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Chair

Mr. Nathan Cullen

Standing Committee on Access to Information, Privacy and Ethics

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•(0855)

[English]

The Chair (Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP)): We're no longer in camera. We're going to open the doors.

There was a request by the media late last night to televise this broadcast. Chad worked hard last night and this morning to try to make that possible. We just talked to communications services and as of right now they're unable to televise this. Is that correct, Chad? There will be audio feed, and of course the doors are open so that media can be here.

The request was received at 7 p.m. on the night before committee. We tried and we were unable to do it, just so committee members are aware.

Before we get into the actual witnesses, I'm going to suggest to committee members a couple of guiding principles I've seen work in other committees. First, when we are studying a topic, there should be some attempt, as we go through the witness list, to allow for as much flexibility as possible when we are booking witnesses, because not everyone's going to be available or available on the dates that you want. Second, we should allow the clerk as much discretion as possible to invite a broad range of witnesses to allow for diversity on the topic we're studying, because the best studies I've seen are the ones for which we get a diversity of views in front of us as opposed to a one-track view.

Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): I'd like to ask my honourable colleagues something. I don't have a problem studying issues of access to information, because that's the business of our committee. I am concerned that we have an October 18 court date regarding CBC's access to information request. This is before the courts now. The Information Commissioner did speak the other day about her unwillingness to speak more about this as it was before the courts. I'm not suggesting that we wait till the court renders its decision, although I think doing so would be prudent in most cases. I understand my colleagues in the Conservative Party certainly want to get at the CBC as quickly as they can. But in the interests of respecting the dual roles—our role as a quasi-judicial body as a committee and the fact that this is going before the courts—I'd ask my honourable colleague from the Conservative Party if we can begin these hearings right after October 18. That way we're not seen as interfering in any way with what's happening in the courts, and I think we'll have more respect.

The Chair: Thank you, Mr. Angus.

Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): First of all, I see that Hubert Lacroix is on my witness list. I thought I saw him on the Liberal list as well. I would suggest, to begin with, that Mr. Lacroix and perhaps the Information Commissioner be called last to these hearings. It looks as though we will have several meetings to discuss this matter. It would appear that, given the Thanksgiving week break, that should achieve what Mr. Angus is discussing. But most of the others on this list have nothing to do with the court case, as a matter of fact. They're not directly involved in the court case. Testimony brought here is not admissible in that case.

So I think the balance of the concerns are unwarranted. I have a lot of faith in our judiciary to be unbiased as to what's happening on Parliament Hill and what's before them in the court.

The Chair: Thank you for the comment.

You raise one point, which I think is important, as to the length and study and breadth of what we're looking into. How many days do committee members imagine will be required for this motion to be studied? Is it two? Is it three? Where are we at?

Mr. Dean Del Mastro: Why don't we determine what the final witness list is going to look like and then we'll determine what's appropriate?

The Chair: Okay.

Mr. Angus.

Mr. Charlie Angus: Thank you.

My understanding from my honourable colleague is that he wants to begin before. Is that what he's telling me?

Mr. Dean Del Mastro: Well, we do have a motion, which I'm going to bring later in the meeting, Mr. Angus, that would take precedence over this study and would probably take the next two meetings. Then we would have a single meeting and then the Thanksgiving week break. Then the clerk can talk about scheduling. But this would likely commence, I would expect, next week and then resume after the Thanksgiving week break.

The Chair: Mr. Angus.

Mr. Charlie Angus: I said this at the beginning. I am very concerned about this committee being seen to interfere with the independence of the courts, particularly if they're calling a judge before us, which I think is a ridiculous suggestion. I don't think any judge would ever show up before one of our committees.

I'm not interested in turning this into a circus. If my colleague is willing to wait till October 18, then we will move forward with all of the witness list. But if he's attempting to move on it before that, and if he says it's a case of one meeting, then we are still stepping on the jurisdiction of the court.

I just want to be clear. We have to deal with the Information Commissioner, and we still have to deal with the Ethics Commissioner—or the Privacy Commissioner. I'm losing track of all my commissioners here.

The Chair: It's easy to do.

Mr. Charlie Angus: We're going to have Mr. Del Mastro's motion on the NDP. If he's willing to wait until October 18, then he's not going to have any difficulties from our side in dealing with the CBC access to information request.

These are early days in our committee. We're going to be together for a long time, folks.

Dean, your hair is going to be grey by the time this committee is done, so I'm saying that we can either work in some cooperative fashion, recognizing our intense differences, or we can get off on the wrong foot. So I'm asking him to wait.

The Chair: That suggestion has been put forward. We have two competing suggestions here.

Mr. Del Mastro is suggesting that we have a couple of witnesses for a couple of days perhaps, and then move into something else and come back to this.

Mr. Angus, you're asking to wait until October 18 to commence.

Mr. Charlie Angus: October 18, yes.

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you, Mr. Chairman.

I would simply point out to Mr. Angus that I understand his concerns, but I'd say they're unfounded. The facts of the case before the court, which I think Parliament needs to hear about, are what will be brought here before this committee. The committee is not going to be rendering any decision ahead of the case going to the court. But I would think, for example, that Mr. Angus might want to know why the public broadcaster is going to court with the Information Commissioner on October 18. Why has that happened? What is the backdrop to that? What is the information they can't get? Why are our taxpayers literally paying to fight taxpayers? This is a federal government body fighting a public broadcaster. I think this is something it behooves our committee to look at. I think it's important, but we're not going to prejudice what will occur on October 18.

With respect to the judge who has been called, I'd like to hear from him about his decision. I think it's entirely appropriate to bring him in to discuss what his findings were. Judges are servants of the public; they uphold our laws. This specific judge has looked at all the evidence before him and has rendered a decision. I think it's important that the committee hears about that decision and why he came to it.

• (0900)

The Chair: Monsieur Dusseault.

[Translation]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): You are right that this is important and we should talk about it. However, if we discuss it here before the court has even had a chance to hear from the parties, I think that we would be jeopardizing judicial independence. That could influence the ruling. It is important to maintain judicial independence, which would be compromised if we were to discuss the matter here.

The Chair: Thank you very much.

Are there any other comments about this?

Mr. Angus, go ahead.

[English]

Mr. Charlie Angus: The issue of the *sub judice* limitations on our committee and respect for the courts is a fundamental parliamentary procedure. It has been ruled upon time and time again that:

It is accepted practice that, in the interests of justice and fair play, certain restrictions should be placed on the freedom of Members of Parliament to make reference in the course of debate to matters awaiting judicial decisions, and that such matters should not be the subject of motions or questions in the House.

This is ultimately a decision that is referred to the Speaker. Furthermore:

The acceptance of a restriction is a voluntary restraint on the part of the House to protect an accused person or other party to a court action or judicial inquiry from suffering any prejudicial effect from public discussion of the issue.

The Chair: Slow down just a little bit for the translators.

Mr. Charlie Angus: Sorry. I will begin again.

The Chair: Maybe not.... Okay.

Mr. Charlie Angus: I'll start again, just so that we're all clear here:

There are other limitations to the privilege of freedom of speech, most notably the *sub judice* ("under the consideration of a judge or court of record") convention. It is accepted practice that, in the interests of justice and fair play, certain restrictions should be placed on the freedom of Members of Parliament to make reference in the course of debate to matters awaiting judicial decisions, and that such matters should not be the subject of motions or questions in the House. Though loosely defined, the interpretation of this convention is left to the Speaker. The word "convention" is used as no "rule" exists to prevent Parliament from discussing a matter which is *sub judice*. The acceptance of a restriction is a voluntary restraint on the part of the House to protect an accused person or other party to a court action or judicial inquiry from suffering any prejudicial effect from public discussion of the issue. While certain precedents exist for the guidance of the Chair, no attempt has ever been made to codify the practice in the House of Commons.

The *sub judice* convention is important in the conduct of business in the House. It protects the rights of interested parties before the courts, and preserves and maintains the separation and mutual respect between the legislature and the judiciary. The convention ensures that a balance is created between the need for a separate, impartial judiciary and free speech.

The practice has evolved so that it is the Speaker who decides what jurisdiction the Chair has over matters *sub judice*. In 1977, the First Report of the Special Committee on the Rights and Immunities of Members recommended that the imposition of the convention should be done with discretion and, when there was any doubt in the mind of the Chair, a presumption should exist in favour of allowing debate and against the application of the convention. Since the presentation of the report, Speakers have followed these guidelines while using discretion.

It says further:

During debate, restrictions are placed on the freedom of Members of Parliament to make reference to matters awaiting judicial decisions in order to avoid possible prejudice to the participants in the courts. This self-restraint recognizes the courts, as opposed to the House, as the proper forum in which to decide individual cases. Matters before the courts are also prohibited as subjects of debate, motions or questions in the House. While precedents exist for the guidance of the Chair, no attempt has ever been made to codify the practice known as the “*sub judice* convention”.

The *sub judice* convention is first and foremost a voluntary exercise of restraint on the part of the House to protect an accused person, or other party to a court action or judicial inquiry, from any prejudicial effect of public discussion of the issue. Secondly, the convention also exists, as Speaker Fraser noted, “to maintain a separation and mutual respect between legislative and judicial branches of government”.

