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Chair

Mr. Joe Preston

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•(1105)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): I'll call the meeting to order, please.

This is our 29th meeting. Congratulations for getting there, folks.

We're here today, in public, to talk about the order of reference of Tuesday, March 6, a question of privilege relating to the member for Provencher. In our good luck, we have him here today to help us with this study.

Minister Toews, it's great to have you here today.

As I said, the meeting is in public today. We have the minister appearing for the first hour and we have Professor Ned Franks for our second hour. We will take a small bit for some committee business, if we can make that work, at the end of the second hour today.

Mr. Toews, I understand you have an opening statement.

Hon. Vic Toews (Minister of Public Safety): I do.

The Chair: We'll start with that, and then we'll go to questions.

Thank you, and welcome.

Hon. Vic Toews: Thank you, Mr. Chair, and thank you, colleagues.

I sincerely wish that the circumstances surrounding my appearance today did not exist. On February 29, I rose in the House on a question of privilege to ensure that the activities seeking to intimidate me with respect to my duties as a member of Parliament, duly elected by the people of Provencher, were appropriately addressed by the House. This intimidation has been aimed at me solely for doing the most basic duty of a parliamentarian—namely, introducing legislation within the exclusive jurisdiction of the Parliament of Canada.

Such intimidation should gravely concern all parliamentarians. We have a special obligation to our constituents to act without fear on the principles that they elected us to defend. This is why I'm pleased that your committee has taken up this serious matter.

As you know, on February 14 of this year I introduced Bill C-30, the Protecting Children from Internet Predators Act. In the days and weeks that followed, I and my office received a great deal of communication from Canadians. As I stated in the House, these ranged from the supportive to the critical and indeed to the humorous.

Specifically of concern were videos posted on YouTube publishing various unfounded allegations about my personal life and threatening to do more if I did not take specific action with regard to Bill C-30. Clearly the actions and threatened actions contained in these videos constitute an attempt by the creators of the videos to intimidate me with respect to proceedings in Parliament.

The online group called “Anonymous” that posted the videos hides behind masks and their claim to anonymity. It is their threats that clearly attempt to intimidate me and in fact all parliamentarians as we carry out our democratically elected responsibilities.

I am prepared to debate, and we must engage in vigorous debate, on matters before Parliament, but these online attacks launched on both me and my family have crossed the line.

Mr. Chair, all parliamentarians need to be concerned.

On February 29, the Liberal House leader repeatedly stated that there were clearly threats made against me, in fact going as far as stating, “...yes, indeed, there clearly are threats being made.”

The Liberal House Leader also cautioned the Speaker in finding a prima facie breach of privilege, and then stated that these threats “...do not constitute a breach of privilege.”

O'Brien and Bosc state that:

Any disregard of or attack on the rights, powers and immunities of the House and its Members, either by an outside person or body, or by a Member of the House, is referred to as a “breach of privilege”....

I would remind the chair and all committee members that in the videos published, there was a broad threat to all parliamentarians. I quote:

And to the rest of the Parliament of Canada: you would do well to mind your words about Anonymous. Any attempt to score political points by claiming we are associated with a particular political party will not be met kindly. Your party affiliations are utterly irrelevant to us.

Quoting again:

To the rest of those who support Bill C-30, do not believe for a moment that you are untouchable.

Mr. Chair, the Liberal House leader and all Canadians should be concerned about the threats posed to our democracy by online bullies and thugs who seek to intimidate duly elected members of Parliament. It is on this aspect that I encourage you to focus your study.

Let me be clear: I will not be intimidated by thugs who hide behind masks and anonymity. Our democracy demands that elected officials be free to debate any and all matters. I firmly believe that all members of this House must be able to serve their constituents, introduce legislation, and debate all matters free from intimidation, obstruction, and interference.

The fact of the matter is that today threats are directed at me for a bill that has drawn much public debate. Tomorrow it could be any of you, either government or opposition. In fact, there are those of you on this committee who have introduced legislation in the House, both from government and opposition. We have seen private members' bills that have produced vigorous debate, with strong positions being taken on both sides of the House.

One only needs to look at this 41st Parliament. Bill C-377 is a bill that would require the public disclosure of the finances of labour organizations. Heated debate and strong positions have been taken on this bill.

