair, it would only be—I will give this to Mr. Brison—if the ministers are not able to attend.

**The Chair:** Or along with?

**Hon. Scott Brison:** I had thought that Mr. Lukiwski's amendment was that public servants will accompany the ministers.

**Mr. Tom Lukiwski:** No, it was that if the ministers are not able to attend the meeting, then we invite the public officials to attend.

**Hon. Scott Brison:** No. We want to hear from the ministers.

**Mr. Tom Lukiwski:** Okay.

Then I'll have my separate motion, Mr. Chair.

• (1755)

**The Chair:** So we'll go on Mr. Brison's motion that we request the ministers.

(Motion agreed to) [See *Minutes of Proceedings*]

**The Chair:** So we'll request the ministers.

On Mr. Lukiwski's motion, that....

**Mr. Tom Lukiwski:** In the event that the minister may not be able to attend, the committee would invite the public officials to attend.

**The Chair:** Right.

Is there any discussion on Mr. Lukiwski's motion?

Mr. Reid.

**Mr. Scott Reid:** This is meant as a friendly amendment. Is it either of the ministers...? It could be that one is available and the other one is not, that the public officials—

**The Chair:** We'll do our best to get both—

**Mr. Scott Reid:** But it doesn't assume that both will be available or not available.

**The Chair:** Right.

We'll do our best. It is six o'clock on the evening before.

On Mr. Lukiwski's motion....

(Motion agreed to) [See *Minutes of Proceedings*]

**The Chair:** It passes. So let's do both. Great.

We have one more piece of committee business. For this study and another study, there has been a budget put together for staff, for the cost of our being here and the like. It is \$8,950 on both of the studies.

Do I have permission from the committee to sign those?

**Some hon. members:** Agreed.

**The Chair:** Okay. Done.

Is there anything else for the good of...?

Monsieur Godin.

**Mr. Yvon Godin:** I have made a request for Mr. Page to give his opinion on the.... I think we could direct the clerk to receive that information.

**The Chair:** Well, if Mr. Page actually sends it, that's exactly right: we'll distribute it as you requested.

**Mr. Yvon Godin:** Thank you.

**The Chair:** Is there anything else today?

We'll see you all tomorrow morning, depending on what we find out on the two motions we've just moved. I'm going to leave it open.

The meeting is adjourned.





**MAIL  POSTE**

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

**Lettermail**

**Poste-lettre**

**1782711  
Ottawa**

*If undelivered, return COVER ONLY to:*  
Publishing and Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,  
retourner cette COUVERTURE SEULEMENT à :*  
Les Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of  
the House of Commons

### **SPEAKER'S PERMISSION**

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and  
Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5  
Telephone: 613-941-5995 or 1-800-635-7943  
Fax: 613-954-5779 or 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the  
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité  
du Président de la Chambre des communes

### **PERMISSION DU PRÉSIDENT**

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les  
Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5  
Téléphone : 613-941-5995 ou 1-800-635-7943  
Télécopieur : 613-954-5779 ou 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à  
l'adresse suivante : <http://www.parl.gc.ca>