There are some situations in which the application of the *sub judice* convention is fairly straightforward. The convention has been applied consistently to motions, references in debates, questions and supplementary questions and in all matters relating to criminal cases.

The convention does not apply to legislation....If the *sub judice* convention were to apply to bills, the whole legislative process could be stopped....

No distinction has ever been made in Canada between criminal courts and civil courts for the purpose of applying the *sub judice* convention, and it has also had application to certain tribunals other than courts of law. The convention exists to guarantee everyone a fair trial and to prevent any undue influence prejudicing a judicial decision or a report of a tribunal of inquiry.

I would like to repeat that line, as I think it is the crucial line here:

The convention exists to guarantee everyone a fair trial and to prevent any undue influence prejudicing a judicial decision or a report of a tribunal of inquiry. Indeed, in the view of the Special Committee on the Rights and Immunities of Members, “prejudice is most likely to occur in respect of criminal cases and civil cases of defamation where juries are involved”.

Where criminal cases are concerned, the precedents are consistent in barring reference to such matters before judgement has been rendered and during any appeal. Members are expected to refrain from discussing matters that are before a criminal court, not only in order to protect those persons who are undergoing trial and stand to be affected whatever its outcome, but also because the trial could be affected by debate in the House. It has been established that the convention would cease to apply, as far as criminal cases are concerned, when judgement has been rendered. The Speaker has confirmed that a matter becomes *sub judice* again if an appeal is entered following a judgement.

● (0905)

The precedents are not [quite] as consistent where civil cases are concerned.... However, in 1976, the Speaker ruled that no restriction ought to exist on the right of any Member to put questions...particularly those relating to a civil matter, unless and until that matter is at least at trial. Although nothing resembling a settled practice has developed in relation to civil cases, the Chair has warned on various occasions of the need for caution in referring to matters pending judicial decisions whatever the nature of the court.

In the court of record in commissions and inquiries,

from the precedents, it is clear that the application of the convention is limited to tribunals designated by statute as courts of record.

A court of record [for my colleagues] is defined as follows: “A court that is required to keep a record of its proceedings.... [The court's records are presumed accurate] and cannot be collaterally impeached. [And too, it is a court] that may fine and imprison [people for contempt]. The *sub judice* convention does not apply...to matters referred to royal commissions, although the Chair has cautioned against making reference to proceedings, evidence, or findings of a royal commission before it has made its report.

The Role of the Speaker

Since the *sub judice* convention is not codified...the jurisdiction of the Speaker in such matters [has been] difficult to outline. The Speaker's discretionary authority over matters *sub judice* derives from his or her role as guardian of free speech in the House. The Chair has the duty to balance the rights of the House with the rights and interests of the ordinary citizen undergoing trial. Indeed, the Speaker [intervenes] in exceptional cases only where it [appears likely] that to do otherwise would be harmful.... The problem facing a Speaker is that determining when a comment will have a tendency to influence is speculative business—it cannot be done until after the remarks [are] made.

In its inquiry, the Special Committee on the Rights and Immunities of Members recommended that when there is doubt in the mind of the Chair, a presumption should exist in favour of allowing debate and against the application of the convention. The Committee concluded that while there can be no substitute for the discretion of the Chair, in the last resort all Members of the House should share the responsibility of exercising restraint when it seems called for. A Member who feels... there could be a risk of causing prejudice in referring [matters] to a particular case... should refrain from raising the matter. Further...a Member who calls for the suppression—

The Chair: We have a point of order.

Mr. Del Mastro.

Mr. Dean Del Mastro: I'm curious about the relevance of this to the witness list.

Mr. Chairman, we were discussing the witness list.

The Chair: Absolutely.

Mr. Dean Del Mastro: Mr. Angus clearly intends to filibuster out the entire committee.

The Chair: There's no need to verify whether someone is going to speak or not. In terms of the relevance, if you are listening closely to what Mr. Angus was saying with respect to prejudicing committees and prejudicing something before the court, I think the question of timing....

We're having some trouble with audio. Is that correct? The technicians are on their way. So that committee members are aware, there is also some difficulty with the audio being translated.

I'm wondering if, for the purposes of translation first and broadcast second, we could allow the technicians to take a look at this. Apparently we're getting almost no audio through to our translators, and that's an infringement of members' rights to have something interpreted.

● (0910)

Mr. Joe Preston (Elgin—Middlesex—London, CPC): It's perfect for Charlie.

The Chair: I'm going to suspend until we get this fixed. We'll get back to it right away.

We're suspended.

● (0910)

(Pause)

● (0915)

The Chair: I will call the committee members back to the table.

The committee members now know how to sabotage a committee. Pouring water on a microphone apparently does the trick. But it's quite dangerous, so I'll ask government members to cease sabotage, because it's not in the order and responsibilities.

Before we lost our audio, we had a point of order from Mr. Del Mastro with respect to the relevance of what Mr. Angus was discussing with the committee. I've been following and also had reference to O'Brien and Bosc, which I think is where Mr. Angus is getting his testimony. I think it is pertinent with respect to the committee's power balanced against actions before a court, so I'll allow it to continue.

Mr. Del Mastro.

Mr. Dean Del Mastro: I'd simply add to my point of order that it's remarkable that the NDP now feels that way. I don't recall them standing as strongly behind this convention in the 40th Parliament.

But people change, right, Charlie?

The Chair: The objection is noted. We'll continue with Mr. Angus's comments.

Mr. Charlie Angus: Thank you.

I'm actually very pleased that my honourable colleague did intervene and ask what the relevance was, because I was wondering if he actually was aware of the *sub judice* convention. This is why I felt we should understand the roles that have been defined over many, many years of parliamentary and court practice for the courts and Parliament.

As for my honourable colleague, I have such great respect for Dean. We've been on committee for years together, and I know his personal crusade against the CBC. He's been the lead, and I'm not surprised that he was chosen as the parliamentary secretary to the Prime Minister, because—

The Chair: Mr. Angus, I'm just going to intervene for a moment.

If we want to stay on point—

Mr. Charlie Angus: I am on point here.

The Chair: —and on topic with respect to the....

For committee members, the focus of our conversation is both the timing and the nature of the study with respect to the CBC. An argument has been made that there's a matter before the court that begins in mid-October. There's been a suggestion made that we can have an initial study on the matter without prejudicing what happens in the court. Mr. Angus is informing the committee as to the roles of committees and the balancing of our powers. I think that is a relevant point.

In terms of personal mandates and positions that people have and the timing of those, I want to stick to the committee's business as to whether this is a good idea or not and when to commence with a study of it.

Mr. Charlie Angus: Thank you, Mr. Chair.

I was pointing that out, though, because I think it needs to be seen in terms of the picture. My colleague has been very eager to attack the CBC. He has suggested that we take the billion dollar subsidy and give it to its competitors, which is no doubt why so many Sun Media guys are hoping to come before this committee.

That being said, I've cautioned my colleagues that they have to understand the role they play at this committee. So I have read to them the issue of the *sub judice* convention. We have the issue and we'll get to it when we get to the witness lists. If they're trying to bring judges before our committee, I think any judge is going to laugh at Mr. Del Mastro on this, because it's obviously a contempt of court. But we'll get to that later.

I want to repeat what I said, because I don't think he heard it, as he was asking if there was any relevance. There are three key elements he needs to be reminded of:

During debate, restrictions are placed on the freedom of Members of Parliament to make reference to matters awaiting judicial decisions in order to avoid possible prejudice to the participants in the courts. This self-restraint recognizes the courts, as opposed to the House, as the proper forum in which to decide individual cases. Matters before the courts are also prohibited as subjects of debate, motions or questions in the House.

That was the first part. Furthermore:

The convention exists to guarantee everyone a fair trial and to prevent any undue influence prejudicing a judicial decision or a report of a tribunal of inquiry.

And we look to the role of the chair in the responsibility of exercising restraint because:

A Member who feels that there could be a risk of causing prejudice in referring to a particular case or inquiry should refrain from raising the matter.

Now, Mr. Chair, I have great respect for you as chair, and I will be continuing with this process. My colleague has certainly established a record of being a virulent critic of the CBC, and I know he's very eager to use this committee to attack the public broadcaster. However, this will be in the courts on October 18, and it's a reasonable thing, as I've asked, for us to follow and respect parliamentary traditions. We can certainly go on this crusade, and we'll all go along for the ride because there are fewer of us than them, but I'm asking that we do it after October 18. Once the judge has heard testimony and arguments before the courts, then this will be referred, and, who knows, we'll get a ruling back probably early next year.

● (0920)

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you.

The hypocrisy of the member, my colleague, is astounding. He seems to think that transparency should abound in government—and I happen to agree with him with respect to that—and everywhere except the CBC.

Now we have a situation, and he wants to impugn my motives and what he believes is actually behind my motivations. My motivations are simply this—and he should also care to see and understand exactly what's happening here, Mr. Chair—that we have a public entity, the CBC, in court against the Information Commissioner of this House, and they are spending millions of dollars fighting each other. Can we at least get some background as to why this is occurring, Mr. Angus?

I don't think that's unreasonable. Having some witnesses come in who are going to give us background will not prejudice an appeals court decision. A justice has already ruled that the Information Commissioner should be able to look at this information and determine whether or not it is subject to section 68.1 or whether it should be released. Those are the facts before us. These are all known to the appeals court. There is no surprise in any of this and it will not prejudice what's going on at the appeals court—it will not.