Bill C-276 and Bill C-279, Liberal and NDP bills respectively, seek to amend the Canadian Human Rights Act to include gender identity and gender expression. While not yet debated in this House, similar bills have been introduced in previous Parliaments, and strong positions were taken.

Whether or not an MP introduces legislation, all MPs take positions on motions, legislation, and House and committee debates. Mr. Chair, that is exactly what we should be doing. That's why we were elected. Canadians expect this.

I do not believe that members of Parliament should be held hostage, afraid to do what they feel is right, for fear that unnamed thugs might threaten them. Canadians deserve better. I was pleased that our Speaker upheld the 1973 ruling of Speaker Lamoureux, wherein he stated that he had no hesitation in reaffirming the principle that parliamentary privilege includes the right of a member to discharge his or her responsibilities, as a member of the House, free from threats or attempts at intimidation. Attacks on the personal life of a member of Parliament, while not appropriate, can be judged by the public where there is public accountability. The threats of nameless, faceless thugs who seek to intimidate legitimate democratic proceedings should concern all parliamentarians, and indeed all elected officials in our great country.

Mr. Chair, in your committee's deliberation I encourage you to view this question of privilege as a matter than concerns all parliamentarians, not just me.

I look forward to discussing this matter further and to answering any questions you may have.

Thank you, Mr. Chair.

• (1110)

The Chair: Thank you, Minister.

We will start with Mr. Lukiwski for seven minutes, please.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Chair.

Thank you, Minister, for your appearance here today.

Minister Toews, you mentioned in your opening statement that you believe not just ministers but all members of Parliament should be concerned about some of the threats issued by the group Anonymous. In just a moment I'll get to the level of concern you believe should be held by parliamentarians.

If we can, let's clear up a little unfinished business. In the threats of Anonymous, the primary reason for posting these videos on YouTube was based on their opposition to Bill C-30. In their videos they demanded that you resign and/or remove Bill C-30 in its entirety. Do you have any plans to do either of those?

Hon. Vic Toews: Certainly I would not resign simply on the basis that I've been threatened in this fashion. That would send a terrible message. Even if I resigned for any other reason than this particular issue, it's very important when a member of Parliament is threatened in this way that the member not give in to those threats and make clear he or she will not give in to threats that interfere with the democratic process in this kind of crass and unlawful manner.

Mr. Tom Lukiwski: Thank you, Minister.

One of the problems we've been having as a committee is to determine exactly where we go as a committee and what we focus on. You mentioned in your opening statement that the threats made not only to you but to all parliamentarians should be of concern, and that should be the area and the aspect of this committee's studies. Specifically, since it could be extremely difficult, if not outright impossible, to determine the source of these videos and these threats—because the group has quite correctly named itself Anonymous, for very good reason—what do you think? What is your recommendation, if you have one for this committee, on the type of study we should be engaging in?

What would you like to see this committee concentrate on in the study we're embarking on right now?

Hon. Vic Toews: Thank you.

It's not for me, of course, to tell the committee how you should frame your investigations. What I can say is that for me this is a serious issue that I believe demands a serious investigation. As much as is possible, the committee should determine who is behind these threats.

The committee should examine how MPs can protect themselves from these types of Internet threats and how the House of Commons can better protect members. I would encourage the House of Commons to take this type of threat very seriously.

I read with interest the comments of the Clerk, indicating that this study may be a "giant waste of time". Those were her words. I couldn't disagree more. In terms of its impact on the democratic process, studying this issue is not a waste of time. I couldn't disagree more. Whether or not the committee is ultimately successful in drawing any conclusions on who's behind this attack, I think the House should be examining preventive or safeguard measures to protect members.

This is an issue that crosses party and ideological lines. Just this past weekend, we saw an Internet attack on the electronic voting system used to choose the new leader of the NDP. In my opinion, it is a very frightening prospect, especially as Canadians are looking more and more to Internet voting and Internet advances, to see our democracy being threatened when we attempt to use new mechanisms that will involve more people in the democratic process. I think all Canadians should be concerned by these types of threats posed to our democracy by these online bullies and thugs who, in fact, are intimidating the democratic process.

● (1115)

Mr. Tom Lukiwski: We have a couple of minutes left. We'll get back to some of the other areas of concern outlined in your opening statement.