The Chair: Mr. Angus, you wanted to speak. Allow me to make a suggestion just before that.

I'm getting the sense that the government members are determined to bring this matter before the committee and will not accept the recommendation by Mr. Angus to wait. Am I reading that correctly?

Mr. Dean Del Mastro: As I indicated, the two entities that will be attending the appeals court will be the Information Commissioner and the CBC, and we would be entirely content if no one from either of them attended prior to that process on the 18th.

I have absolutely no problem with that.

The Chair: So here's the concern, and it's up to committee members how we proceed. If the government members feel intent on having some witnesses prior to this mid-October date when the court case begins, given the majority they hold on the committee, they'll be able to do that. The concern I have—and it was read into the record by Mr. Angus—is a valid concern in terms of balancing our powers as a committee to not cause any harm and to not infringe upon the rights of someone who is before the courts. We've all heard this. This is a good precedent from the House and we must be mindful of this.

So I have a caution about what we're about to agree on. I know as chair that if calling upon witnesses would infringe upon their rights to defend themselves in front of a court, then doing so would be a terrible precedent for any committee to set. That being said, if the government is pursuing this course...

On a point of order, Mr. Del Mastro.

Mr. Dean Del Mastro: That would not in fact be a precedent-setting thing at the committee, even if...and frankly, I disagree that it would be the case, because the witnesses would merely be giving background. They will not be at all influencing what is at the core of the argument at an appeal's court. I would also argue there is no precedent, because, as you'll recall, in the 40th Parliament there were witnesses called who were under investigation by the RCMP, by the Information Commissioner, or by others, but there was no due regard given to them for any kind of independence or otherwise. At that time, it seemed appropriate to my colleague and others in his party, and now it appears that's not the case. As I said, it's a remarkable transformation, but people change.

• (0925)

The Chair: The point you make about precedents is correct and fairly understood. We're trying to balance here the ability of the CBC to defend itself in court and the ability to have a fair and open trial. Committee members, particularly those on the government side, are interested in getting in a couple of days before that. With regard to both the nature of the witnesses we call and the testimony they give, it will be the committee's responsibility to ensure that we do have some measure of protection.

Mr. Angus, you wanted to make a comment.

Mr. Charlie Angus: Again I'm concerned that my honourable colleague is raring to go. I've raised this issue in terms of us respecting the matter.

Mr. Dean Del Mastro: This won't be the first—

The Chair: Mr. Del Mastro, allow Mr. Angus to finish, please.

Mr. Charlie Angus: Thank you.

We can sit and argue this out to the end of the session today, and then we'll be hearing this after October 18th anyway. So I don't see that there's much to be gained. I just wanted to clarify that he seems to think that people are refusing to have CBC held accountable when we know that in 41 cases the government has gone after the

Information Commissioner. So there's certainly not really an example of this government being able to say that they have a clean record in terms of respecting the rulings of the Information Commissioner.

Our Information Commissioner did speak the other day at our hearings. She did believe there was a black hole of accountability in the minister's office. These are all issues we can get into while we're undergoing our work, but I think my honourable colleague has to just refrain from turning this into Conservatives defending the taxpayer and the NDP defending the CBC. I'm talking about the larger principle here of how we're going to establish our committee.

I'm certainly willing to work with my colleague, but I think he should recognize that it will be heard on October 18. He's going to have a break week for Thanksgiving. We'll be able to get back. We can get on this. They can bring all the witnesses they want. There's not much to be gained. I'm just asking that we establish some ground rules of basic respect at the beginning of this session so that we can continue to do the work that Canadians expect of us.

The Chair: Allow me to put that question directly, because I want to move on in terms of being able to establish what we're doing next as a committee. The suggestion has been made to wait until after the Thanksgiving recess. I'm going to put that question directly to Mr. Del Mastro.

Mr. Dean Del Mastro: As I said, I think the concerns are unfounded.

The Chair: I see.

Mr. Dean Del Mastro: And we will not bring any of the proponents in the court case prior to the 18th, in respect of Mr. Angus's concerns.

The Chair: We can go through the procedure of actually voting on such a motion, but I think if that's certainly the will of the parliamentary secretary, and I see the members from government nodding as well, then my suggestion is going to be that unless there are other comments and arguments to be made about this, I'm going to hold all members to that very principle that Mr. Del Mastro has suggested, which is that witnesses we call and the testimony we ask for is very cognizant of what was just read into the record with respect to attempting not to prejudice the case before the courts.

So moving to that, we have a witness list. I believe everyone has the witness list in front of them from all the parties. The clerk has highlighted for me the obvious witnesses who would go against the principle we've just set, those who are directly involved in the court case. I think it would be clearly unfair for the committee right now to ask any of those witnesses to come.

I'll read out the ones that are most obvious to me. Let's do a process of elimination first in terms of how we go through this. We have Mr. Lacroix, from CBC; Madame Legault; and potentially Ms. Bertrand, as well. I see Madame Legault again on the Conservatives' list, and Mr. Casgrain and Madame Lafrance. Those are the ones who immediately pop to mind as being most directly involved with the case and ones who should not be called before this committee prior to them having their day in court.

Is that a complete list? Are there any others that people see on the list who should also be held off until later? We're good?

Barring those for the moment, I see there are some common witnesses who appear between at least two parties: Mr. Morrison and Mr. Lacroix, who we've removed. Is there any conversation around Mr. Morrison? Do you want to go through it this way, or do committee members want to suggest witnesses as we go?

I see Mr. Del Mastro, and then Mr. Angus.

• (0930)

Mr. Dean Del Mastro: Just with respect to Mr. Morrison, first of all, it's interesting that both parties that are requesting Mr. Morrison have referred to Friends of CBC. I just correct them: it's Friends of Canadian Broadcasting. They're very clear that they're not friends of CBC, and I would also suggest they're not friends of CBC.

The Chair: Now you're impugning people who aren't even here.

Mr. Dean Del Mastro: Well, they're not actually friends of CBC, and that's not the title, either.

I'm just not quite sure what the relevance of Mr. Morrison is when we're having a discussion around section 68.1 of the Access to Information Act. I'd be interested to hear the argument from the opposition parties, who have suggested that he might be relevant to our hearing testimony and understanding why this case is in fact before the courts. I'd be interested to hear what the relevance of Mr. Morrison is.

The Chair: Let's do that.

Mr. Angus, can you satisfy that?

Mr. Charlie Angus: Thank you.

It has been our longstanding procedure that we respect each other's witness lists, and I'm certainly willing to continue on that path. When I saw Ezra Levant's name there I kind of fell off my chair. I thought, are we turning this into a media circus? But if my colleague wants to bring Ezra Levant, I don't have a problem. I can justify our witnesses.

I think we're going to need to work together on this. Mr. Morrison has numerous opinions on CBC and he has opinions on their freedom of information issues.

We've brought our witness list. If there is overlap, I'd certainly say let's cut it out, if we end up with a massively long list, but I don't think this is a long list. This looks like two to three days of study. So I would just say to my colleagues that I'm not going to quibble with their choices, and we should just get down to business.

The Chair: Okay. I think I've started us off a bit on the wrong foot by going witness by witness and arguing the abilities of each witness to perform. One of the guiding principles for this committee ought to be to respect what each of the parties believes is an important course of investigation but to also attempt to balance the table in terms of witnesses we have in front of us.

Can I reverse the course here and suggest that barring any obvious problems with a witness that's been suggested by another party, we put this to the clerk as the witness list stands right now, with those exemptions that I mentioned before, and attempt to have witnesses come to us again—due to their own schedules, and we're not going to get everybody—and allow it to go forward unless there are any outstanding problems with witnesses that have been suggested.

Before Mr. Del Mastro speaks, if there is any priority in the witness list and if there is somebody a party is very urgently hoping to hear from, that helps us. We can do that here in the committee or we can do it afterwards with the clerk and just let him know that a particular witness is a top priority and another one is less so.

Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you.

I would like to speak to the relevance of my witness list and why in fact the government is...or I've put forward the names that I have.

The Chair: Sure.

Mr. Dean Del Mastro: First of all, Mr. Angus has mentioned Ezra Levant. I would have thought, being that Mr. Angus I don't think overly appreciates the commentary of Mr. Levant, that he would like the opportunity to question him as to his motivations, as would I.

I would expect that someone who has, frankly, taken the swings that they have with respect specifically to access to information would come prepared to defend the things they've said. This won't be about a free ride. It's about trying to understand why, as I said, taxpayers are in fact going after taxpayers on this.

It is correct to say that QMI has in fact brought forward a significant number of access to information requests. We need to understand why they're doing that. Is this actually in the interests of taxpayers or is it in their own interest? I think it's a question that Mr. Angus would want to ask. It's certainly a question I want to ask. I want to understand what is behind some of the issues at hand and why in fact it has gotten to this point, where it's before the courts.

I think it's important to bring the chairman of the CRTC before us. The chairman of the CRTC does request and receive full transparency from private broadcasters with respect to revenues and so forth. The CRTC also requests revenues and so forth from the BDUs—the cable and satellite companies. They contribute to significant funds. One, of course, is the local programming improvement fund. They also contribute towards the Canada Media Fund. Both the CBC and the other broadcasters in the country are recipients of those funds. I think as interested parties...and ultimately, let's be clear, the BDUs don't pay into the Canada Media Fund and they don't pay into the local programming improvement fund. Their customers pay that on their bills, so this winds up being a consumer issue.

I think it's important, especially considering that the CRTC will be considering the local programming improvement fund in the near future, that we find out a little bit about why or if they're interested in seeing transparency and how those funds are being spent. Because ultimately, should there be an adjustment in the local programming improvement fund, that is going to find its way back to Canadians, and certainly the Canadians I talk to, the ones in my riding, are weary. They feel like every time they turn around somebody has a hand in their pocket. We should always be mindful whenever we're going to them and seeking new fees from them.

Again, Michel Drapeau, an esteemed professor at the University of Ottawa, can talk to us about access to information.

It's interesting that Mr. Angus has specifically cited Mr. Richard Boivin, who is a judge. Mr. Boivin heard the arguments before the court and did in fact render a ruling that the Information Commissioner did have a right to review the information that was being requested and to determine whether it was subject to section 68.1 of the Access to Information Act.

For the benefit of members of the committee, section 68.1 protects the CBC on issues such as creativity and journalistic integrity. What the judge indicated when he made that ruling is that the Information Commissioner should be able to look at this data and determine if it's subject to section 68.1 or whether it should be released. That is at the core of what is going before the appeals court.

I think it would be interesting. I think members of the committee would like to understand why the judge came to the ruling that he did and what information was before him and would like to get a little bit of background as to, once again, why this is going before an appeals court.

Otherwise, I think most of the other witnesses are self-explanatory. I would note, as I said, that this is not about funding of the CBC. It's not about programming on the CBC. It's not about Canadian content on the CBC. This is simply about...and the opposition needs to understand that there were two—and only two—crown corporations that were red-flagged for their access to information cooperation, let's call it. Certainly CBC was the one that stood out as, frankly, much worse. They're the only one in court and the only one where taxpayers are funding both sides of the case.

● (0935)

Mr. Angus would acknowledge that at a time when we're talking about fiscal restraint, and certainly we see all the global economic turmoil, a lot of Canadians would be really troubled to know that we are spending an awful lot of taxpayers' money funding both sides of that court case. Maybe we can come to a solution so that that's not happening.

The Chair: Thank you for the comments.

I'll remind us where we are, and it's just for expediency's sake. Members can make supportive comments about any witness appearing on the list. I'll hear from Mr. Angus next, but I've asked for some leniency from committee members to allow the clerk to put together a study—with the witness list as it is right now, with the exemptions—that will not prejudice us before October 18.

I will make a small comment. If the judge remains on the list and is called, we'll allow the judge to speak for himself, but I'd be very surprised to see someone from the judiciary come in, even to go over the merits of the case that they've already seen, with something *sub judice* right now.

● (0940)

Mr. Dean Del Mastro: I would agree.

The Chair: Again, I'd be surprised, but it will be for the judge to talk to this committee. Let's put it this way, I'm not going to press it, because my belief in the separation of those particular powers is near absolute.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I was very interested in my honourable colleague's explanation. There are a number of areas where actually I think we're going to find this an interesting study. I think we have to clarify the record a little bit, and I would just like to do that before getting into the substantive issues regarding what he just raised.

My colleague said that this is not about the funding or defunding of the CBC, when clearly it is. We see Senator Gerstein, the number one Conservative fundraiser bagman, sending out letters to Canadians about whether or not it's worth funding CBC. We see Rob Anders sending out petitions about defunding CBC. I remember last year we ended up in a big committee study because my colleague, Mr. Del Mastro, had suggested taking the \$1 billion appropriation for CBC and giving it to its competitors, which certainly Sun Media would love, the number one competitor in Quebec.

The Chair: A point of order, Mr. Del Mastro.

Mr. Dean Del Mastro: That's the second time Mr. Angus has said something about me that is factually incorrect, and I would just ask him to withdraw the comment. He knows very well that is not what I said. He can state it if he wishes, but he's stating something that he knows is factually untrue. I won't misquote that honourable member; I won't impugn his motives. I think it says something about him if he doesn't withdraw that comment.

The Chair: Thank you.

Mr. Angus, stay on point with respect to—

Mr. Charlie Angus: Sorry, this is absolutely on point.

The Chair: Well, then in terms of—

Mr. Charlie Angus: Mr. Chair, please allow me to explain myself.

The Chair: I believe you're attempting to get there. My point is only that the impugning of motives of other committee members is something committee members do all the time. It doesn't necessarily get us down the road of deciding where this study has to go, and I'll ask them to see some restraint in that. I think Mr. Del Mastro has made a fair point.

Mr. Charlie Angus: Certainly. The fact is that Mr. Del Mastro and I were on the heritage committee for a number of years. The study we're beginning today seems to be the exact study we just had at the heritage committee, because of the direct comments Mr. Del Mastro made about the possible defunding of CBC and giving it to their competitors.

I mention that because it's interesting that we did have CBC before us, and I'll certainly be more than willing to bring the references from the heritage committee hearings, where we went through all the issues of access to information; we went through all these questions. The Conservatives were certainly more than aggressive. This is why I guess I find this a little tedious. In our last committee we went through all these issues, and now it's like a broken record, but we're at it again.

That is important to put in context in terms of talking about respect for the taxpayers: we just did a study. Mr. Del Mastro was on that side, I was over here—I was actually a little further down the line at that point, but both of us participated in this hearing and we talked with CBC and we heard all these issues. People need to understand this isn't anything new; this is certainly a favourite kicking horse, like the Wheat Board.

I want to continue on about the study we had at the heritage committee, because I'm interested, and perhaps we're both still living on the—

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro: On a point of order, please, for the record, there was no such study. I'm not aware of any such study. I remember calling a witness or two. I also remember the CBC appearing before us and us asking them specific questions related to access to information, but it was certainly never a study.

It had nothing to do with why taxpayers were fighting taxpayers in courts, spending millions of dollars, Charlie, and that's the issue before us. There's no relevance to what you're talking about.

The Chair: It was a point of clarification, not order, but thank you for the point.

Mr. Angus....

Sorry, Mr. Andrews, you have a point of order?

Mr. Scott Andrews (Avalon, Lib.): Thank you, Mr. Chair.

I just kind of wonder how much longer you're going to let this little charade back and forth go on. We have our list there. We're going to see all these witnesses that we have on our list. Can we just let the committee clerk get to scheduling these witnesses in?

You guys can have your little debate back and forth when these committee members come in, okay?

You've already suggested that we're not striking any of these witnesses. Let the clerk schedule them in and let's move on.

The Chair: Thank you, Mr. Andrews.

To that point, I will remind committee members of the offer I've made to members. Rather than go through witness by witness, we were suggesting that, outside of those we can't call before us because it would prejudice the case before the court, are there any witnesses on the list that we find concern with, that we think are not appropriate? Otherwise, we will allow the clerk the discretion to book the meetings as appropriate.

Mr. Angus, then Mr. Dusseault.

•(0945)

Mr. Charlie Angus: Sorry, I did still have the floor.

The Chair: You did. I was just addressing a point of order.

Mr. Charlie Angus: I've been trying to finish my point.

The Chair: Absolutely.

Mr. Charlie Angus: I understand the frustration of the honourable member. The reason this is important is that we did have a study. The study was based on the fact that Mr. Del Mastro made comments about defunding CBC.

Mr. Dean Del Mastro: A point of order.

Mr. Charlie Angus: And then—

The Chair: There's a point of order, please, Mr. Angus.

Yes, Mr. Del Mastro.

Mr. Dean Del Mastro: I'd like very much for Mr. Angus to cite that specific study. There was no study.

The Chair: I see. Okay—

Mr. Dean Del Mastro: What he is saying is absolutely false. It's absolutely false. We had a witness. I think we had two witnesses, as a matter of fact, on it. There was no study. We called two witnesses. That's the truth.

The Chair: Thank you.

Mr. Dean Del Mastro: Mr. Angus can either be factual or he can continue to pretend like....

I know what he's trying to suggest, that this is a recurring theme. It's not a recurring theme.

As I recall, it was an opposition motion that brought those witnesses, Mr. Angus; it was not from the government. And it was absolutely not a study.

The Chair: Thank you.

Mr. Dean Del Mastro: Perhaps, Mr. Angus, if you're going to make comments, if you keep it factual we won't have any problems.

The Chair: Thank you, Mr. Del Mastro.

That was not a point of order, and this is not the heritage committee. This is a new Parliament. I would ask that we go back to the principle of what we're trying to determine here—namely, the witness list as constructed by the members of the committee from the various parties.

Mr. Angus.

Mr. Charlie Angus: I still have the floor.

The Chair: If you can stay on point.

Mr. Charlie Angus: Well, my honourable colleague is.... I'm not going to argue with him. I'll bring the heritage study that we did, the questions that were asked.

I'd like to just continue on, because a lot of this is a repeat of the heritage committee. My colleague wants to bring CRTC. He wants to bring...well, obviously, Sun is going to be all over this. They're going to love this. This is their number one competitor. But Bell, Rogers, Shaw....