I tend to agree with the Liberal house leader when he said that this clearly is a criminal matter. I agree with that. Have you referred this matter to any law enforcement agency, such as the RCMP or other agencies?

Hon. Vic Toews: Yes, these matters have been referred to the RCMP, but I prefer not to get into that discussion. I understand that you may be calling police officers here to testify, to the extent that they might wish to share information. I think that is appropriate, rather than my commenting on the investigation. I might point out that even though I am the Minister of Public Safety and that in that context the RCMP is responsible to me, I do not direct investigations or involve myself in investigations.

Mr. Tom Lukiwski: You may not have much time to get into detail, but I'd be interested in hearing your comments on how seriously you're taking these threats. We certainly saw or heard of all the threats being made by the group Anonymous. I understand that there might have been others who communicated some threats to you. How seriously are you taking these, and how seriously should we as parliamentarians take any threats from any group, whether Anonymous or cyber-hackers or anybody else, that threaten the job we're supposed to be doing?

Hon. Vic Toews: I take these threats very seriously, not only as they impact me but also my family. I think there's a much broader issue here, and that is the threat against the parliamentary process. As good a tool as the Internet is—I think we all recognize the benefits of the Internet—the fact that criminals can use the Internet to subvert the very freedoms that spawned it causes me grave concern.

The Chair: Thank you Mr. Lukiwski.

Mr. Comartin, you have seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair, and thank you, Mr. Toews, for being here

As you know, when I supported your motion for finding a breach of privilege, that was our position as a party. It continues to be our position today. We're fully supportive of the determination by the Speaker that there was a prima facie case, and I think without any doubt that the committee will confirm that position at some point in the future when we report back to the House.

I want to take a bit of an issue with you with regard to Ms. O'Brien's position. I think what she was saying to us was that in the capacity they had in terms of being able to identify the culprit in this

case, it was just not possible within the framework of the resources we have in the House. I want to make that point so that we're clear on the position she took.

By way of question, I'd like to pursue the role the RCMP is playing in this. I understand from your response to Mr. Lukiwski's question that in fact they are involved. Do you know if there's an ongoing investigation?

Hon. Vic Toews: I am aware of an ongoing investigation, yes.

Mr. Joe Comartin: Okay. I want to go to the other side.

This committee certainly has within its perspective the mandate, the authority, to recommend punitive action by the House, so within that mandate we will certainly be considering that response. However, this is also, as Mr. Lukiwski has pointed out, potentially a criminal matter.

Can you share with the committee the type of charge that would be laid against the perpetrator? Would that be a charge under the Criminal Code? Are there other laws that would show as having been breached?

Hon. Vic Toews: I appreciate your comments regarding the Clerk. I think, unfortunately, the message of the Clerk was somewhat garbled in the media to the effect that somehow the time this committee would spend looking into this matter would be a waste of time. I simply wanted to bring that issue forward to say that if, in fact, this committee determines who is criminally responsible for certain actions, that could well be not the best utilization of this committee's time. I think there are better things.

That's why I said that a focus on how this type of intimidation impacts on individual members is a study that is worthwhile for the committee to look at, given the growing utilization of the Internet and other electronic means of communication. I'm glad you brought that forward. I think that in its proper context, the Clerk's comments were....

We should be mindful of the proper role of this committee. We should be careful not to stray into areas where the committee does not have expertise or jurisdiction.

Similarly, Mr. Comartin, in respect to what exact charges could be laid, I can only point at this time to what is publicly known, and that is the issue of the clear intimidation on the YouTube video. In my experience as a prosecutor, had that type of comment been made by a specific individual, there would be charges under the Criminal Code relating to intimidation or extortion.

● (1120)

Mr. Joe Comartin: I think there are provisions within the code specifically with regard to it being a public official. Would that be the type of area that you'd be expecting a prosecutor to pursue?

Hon. Vic Toews: I'm somewhat hesitant to give you any further information. I don't want to be the prosecutor in the case. In many ways, I'm a witness in the case, and I'm going to leave it to the police who are investigating this matter. With all due respect, Mr. Comartin, I think those questions should be brought to the attention of the police. I think that they can clarify that to the extent....

I obviously don't know the full extent of the investigation. I only know the very small part of the investigation that involved me directly.