I think it's interesting—we did, again, deal with this at committee—because there are a lot of questions, as my honourable colleague says, about the local improvement fund. The CRTC is a black hole of information. You can't get any.... The CRTC doesn't even seem to keep reports, as far as I can see from the numerous freedom of information requests to CBC, about basic accountability.

So I think this is good. Let's bring the CRTC. Let's bring Shaw. Let's bring Rogers and Bell, because the issues—and again, I'm surprised it's being brought here, because I still think it's under the purview of the heritage committee, where we did look at this—are basic issues, such as what's your Canadian content? What's your local programming? How many newsrooms are there? Those are elements that Canadians want to know, because they've paid into the system with the private broadcasters. They want to know what the CRTC has done in terms of holding these various broadcasters to account. There are many black holes.

My colleague focuses on CBC, but he'll remember, from when we did these studies, that getting some basic information.... This isn't competitive information. This isn't attempting to find out what their corporate competitive advantage is. Unlike probably some of the requests that are made at CBC, it's ensuring that they're following the basic standards that have been set out.

The Canadian taxpayer pays a lot into the system; as my colleague says, the local improvement fund. We pay a lot of money into that, and we want to know that it's going to local programming, that it's going to local television.

That all seems to me to be under the purview of the heritage committee, but I appreciate my colleague for bringing this here, because I think it will give us a broader picture. I'm certainly more than willing to support bringing in Mr. von Finckenstein and bringing in the other BDU players. If we're doing that, then obviously we're expanding this mandate somewhat, and I'm not opposing that. I think it'll give us a fairer picture.

So after all those interruptions, I was just trying to tell my honourable colleague that I supported his witness list.

The Chair: Sometimes the most difficult thing to try to say in Parliament is that you're in support of something.

Mr. Charlie Angus: He just didn't want to hear it.

The Chair: We'll have a little *Kumbaya* session afterwards.

Again back to the question of the witnesses as they have been proposed. I haven't heard anyone to this point suggest that anybody should be off the list again, other than those we can't call because of the court case.

Mr. Dusseault, *un commentaire*.

[*Translation*]

Mr. Pierre-Luc Dusseault: I think that we need to be consistent and that, if the information commissioner or the SRC and CBC representatives are not in attendance, the judge who made the latest ruling should not be either. His being here could unduly influence the next ruling.

[*English*]

The Chair: Thank you, Mr. Dusseault. I share some of these reservations.

Mr. Del Mastro.

• (0950)

Mr. Dean Del Mastro: I have no problem with that. In fact I would suggest that we get some background information on this only, Mr. Chairman, nothing that would in fact prejudice what is

before the court. I would suggest perhaps that we give those who are in fact seeking the access to information and being denied it their opportunity to come before us. It will be an opportunity for this committee to question their motivation.

Certainly, I know Mr. Angus has made several statements about a given media company here in Canada, and if he wants to take a run at Sun or find out what their motivations are...I would like to know their motivations as well, as I said. Is this about transparency or is it about competitive advantage? I think that's important.

I also think transparency with respect to how funds are being spent and where it could ultimately come through as fees for Canadians...I think we need to understand that. That's why the other witnesses are there. Any of these background witnesses have absolutely nothing to do with the court case, but it does have everything to do with access to information and transparency.

[*Translation*]

The Chair: Am I correct in saying that you agree with Mr. Dusseault's suggestion regarding Judge Boivin?

[*English*]

Mr. Dean Del Mastro: Yes.

[*Translation*]

The Chair: Okay.

[*English*]

We will leave that particular witness off.

Any other comments on witnesses we have here?

Hearing none, the last thing I will remind committee members of is that for the aid of the clerk we have some sort of sense of priority and urgency, which witnesses committee members most want to see and want to see first. We don't necessarily have to have that discussion here; you can do that with the clerk.

Mr. Angus, did you want to comment on that?

Mr. Charlie Angus: Past practice at other committees has been that we hear from the main ones first and then whoever else, but as my colleague, Mr. Del Mastro, says, we're going to actually hold off on the main ones. I prefer as often as possible to leave it in the hands of the clerk. A camel was a racehorse that was designed by a committee, so the more we make demands of you, the less likely it is we're going to get something done in a timely fashion. Bring back a witness list and we'll look at it.

The Chair: Thank you. That's a fair comment.

It was actually a suggestion from the clerk to ask for some guidance, but we'll put together testimony that will make some sense for committee members.

Mr. Del Mastro.

Mr. Dean Del Mastro: I want to be absolutely fair on this. Mr. Angus has indicated that there may be some allegations made by some of the witnesses. I want to make sure that the CBC gets the final word on this, because I think they should be able to respond to any accusations that are made about them or about their practices. I think that's only fair. So I would suggest that CBC is in fact called last so that they can respond accurately and fulsomely to anything that's brought before them. I don't want others to come after them and make allegations that may require us to call them a second time, in fairness.

The Chair: Absolutely.

Any other comments?

Thank you for the discussion. We'll leave it in the capable hands of the clerk to begin to put together something that's going to get to the bottom of what we need to get to.

Now, our next order of committee business is with respect to a motion that we've received from Mr. Del Mastro. Before we get to the motion, I'll ask if Mr. Del Mastro is interested in moving the motion.

Mr. Dean Del Mastro: Yes.

The Chair: I'm not sure if committee members have a copy of this motion in front of them. I believe it's coming. We'll just hold off for one minute so members can see the motion.

Mr. Andrews.

Mr. Scott Andrews: A point of order on the motion.

We've all read the motion by Dean and—

The Chair: Mr. Andrews, before we get into debate, I have a ruling on this motion that we probably need to hear first, before we get into points of order regarding the motion.

People have all seen it; it has been distributed. Mr. Del Mastro has moved the motion, I believe. Before we get into any context other than that, I have a ruling on the legitimacy of the motion, and then I'll come to your comments straight away.

Mr. Scott Andrews: Thank you.

The Chair: I thank the honourable member for having moved his motion. However, I'm of the opinion that as moved the motion is inadmissible for the following reasons—and I'll be as explicit but as expedient as I can.

I believe that the motion goes beyond the mandate of the committee, specifically with regard to Standing Order 108(3)(h)(vi), which states:

the proposing, promoting, monitoring and assessing of initiatives which relate to access to information and privacy across all sectors of Canadian society and to ethical standards relating to public office holders; and any other matter which the House shall from time to time refer to the Standing Committee.

These are our directives from the House.

It is important to understand the definition of public office holders. There's some distinction between the code of conduct and the act itself. Two different groups fall under two different codes, if you will.

The definition of public office holder.... With regard to the mandate of this committee, because that is what we're meant to look at, the Standing Orders refer to the definition as described in the Conflict of Interest Act 2006, where a public office holder is referred to as a minister of the crown; a minister of state or a parliamentary secretary; a member of ministerial staff; a ministerial advisor; a Governor in Council appointee other than the following persons: the Lieutenant Governor...and there's a proceeding list that I won't read out. The fourth is a ministerial appointee whose appointment is approved by the Governor in Council; and finally, a full-time ministerial appointee designated by the appropriate minister of the crown as a public office holder. Those are the designations of a public office holder under the Conflict of Interest Act.

The Conflict of Interest Code for members of the House of Commons guides all members who are not public office holders—so with the exception, for those of us here, of Mr. Del Mastro—in all matters relating to the election of members to the House of Commons, which includes anything to do with Elections Canada, and would fall under the mandate of another committee, namely the Standing Committee on Procedure and House Affairs, as described in Standing Order 108(3)(a) in subsections (vi) and (viii).

Just to be clear with members, I'm not ruling on the relevance of the motion as brought. I'm suggesting that clearly in the Standing Orders that we have that have set up this committee, it's the wrong committee to have this particular conversation at, because the motion as presented by Mr. Del Mastro does not affect public officer holders as defined in the act. It affects members of other parties.

That is the ruling. There's no debate on the ruling. We move straight to a vote. If there is any disagreement with the—

• (0955)

Mr. Dean Del Mastro: I challenge the ruling of the chair.

The Chair: There's been a challenge.

I'll turn it over to the clerk.

The Clerk of the Committee (Mr. Chad Mariage): Thank you, Mr. Chair.

The question is shall the ruling of the chair be sustained?

(Ruling of the chair overturned: nays 7; yeas 4)

Mr. Charlie Angus: Way to go.

The Chair: Way to go, yes. My first ruling. Thanks a lot, guys.

With the motion in front of us, I now entertain comments.

I'll start with Mr. Del Mastro, if that's okay, Mr. Andrews. I know you had a point of order, but I'm going to start with Mr. Del Mastro and perhaps your comments can follow.

Mr. Dean Del Mastro: Thanks very much, Mr. Chairman.

As you know, this committee did in fact set a precedent when we brought in Elections Canada regarding the Conservative Party—something, by the way, that was before the courts. I made a very impassioned argument at that time to the then chair Paul Szabo regarding what the opposition parties were seeking to study at that time.

Not only did that chairman, Paul Szabo, disagree with my concerns at that time, my having pointed out the very precise nature of what I thought were the guiding principles of this committee, but all the members of the opposition at that time, in all three parties—there are only two represented in the opposition now—in fact sustained the ruling of the chair, because I did challenge the chair's ruling at that time. So a precedent has in fact been set in this regard.

I do think it's entirely appropriate. As Mr. Angus would know and I'm sure as you would know, Mr. Chairman, back in July I did write a letter to the Ethics Commissioner requesting that she review the matters of sponsorship at the NDP convention, specifically sponsorship from large unions from across the country. The Ethics Commissioner has in fact indicated to me that this investigation is continuing.

I think it's entirely appropriate, especially considering, certainly, if anyone watched Mr. Angus's theatrics yesterday on a matter that frankly has been entirely researched and reported upon by the Auditor General...the NDP appears to be putting up a smokescreen and in fact flaunting the Accountability Act. They know—and I would argue that Mr. Angus well knows, as he's not a rookie in this House—that certainly the spirit of the Accountability Act was shattered with tens of thousands.... We don't know exactly how much. We know from an article written last week that at least \$75,000—but it appears to be much, much more than that—was paid directly into the NDP coffers by big labour, which is contrary to the Accountability Act.

So I would argue that this is a very important issue, a very important matter, that it takes precedence over anything else the committee is doing, and that we should call both the Ethics Commissioner and the Chief Electoral Officer before committee without delay. I'd like to see one of them here Thursday and the other here on Tuesday, because I think this is a matter on which the committee, Canadians, and Parliament deserve an answer.

It seems that other parties...certainly our party is playing by the rules. We had a spring convention here. It was not inexpensive for members to attend because these are not inexpensive events to put on, but we abided by the rules of the Accountability Act and the spirit of the Accountability Act. It appears that the NDP governed itself by very different rules—in fact, by rules that are contrary to the Accountability Act.

• (1000)

The Chair: Just so I understand your point well, Mr. Del Mastro, are you suggesting that this Thursday is when you want to see these folks?

Mr. Dean Del Mastro: I'd like it—

The Chair: Or did you say as soon as possible?

Mr. Dean Del Mastro: —without delay. I'd like to see one of them appear—

The Chair: I see.

Mr. Dean Del Mastro: —on Thursday and the other appear on Tuesday. They're both in Ottawa, so hopefully they're able to attend.

The Chair: There's just one thing: we're not sure that they are, that their offices—

Mr. Dean Del Mastro: If they're not—

The Chair: My point is that—

Mr. Dean Del Mastro: If they're not, that's fine, but I'd like to have them appear—

The Chair: The Ethics Commissioner and the Privacy Commissioner are already scheduled to appear before this committee this Thursday, so we would have to cancel one of them and change it. I just want to make committee members aware that we are seeing both of those commissioners, as per our request, in two days' time, on another subject, on their reports—just so you know that they'll be here.

Mr. Dean Del Mastro: Sure. If we are able to schedule in the other witnesses for Thursday, I would suggest that it would take precedence, but we will allow the clerk to see if those arrangements can be made.

The Chair: Mr. Andrews.

Mr. Scott Andrews: Thanks, Mr. Chair.

I was going to suggest, as you're ruling, that this needs to go before the procedure and House affairs committee. This is an Elections Canada issue. This is an issue of what's allowable under the Canada Elections Act.

I'm really dismayed by this little game that's going on here at this committee between these two members: it's tit for tat, a motion for a motion.

To be quite honest, guys, this is brutally unproductive.

Yes, you have a majority to do as you wish on this committee, and you will do what you want throughout this entire Parliament, but I truly, truly believe that there needs to be some goodwill here.

We've already established a study to proceed forward with listening to our commissioners, as the chair just pointed out.

I think this is totally unproductive. If this is how this committee is going to operate, we might as well just fold up our tent right now, because we're not going to accomplish anything.

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I hear my honourable colleague's frustration. Certainly, Chair, you made the correct ruling that this should go to the procedure and House affairs committee. However, it's been overruled by the Conservative majority.

I am a little disturbed that they want to throw out the business we've agreed to, in order to get at this immediately.

Certainly, we don't have a problem. Number one, let's put it on the table. I don't have a problem bringing them. I'm concerned about the idea of their riding roughshod to get at the red meat issues as quickly as possible. We agreed that we were going to hear the commissioners and to set the terms. So let's do that on Thursday.

I was actually really interested to hear him say the reason he wanted to bring this. He referred to the so-called theatrics yesterday—

Mr. Dean Del Mastro: Yes, and—

Mr. Charlie Angus: The fact is it's now 91 days since the Treasury Board minister had an excuse, or an explanation, for the fact the Auditor General was misled. Now they're setting the turf and are going to go after the big, bad NDP. Hey, that's fine, because when it comes to Elections Canada, we follow the rules. We meet with Elections Canada, so we certainly aren't afraid to talk with them, unlike my colleagues whose party and all of its key leaders are up on charges. Their election planners are up on charges for having broken the rules, and that's still before the courts. So let's not turn this into a chance for a bully pulpit here and my colleagues to start misrepresenting the facts.

Chair, I think it's unfortunate that you were overruled. You made the correct decision; it should be at another committee. But they're going to do what they're going to do, so let's just get it done. Let's bring witnesses. We'll have witnesses to bring forward. We'll have to sit down and have a planning meeting on witnesses. I suppose we're still doing that, or is the majority going to say, "No more witnesses, we're going to start giving you the list"? But I'd like to think that we'd get some witnesses in. We should certainly hear about what it means to follow the Elections Act, because it's crucial. Breaking the Canada Elections Act is serious business. That's why many people were concerned when all of the leading figures in the Conservative electoral team were brought up on charges—and they're still up on charges.

So let's do it and get it over with and get back to business.

• (1005)

The Chair: As to Mr. Angus's point, I'll get there in a minute, but with respect to how the motion reads right now, there are two witnesses who are described in the motion. In order to open it up to any further inquiry members are interested in having, we have to amend the motion to allow for other witnesses. I say this because it's discrete right now; it says these two witnesses only. If we want to hear from other people on this topic or other topics with regard to this matter, we simply have to amend the motion.

The next up is Ms. Davidson.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Mr. Chair.

I think we've all seen the motion, which was circulated before us. We've had it for 48 hours. It's very clear that the motion refers to two witnesses.

I would ask that you call the question.

The Chair: Absolutely.

Mr. Angus.

Mr. Charlie Angus: Again, we can all start putting on our kangaroo outfits, if Ms. Davidson wants.

It seems absurd that you're not going to have the people involved bring testimony.

Mrs. Patricia Davidson: [*Inaudible—Editor*]

Mr. Charlie Angus: Are you afraid to hear from them?

If we're going to be a credible committee, let's do credible work. Let's bring the witnesses. This is starting to descend into a farce.

Even though the chair has made a ruling, we've expressed our willingness to bring this before this committee. So let's bring forward our witnesses. We can bring the people who were involved in the convention and they can explain. If you're not willing to hear that, then you're certainly sending the impression that this is about creating as much political cover as fast as you can, and I think it's going to set a really bad precedent.

I am just asking that we look at a proper witness list and do the work of this committee.

The Chair: All right. Thank you.

Ms. Davidson.

Mrs. Patricia Davidson: Thanks very much, Mr. Chair.

I merely pointed out that we have a motion before us. That is the motion we're dealing with. If the member opposite wishes to amend that motion, that's entirely his right and he can certainly do that. His descriptive phrases sometimes leave much to be desired.

Again, I would ask that you call the question.

The Chair: I see that Mr. Angus has a comment.

I sense some willingness in your initial comment, Ms. Davidson, that the committee members be allowed to submit other witnesses. Did I read that correctly?

Mrs. Patricia Davidson: No. I didn't—

Mr. Dean Del Mastro: No. She made the point that it's their right.

The Chair: I understand.

What I'm seeking to understand is that if the committee is seeking to have, as we said in the previous discussion around the CBC, a fulsome inquiry into this matter—the motion brought by Mr. Del Mastro—is there a willingness of the committee members to see other witnesses in front of the committee?

Do you have a comment, Mr. Del Mastro, or are you agreeing?

Mr. Dean Del Mastro: What I would suggest, Mr. Chairman, is that in the case of both Elections Canada and the Ethics Commissioner, they have in fact conducted interviews of all the relevant parties in this matter. Let's first get them in and hear what they have to say on the matter and on where their investigations are in fact taking them.

You know, potentially I might like to hear from Minister John Baird. I mean, Minister Baird was one of the architects of the Accountability Act. Perhaps he might be a witness who could come in and talk about what the spirit of the Accountability Act was, what the intent of the Accountability Act was, and exactly why this is such an egregious violation of the Accountability Act.

So I might want to hear from him and bring him before committee, but at this point, let's just hear from these two witnesses and see where this goes.

•(1010)

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: I would like to make an amendment, a friendly amendment, that we also bring witnesses to determine the applicability of the Elections Canada rules regarding funding for political conventions. It's simple.

The Chair: Would you mind repeating that, Mr. Angus, please?

Mr. Charlie Angus: The motion as amended would read:

That the committee call Elections Canada and the Ethics Commissioner to appear before the committee regarding the union sponsorship of the NDP spring convention, and that the committee bring forward witnesses who can speak to the applicability

—that's what I have, but I'm not sure “applicability” is the correct word—

of Elections Canada rules regarding funding for political conventions.

The Chair: Has everyone heard and understood the amendment as moved? Okay.