Mr. Joe Comartin: I think, Mr. Toews, a bit of difficulty we have, on this side of the table anyway, is really the concept of double jeopardy. We're going to have the investigation going on. If they're ultimately successful in identifying the culprit, there will be charges and, assuming a conviction, some penalties. At the same time, if the person's identified at any time, this committee may very well be recommending penalties within the parliamentary system.

I just put that on the record; I don't want a comment on it, but that's a bit of a struggle we're having here.

Hon. Vic Toews: I appreciate your concern. I think that's something that the committee should be mindful of.

Mr. Joe Comartin: Those are all the questions.

The Chair: Okay, great.

Monsieur Garneau is next.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chairman.

Thank you for appearing today, Minister.

It is very clear that you were threatened. It is very clear that what was done was totally unacceptable. I certainly would not want that to occur to me.

When the Speaker ruled, he invoked Speaker Lamoureux's ruling of 1973. It was a totally different world at that time. It doesn't invalidate anything—the ruling is his ruling, and I respect that—but it was a totally different world. I don't think Monsieur Lamoureux could have imagined the kind of world we live in today, where unfortunately ministers who present legislation can sometimes be criticized.

From a practical point of view, the question that I'm still trying to ask myself is what this committee is going to do. I perfectly understand your point of privilege and I would have done the same thing myself, but I'm scratching my head as to what we can do as a committee when one considers that the Anonymous threat that was made against you came through a YouTube video, which is available to anybody on this planet to make. Over and above an investigation by police authorities, which I think is the right thing to do in each case where it may occur, what is it that you are hoping, in practical terms, this committee will do so that in future this kind of thing is not going to occur?

We talked last week with the Clerk. A lot of the talk went into the subject of hacking into people's accounts and things like that, but really had nothing to do with your specific point of privilege, which was based on a YouTube video, which anybody create. The reality is this is going to happen again. It's going to happen to other ministers at different times in the future. What can we do, other than get the police onto it?

•(1125)

Hon. Vic Toews: Thank you, Mr. Garneau.

First of all, let's be clear: I take no issue with criticism of a minister. Whether they choose to criticize my professional position,

my political position, or indeed my personal life, that is fair game. I know it's a difficulty even for members to accept that your personal life is fair game. That's the world we live in, and I'm not going to try in any way to suggest that somehow aspects of my life are off limits. My life is literally an open book. That is, I think, the sacrifice that many of us make when we come into public life: all anonymity is gone. We answer for our lives, both our public positions and our private lives. I just want to make that clear. I'm not concerned about criticism. I'll deal with criticism as it comes. I am answerable, ultimately, to my constituents in that respect.

I think you've raised a very good point. You wondered whether Speaker Lamoureux could have anticipated the world we live in back in 1973; I don't think most of us could have anticipated this world back in 1999. I use that date, which is the date I learned to use a computer. Prior to that time I had been in the elected office in Manitoba, and before that time I was in the private sector for a few years. The world in 1999, when I left the provincial office, had changed; I began to use a computer and realized the full potential of what might follow with the use of the computer. I think it's been a real blessing in that respect.

What we haven't explored, and I think what this committee may seriously want to look at, is how the computer and Internet impact on the institutional integrity of Parliament. I think we have not really examined how MPs can protect themselves in these kinds of situations. We all know about intimidation, blackmail, and extortion, and all those types of things, but the use of the Internet in committing old crimes in new forums is something that is new to us. For the benefit of all MPs, we have to examine how MPs can protect themselves from these types of Internet threats and how the House of Commons can better protect members.

I'm not an expert on the computer and the Internet, but I certainly think there are steps that can be taken, which I don't want to presume to suggest to the committee. I think there are steps that can be taken to better protect members against criminal acts of this nature.

•(1130)

The Chair: Mr. Hawn, you have a four-minute round.

Hon. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chair.

Thank you, Minister Toews, for being here.

In talking about technology, you said it's a blessing. It can also be a curse, obviously, depending on who is manipulating it.

I want to go back to the advisability or practicality of trying to track these guys down. Will this type of criminal ever go away? Will this kind of Internet thuggery ever go away? Like other nefarious groups, these guys are many and shadowy, and we'll never run out of them.

You talk about wanting to make an example of them; I would fully support that, but does it really hurt them, or does it give them some kind of pathetic martyrdom if one of them gets apprehended and punished? Do you still think that's worth pursuing, or should we basically suck it up and try to encourage a more honest dialogue, a more open dialogue? The natural human reaction is to catch them and punish them, and I couldn't agree more, but are we going to give them more of a platform by doing that?