The amendment has been moved. I'll call the vote on that, if there's no other debate.

A voice: Is it campaign funding or convention funding?

Mr. Charlie Angus: Convention funding; this is what we're speaking of.

The Chair: All those in favour of the amendment?

(Amendment negatived)

The Chair: We're back to the main motion.

Are there any other comments on this?

The suggestion has been made right now that we hear from these first two witnesses with—I don't want to impute something here, Mr. Del Mastro—some openness to hearing from further witnesses based on that testimony...?

Mr. Dean Del Mastro: Absolutely.

Mr. Scott Andrews: I think the question's been called—

The Chair: The question gets called when the debate is exhausted.

Are there any other comments on this?

Seeing none, I will call the question.

(Motion agreed to)

The Chair: With respect to Thursday's meeting, we have invited two guests, the Ethics Commissioner along with the Privacy Commissioner. We have this motion in front of us. Is it the will of the committee to go ahead with Thursday's meeting or to cancel Thursday's meeting? I need some direction, because we have very short notice for this.

Mr. Andrews.

Mr. Scott Andrews: Well, we know how this is going to go, so why don't we just bring forward the NDP's motion and deal with that so we can get on with some real business on Thursday?

The Chair: I'm perhaps not following your line of logic. Bring forward what from the NDP?

Mr. Scott Andrews: Charlie has a motion before the committee, if I'm not mistaken. Did I see that come in over the last little while?

The Chair: I can ask Mr. Angus if there's a motion that he's seeking to move, but the specific question in front of the committee is that we've invited the two commissioners, privacy and ethics, to testify before us for two hours on Thursday. Do we wish to go ahead with that?

I'm inclined to say go ahead with that. I think they'll be relevant to much of what we're trying to get into. The initial intent behind hearing from all the commissioners was to help guide the committee's work over the next number of months, to hear from them on their reports or whatever else they had to tell us. So I'm inclined to continue with Thursday.

Mr. Del Mastro.

Mr. Dean Del Mastro: What I would request, Mr. Chairman, is that, if possible, we hear witnesses on this on Thursday. If it's not possible—

The Chair: By “this” you mean the motion?

Mr. Dean Del Mastro: Yes, the motion the committee just passed.

If that's not possible, then we go ahead with the witnesses as scheduled for Thursday. There should be a meeting on Thursday regardless.

The Chair: Yes. I'm very much inclined for us to get together on Thursday for one of these topics; on just which one it's going to be, we'll have some comment.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I'm concerned. The issue of privacy rights is one of the key elements and we're going to blow that off to go on another crusade. We've got four years, Dean. You guys are going to be able to beat on us as much as you want. We'll certainly be going at this, but I think it sends a pretty bizarre message that already we're blowing parliamentary procedure out of order. We're saying that the four commissioners who are key to this file can wait until we get at something that we haven't even been allowed to bring proper witnesses to.

If we're going to again go to the kangaroo court model, we can live in a kangaroo court, but.... It's one day. We should hear these commissioners. They've already shot down debate on this NDP motion. They've got some defence now for poor Tony. He didn't have an excuse up until now. They'll be waving this one around, about the big bad NDP union thugs, blah, blah, blah. That's okay. We still have to do our job, which is to hear from these commissioners, and then Mr. Del Mastro's motion can come forward. I have a couple of motions coming forward. I'm certainly willing to bring them forward, but I wouldn't use my motions to supercede the ability of this committee to hear from the commissioners.

Mr. Chair, I'm appealing to you. You've got to set some basic rules of credibility. Otherwise this is just going to turn into a gong show from the beginning.

•(1015)

The Chair: I appreciate the confidence in being able to make whatever we do credible. It will be the committee's decision as to what we do on Thursday.

Mr. Del Mastro, do you have a point?

Mr. Dean Del Mastro: I just had discussions with the clerk. Perhaps what we could do is postpone the appearance of the privacy commissioner. The ethics commissioner is coming on Thursday anyway. We could hear testimony from the ethics commissioner on Thursday. We could seek to have Elections Canada here on Tuesday, if that's agreeable to the committee. It won't be the introductory testimony, or perhaps the ethics commissioner could break it down. We could break it down into two one-hour sessions, if members prefer, one being kind of an introductory session about what the ethics commissioner does, what the job is, and what the commissioner is tasked by Parliament to perform. The second hour could be on this issue as passed by the committee in a separate motion. Of course, on Tuesday we could have the chief electoral officer here from Elections Canada.

Those would be my suggestions to the committee.

The Chair: Everyone has heard the suggestions.

Mr. Angus.

Mr. Charlie Angus: Well, again, we asked for two hours with the other commissioners and we were told we didn't need to hear from the commissioners.... Again, on access to information, for the key commissioner, we had an hour. That was it. Now, because suddenly they're on a hunt, they want a two-hour thing.

Bring the ethics commissioner for an hour and you guys can ask all the questions you want, but if you're going to continue to rewrite the rules and make up the game as you go along—and we're two sessions into it—this is going to start to lose a lot of credibility. You established a precedent. You didn't want to hear from the other commissioners. You wanted to limit them to an hour. Now suddenly you want to have one for two hours. We've got an hour. She can talk all she wants about the NDP and you can say whatever you want. Then let's get to Elections Canada and get on with this.

The Chair: I'm just going to make a brief comment. Let's be cautious, committee members, to make sure that none of the conversations that this committee did in fact have in camera are discussed out of camera.

Mr. Butt.

Mr. Brad Butt (Mississauga—Streetsville, CPC): Mr. Chairman, I don't think Mr. Angus was listening very well to Mr. Del Mastro. I think he made it very clear that the first hour was the general one that we've had with the other commissioners already. The second hour is on a very specific, time-sensitive issue. I think this is a time-sensitive issue because I think we need some clarity around this issue about exactly what happened with respect to funding at a political convention. That's clearly what Mr. Del Mastro said, and I think that's very much in keeping with the original agreement of the committee, which was to have the four commissioners in, each for an hour. Now we're moving on to a specific file, for which one of those commissioners needs to be before the committee.

I think it's quite clear what the intent of this is, and I would support Mr. Del Mastro's suggestion as to how we handle the meeting on Thursday.

The Chair: Thank you, Mr. Butt.

Mr. Del Mastro, do you have a point? You wanted to...?

Mr. Dean Del Mastro: No. That's fine. Mr. Butt has made my point.

The Chair: The suggestion is that the ethics commissioner appear for one hour on the general report that we had requested from them, and then the second hour is to deal with Mr. Del Mastro's motion. We will seek to get Elections Canada the following week, on Tuesday.

I was just told by the analyst that we're not going to have the kind of briefing notes we're looking for.

Are there any other comments on this before we move on? That is the ascribed process.

Seeing no other comments, that's how we'll proceed. We will likely have to make some time available on Thursday for motions that have been presented to the chair to deal with, so we're going to have to carve off a little bit of time towards the end of committee to deal with those. I just want committee members to have a sense of that. It will not likely be the full two hours with the commissioner. We have some other motions in front of us.

One last comment, Mr. Del Mastro.

Mr. Dean Del Mastro: I suggest, Mr. Chairman, that if we are going to deal with motions, we do that at the beginning of the next committee meeting and that those motions be dealt with and that be taken out of the first hour, which would be the general discussion from the Ethics Commissioner. I think this matter is important. We will need at least a full hour with the Ethics Commissioner on this matter.

So I'd move that any motions we're going to deal with at the next committee be moved at the beginning of the meeting and then the committee be allowed to get on with its business.

•(1020)

The Chair: Again, the committee can divide the time how we wish. My suggestion was going to be that we break the.... Say the full time with the commissioner is an hour and a half and there are 30 minutes on motions. I was going to suggest that we divvy the two parts into 45-minute segments.

Mr. Dean Del Mastro: Okay.

The Chair: I'm very concerned that we're going to have the full report and questions and comments to the commissioner in 30 minutes. That worries me simply because the other commissioners we had for an hour, and there was a suggestion to have them for two hours. Now we're reducing that initial comment and idea down from two hours to 30 minutes, which is very brief.

Mr. Dean Del Mastro: Otherwise, I would be happy to entertain a motion from the opposition whereby the committee could certainly convene an hour earlier, so that we could entertain motions, and then we would be able to provide the full two hours for the Ethics Commissioner. I have no problem with that at all in order to allow Mr. Angus to move his motion.

The Chair: Mr. Angus.

Mr. Charlie Angus: I vote no. I mean, we said at our first meeting that we were going to sit down and try to get a full briefing from all the commissioners, and that clearly wasn't of interest to the government. We're down to an hour with everybody else. Now suddenly they've got an issue, two days in. So we're supposed to extend, when before we didn't even need to hear from them. Let's just get down to the business of picking fights. The Information Commissioner is a key element—

The Chair: There's a point of order.

I want to clarify the words you used, Mr. Del Mastro, in bringing this. Did you move a motion to accomplish this? Have you moved a motion to this?

Mr. Dean Del Mastro: I could move such a motion. I made a suggestion at this point.