Hon. Vic Toews: You know, it's a little like whacking a mole. They keep on popping out of another hole, and that's the nature of their game.

What concerns me is that there are good people out there who look at politics and being in elected office as a way of doing good in society, doing good for our country. I think for the House of Commons to throw up its hands and simply say that this is always going to happen, that these criminals will always find another way of doing it... If the House is not supportive of individual members in trying to find ways to lessen the impact of or the opportunities for that type of criminal activity, we are a poorer country for it.

On the whole issue of who Anonymous is, I don't think it's a particularly well-organized group. These are individuals, as far as I understand it, who can choose to belong to Anonymous whether other members of Anonymous want them to be there or not. In many respects these are individuals acting on their own. The fact that an individual can eventually be held accountable, whether it's through this type of process, a committee process, or through the criminal process, is an effort that is very necessary.

People like me and people like you have developed a thick skin. This is something we've been through and we probably will be through it many more times yet, but we owe something to younger parliamentarians or those who are looking at entering Parliament. What type of protection do we offer colleagues who choose to serve the public in this way? That's something that the House cannot give up on and needs to address, even though the challenge does appear to be overwhelming from time to time.

Hon. Laurie Hawn: I agree.

While we're talking about actual criminal activity, they hold themselves out as defenders of democracy and so on, but back on March 13 they reportedly took credit for a cyber attack on some servers that gave them access to 9,600 non-expired credit cards. According to this one report, they charged at least \$700,000 worth of false credit charges for personal gain, so it's beyond intimidation and the personal stuff; it's purely criminal. It's theft and fraud. It's not just the kind of thing that we're talking about; they appear to have gone well beyond that.

Hon. Vic Toews: I'd be careful not to attribute the non-criminal activity of some of these individuals to the criminal. It's not an association that we can necessarily make. Even when somebody is talking on behalf of Anonymous, who are they really talking on behalf of? Perhaps it's themselves and one or two others, and not on behalf of others who may exploit the Internet for other criminal activities.

What I'm hoping the committee can look at is how we, as parliamentarians, react when one of our colleagues is being intimidated in this fashion. What type of support do we offer them, in terms of ensuring that they can continue to carry out their responsibilities to the people who elected them from their riding?

• (1135)

The Chair: Madam Charlton is next.

Ms. Chris Charlton (Hamilton Mountain, NDP): Thank you, Mr. Chair.

Thank you, Minister, for being here today.

I want to follow up on the line of questioning we started with last week. I know that you indicated you'd followed the story both in the media and through *Hansard*, so let me go directly to that point.

Most of us here in this room would agree there was a indeed breach of privilege. All of us would also share your concerns about the seriousness of such a breach. I have a more difficult time with the second two of our responsibilities: to find who the culprit is, and then to determine the remedies or penalties that ought to be applied for such behaviour.

You suggested that you have some concern about the perception that House wouldn't be supportive of pursuing this. I don't think that is an impression anybody had hoped to leave.

On the other hand, there is a reality that we have to confront. It's true that we have to protect ourselves from intimidation, but I heard you say—and you can correct me if I'm wrong—that we need to pursue this so that we can restore the integrity of our systems, except from my perspective, this wasn't a hacking job. There was no breach of computer security here on the Hill and there was no concern about the security of our BlackBerrys, our desktops, or anything of that nature, so it's not really a matter of defining a remedy in terms of enhancing computer security here on the Hill.

Anybody can post a YouTube video from anywhere, and that's quite different from somebody who is hacking into our systems. For the kinds of issues we are looking at here, remedies probably lie within the Criminal Code, perhaps in our defamation laws.

I wonder if you could clarify the remedy you are seeking, and where you feel that the House may be letting you down if it doesn't pursue this as you envision it ought to be pursued.

Hon. Vic Toews: In many ways, I'm a novice at this. Many of us who have been parliamentarians, whether in provincial legislatures or federally here in Parliament, have been intimidated before in one way or another. This intimidation may or may not amount to blackmail or extortion under the Criminal Code. What this situation brings to light is the use of the Internet to intimidate members in an anonymous manner. Are there any steps that can be taken?

I don't presume to know what the experts may tell you in their testimony. The experts may all come here and say there is nothing you can do and you're just going to have to suck it up and be intimidated. I hope there are those who have thought about these situations, who have the expertise, and who can give you some better solution than to tell us that this is the way of the world and that's what you bear when you become a member of Parliament. I would hate to think this committee would simply decide that this task is so overwhelming that you have to just call it a day because nothing can be done.

Let's hear from the experts. I think the committee will call certain experts. At the end of the day, if all of the experts say there is nothing that can be done, perhaps then we'll have our answer. I think it would be premature for me to provide you with that kind of conclusion at this time.

•(1140)

Ms. Chris Charlton: Minister, I look at this as the 21st-century version of an anonymous letter. If someone in the 1970s or 1980s sent an anonymous letter with the exact same message, what would have happened?

Hon. Vic Toews: Certainly, there would have been a criminal investigation, but there may well have been certain steps that the House might have taken. The actual mechanism by which the threat is being conveyed is a new phenomenon for members of Parliament. How do we respond to something like this? Is it acceptable because we don't have the technological tools to ferret out those who are responsible? Is there nothing we can do? Maybe that will be the conclusion of the committee, but I don't think that an investigation by this committee is a waste of time.

The Chair: Mr. Lukiwski, you're up.

Mr. Tom Lukiwski: Thanks. I think one of my colleagues also has questions.

Quickly, Minister, what I'm concerned about in situations like this is the consequential effect of, for lack of a better term, piling on. In other words, as we've seen before, once a level of criticism starts against any member or minister, it seems that it goes on and on.

I'm not sure whether you want to respond to this question or not, but beyond the anonymous threats that were posted on YouTube, do you consider that you have received any other credible threats against either the performance of your job or your physical security?

Hon. Vic Toews: I'd rather you asked the police that question. I don't want to talk about any threats that have been made. I can indicate that they are broader than the issue of the threats on YouTube.

Mr. Tom Lukiwski: Thank you.

The Chair: Go ahead, Mr. Zimmer.

Mr. Bob Zimmer (Prince George—Peace River, CPC): Thank you, Minister, for being here today.

I think my colleague Mr. Lukiwski mentioned earlier that all parties are involved in this thing. The NDP saw an example on the weekend from whoever was trying to subvert their process in their leadership selection, so I'd like to frame it in broader terms than just parliamentarians. I'd like to frame it, basically, in terms of freedoms of all Canadians.

Essentially it becomes.... Parliament is an example of who our constituents wish to be here. We're an example of that. I would say this group typically claims to be part of their own democratic process and claims to be supportive of it, but they really are subverting the process as opposed to being part of it.

I think you said it as well. There are really two elements here. There are some that are more nefarious, but there are also more the innocent members, I would say, who have an innocent affiliation with the group. For whatever reason, it emboldens them to hide behind the name. I would challenge those groups that want to be part of the process to be part of the process.

I would like to know your opinion. If Anonymous was sitting right here, what would you say to them?

Hon. Vic Toews: Aside from introducing them to a police officer, I would raise the entire issue.... Freedom of speech, I think, is one of the most precious freedoms that we have in this country. I defend freedom of speech very vigorously. That's why I take no issue with the fact that people choose to point at allegations about my private life. Because we are in the political realm, that is something that we have to learn to live with, whether the allegations are true or not.

Now if they are not true and it's worth your while, you can, of course, utilize defamation and other sections under the Criminal Code that relate to the intimidation of public officers, as Mr. Comartin mentioned. I see this kind of activity, the utilization of so-called free speech, to forward criminal activity as being a very dangerous and regrettable thing, because I think that then has certain repercussions in terms of the passing of laws or other restrictions on freedom of speech, which I would be very concerned about.

•(1145)

Mr. Bob Zimmer: Right.

I would just add a little question. Do I have no more time?

The Chair: Hold that thought.

Go ahead, Mr. Toone.

[Translation]

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Thank you.

Thank you, Mr. Toews, for having come to meet with us today.

I agree that your privileges have been breached. There is not a doubt in the world. I think that all the members of this committee share that opinion. Like several of the members who sit on this committee, I am concerned about what we and the committee can do to remedy this. In my opinion, the measures this committee should consider are not obvious. When dealing with matters of privilege, we normally turn to the Speaker of the House, or the chair of the committee, who guides us.