But I would caution the member, Mr. Chairman—and this is a point of order—that Mr. Angus often impugns motive and also misquotes folks. It's quite a different thing when he's going to impugn the government and frankly misquote members of the government from an in camera discussion whereby we can't even... We're not going to talk about it, because it happened to be in camera. Mr. Angus wants to talk about it and frankly misquote members of the government in doing so. I think it's highly inappropriate and I call the chair to advise—

The Chair: I remind committee members, as I did just moments ago, that issues and conversations that we had in camera... I know sometimes it can be a bit difficult to remember what was in and what was out, but I'll ask you to be cautious with your comments, particularly if it was anything around in camera meetings.

Mr. Charlie Angus: I fully respect that, Mr. Chair. You obviously sense an element of frustration when the public could wonder that there was only an hour given to the Information Commissioner, who came before us and raised serious concerns about the black hole of accountability within ministers' offices and her role of attempting to find out information when political staffers are now considered to be exempt. We had the case, and we talked about it with Mr. Togneri and we will talk about this later on, about him sending SLAPP suits against witnesses who were asking us to do our job.

So I would think that the public who are watching, who weren't aware of what was going on in camera.... And Mr. Chair, I certainly take the role of in camera as absolutely a fundamental of our committee, but we have a job to do at this committee.

We have four key pillars, and we have four commissioners we need to hear from. Yet the public would see an appearance that we're more than willing to blow through commissioners and we're saying we don't even want to hear from them, we want to get down to other business. It sends a clear message that we have a government that is not just uncomfortable with being a majority, but they want to shut

down witnesses. We're told we're not allowed to even bring witnesses to dissent and to explain.

The Chair: A point of order from Mr. Mayes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Mr. Chair, this rant is about the motion that we've already passed. You cannot discuss a motion after it's passed. I'd ask the chair to respect the motion that has been passed by this committee—

The Chair: Thank you, Mr. Mayes.

Mr. Colin Mayes: —and ask Mr. Angus to get on to another subject.

The Chair: Thank you, Mayes.

To be specific and clear with the committee members, the motion has been passed as it was. What we're discussing is the order in which we proceed with this. There was some question about the commissioners. I think we have near agreement on how this is going to proceed. There's a question now about the timing.

Mr. Del Mastro has made a suggestion that we extend the committee by an extra hour to allow for other motions that may be coming before the committee. That is in fact what we're discussing.

Whether somebody is talking one way or another is not actually a point of order, so I'm going to return to Mr. Angus.

Thank you.

• (1025)

Mr. Charlie Angus: Thank you, Chair.

I sense that now my colleagues again are shutting down witnesses. Whenever I seem to have the floor to try to lay the groundwork, I see the points of order and the attempt to shut this down. They are certainly uncomfortable with hearing anything that doesn't agree with them.

As for Mr. Mayes, I'm sure he was paying attention, but the issue was whether or not we were suddenly going to expand this committee for an extra hour to satisfy a particular interest of the Conservatives. I was saying that it seemed to me to be a bizarre precedent they're setting: whenever they want to go on more, they'll expand, but for us to even try to bring in witnesses, basic witnesses, so the committee can hear them...now we see that we're going to go to another attempt to shut me down.

This is about how we're going to establish ourselves as a committee. This is not about their little hot button issue and the fact that they certainly seemed to be looking to find some way of finding some cover for Mr. Clement, who has been, for 91 days and counting, absent from his post in terms of accountability.

They think they have an issue. I don't have a problem with them bringing this issue before us. I don't have a problem bringing in witnesses. However, I'm concerned. I'm concerned that the basic respect due to all members of Parliament is absolutely lacking. We've made reasonable offers throughout today and they are not interested in reasonable offers. They're not interested in the larger work of our committee, which is, number one, to hear from the four key commissioners, to understand those roles, and to understand them thoroughly.

They weren't interested in that last week. We had an hour. Again, people would have wondered why with the Information Commissioner there was barely an hour, and now suddenly with the commissioner they want to hear from, they want to have two hours. Also, they want to interrupt committee business by saying that if you want to have committee business, which is, again, the right of our members of Parliament.... All members of this committee have the right to bring witnesses before us.

It seems to me that if we're going to get off on this wrong foot... We have four long years of working at this committee. I would like to think that we'll establish some basic ground rules of respect, of listening to each other, and that the work we do bring here is not just based on poking whatever hot button comes up in the media of the day. We have our hot buttons and they have theirs, and we'll certainly do a lot of that, but for my colleague now to say that if the opposition wants to talk about their motions, they're going to have to come early, they're going to have to come at another time to discuss their motions...?

Well, we sat here and gave full respect to their motions today. We didn't hold them up. They got their motions right through today. They got their witness list through today. They shut down any attempt that we had at witnesses, but they're telling us that if we're going to come to this committee, we have to come at breakfast time or before breakfast and get that all out of the way so they can get down to their business. Frankly, I don't think that's an acceptable way of doing business.

I've appealed to my good friend, Mr. Del Mastro. We've worked together very well for many years on the heritage committee. You know, they're going to have their big sticks to come and pound on us, and we're going to push back, and that's the nature of the rough-and-tumble business, but if we lose that fundamental notion of respect, of respect for the committee, of the building of a sense of how we are going to work together, if we lose that in the first three days, then this is going to turn into a very dysfunctional committee—and it doesn't need to.

I've said again and again that we are more than willing to entertain whatever issue they want; I didn't even raise a single question about any of their witnesses. They can bring in any witness they want. Yet when we ask about bringing in witnesses, we're told, "Sorry, don't bother". I think that sets the wrong precedent.

I think that for them to turn around now and say they want us to come early so we can do the business of committee because it's interfering with their crusade is simply an unacceptable interference with my rights and my privileges as a member of Parliament. I don't know what my honourable colleagues think, but I am not going to allow that precedent to happen.

Whenever we want to bring information and Mr. Andrews wants to bring information.... Remember how they wanted to shut him down from a second round of questioning when we first began? They didn't even want to hear the Liberals in a second round, which again is completely breaking with the parliamentary traditions we've had in this Parliament, where we allow the members to be heard and to speak.

So we will come here Thursday morning. We have committee business to do. We will come at the normal time. We will sit down here and we will deal with our business, just as we've dealt with their business today.

We dealt with their business with the utmost respect today. I'm hoping they will take on a little bit of respect for our motions. If the commissioner has to be done in two 45-minute sessions, well, that seems perfectly reasonable. We do that all the time. Certainly this commissioner is getting double the shot the Information Commissioner had.

● (1030)

I see that it's 10:30, Mr. Chair, so thank you.

The Chair: I believe Mr. Preston had a comment—no?

Mr. Preston, are you okay?

Mr. Joe Preston: I'm okay.

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you, Mr. Chairman. I was merely being courteous to the member opposite.

I should say, by the way, if the member wishes to have more love around the committee and some bonding opportunities, I'd propose to the member that perhaps he might come to the country property that I just bought. It's on the water. We could have a campfire, as a committee. We could roast marshmallows. Charlie could bring his guitar. I could pull out the karaoke machine.

The Chair: Is that a motion, Mr. Del Mastro?

Mr. Dean Del Mastro: There would be a lot of love.

But at the committee we do actually have some business to do. This isn't about making anyone's life hell, but I did want to simply point out, Mr. Chairman, that my good friend across the way does from time to time need a little bit more time than others do to express himself and to explain and give rationale for his motivations. I was merely being courteous in offering him a full hour to bring his motion and to discuss it. It's clear the member doesn't want that. That's fine.

I'd simply move and request that the chairman consider Mr. Angus's motion at the beginning of the next meeting and that we simply take any time it takes to do that off the first hour of the Ethics Commissioner's appearance. It doesn't matter. I don't expect questions from the honourable member or, frankly, his colleagues to be on the issue at hand anyway. So I suppose that ultimately it doesn't matter which time slot it comes out of. It just seems to me that if we put it at the end.... Well, you know what? We'll go with your suggestion. We'll put it at the end and deal with it. Ultimately we can ask our questions about whatever course we want.

This was not an attempt, by any means, to impact on the rights or privileges of a member. In fact, it was to provide Mr. Angus with even more time than what he currently has to discuss his motion. We'll deal with that at the end of the next meeting, and go with the chair's suggestion and move forward.

The Chair: The suggestion has come back. Mr. Del Mastro makes a good point. When the commissioner is here in front of us, the range of topics is available to the committee members to pursue what they want. So in terms of the division of time as to which topic the commissioner is on, given that time is somewhat arbitrary, the chair will seek to have some guidance within each of the rounds. As well as we can as a committee, we should get to the testimony from the commissioner and allow him some time, because it is very limited. Sixty minutes is not much time in which to give the round picture, and we're going to be reducing that down by some factor.

I'll take just one second before we go to Monsieur Dusseault and Mr. Mayes.

There is going to be something procedural, in which case he'll likely want to give a separate statement of up to 10 minutes to the committee on each topic. We're going to divide that so committee members at least have that in front of them.

[*Translation*]

Mr. Dusseault, do you have any comments? No, okay.

[*English*]

Mr. Mayes, did you want to add anything?

Mr. Colin Mayes: I'm fine. Thank you.

The Chair: You'll pass?

That is the suggestion before the committee. Is the committee in agreement with that? We'll send that direction to the commissioner. We'll get back. We'll talk about bringing in Elections Canada the following week, due to availability, and we'll continue on with the study that's before the committee.

I thank committee members for their time today. The meeting is adjourned.

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