In this case, we want to find a solution regarding these threats, but I don't know if this committee is in a good position to solve the issue. Certain bills undeniably generate debate. You mentioned during your first statement that this was the case for bill C-279, on gender identity and gender expression. The purpose of that bill was to introduce solutions for dealing with certain threats. I don't think it generated threats against a member of Parliament. So I don't know if it is really a good example.

Of course, this is not the first time that a member of Parliament has been threatened. However, since this happened outside of this Parliament and since you are the Minister of Public Safety, it seems to me that you are in a very good position to tell us what solutions you think this committee should look at.

[English]

Hon. Vic Toews: As I've indicated, I don't think the whole relationship of the responsibilities and duties of a member and the utilization of the Internet in this fashion has ever been explored or discussed. I think that you're getting certain experts who will talk about that relationship and then you will be in a position, after hearing the evidence, to make the determination of what steps, if any, you can take. At this point, I'm not in a position to be able to say this is what you should or should not do, but very generally, is there any way that MPs can be protected from these type of threats, and are there any steps that the House of Commons can take to better protect its members?

Mr. Philip Toone: Maybe we could be more precise as to what threats we're talking about, because we did get expert testimony at the previous meeting of this committee regarding locking down the technology and attacks on the internal network within Parliament. There were also discussions over the lack of security in riding offices, but that's certainly very different from a YouTube video being posted freely on the Internet and certainly beyond the scope of the Chief Information Officer's capacity to be able to control.

Maybe you could explain what specific threats you want this committee to remedy and how you want those threats remedied.

• (1150)

Hon. Vic Toews: The Speaker's decision stands and speaks for itself. There's been a breach of a member's privileges in terms of being able to carry out their responsibilities. Do the Internet and electronic communications add a new dimension to the world that Speaker Lamoureux saw in 1973? To what extent has the Internet changed the way we relate to our constituents and to the general public, and the privileges that have been developed in respect of the members here in the House? Are there any steps that can be taken in respect to even a general posting, as you have suggested? I'm not saying that there are. I think this is something that the committee ought to examine.

The Chair: Mr. Albrecht is next.

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

Thank you, Minister, for being with us today.

I would like to respond to a comment made by my colleague across the way, which was that perhaps the situation we're facing today is the 21st century version of what happened 40 years ago with an anonymous letter. I couldn't disagree more. Certainly the anonymous letter was a threat, but it was probably seen by a few people at most.

Here we have a situation in which a threat is seen by millions of Canadians, and possibly by billions of viewers worldwide. I think it's a huge difference in terms of the implications of the potential threat that we as parliamentarians open ourselves up to.

You pointed out rightly that when we enter politics, we are very much aware of the risks we take on in terms of criticism. None of us expect to do our job without criticism, and you've indicated that we develop a rather tough skin to be able to face that and deal with it.

Another colleague commented earlier and implied that because something's posted on YouTube, there's really not much we can do. I think to accept that we just have to go on as normal is perhaps too easy a way out. If threats are made, especially against a public official, is it not reasonable for us to expect that there would at least be a criminal investigation in terms of the livelihood of the person who is being threatened?

Hon. Vic Toews: Not only do I think it's reasonable to expect it, I think our parliamentary system demands it. What steps should Parliament or a committee take if a member is being intimidated, coerced, or extorted on a public website because of his or her responsibilities and actions in the House of Commons? Maybe many of you have already heard this from constituents who are concerned about false statements being made on the Internet. How does one talk to YouTube, short of filing a legal action to get them to take it down?

I think this is something that needs to be discussed. If something clearly criminal in nature is on the Internet, especially if it relates to the duties of a public official, does the House of Commons have a responsibility to approach those who post it or provide the service and indicate that it is inappropriate and should be taken down? To what extent should that be done? Could that be properly done? I'm always mindful of the fact that we, as a House of Commons, shouldn't interfere with freedom of expression, but that, of course, has its lawful limits.

• (1155)

Mr. Harold Albrecht: I want to thank you, Minister, for raising this issue. You've certainly been very vulnerable. I think it's important that we address it, because it impacts on those who may be considering entering public service. As you rightly pointed out, everybody around this table entered public service to serve Canada and make it a better country for our children and grandchildren. A threat of intimidation will certainly make it less likely that many of these people will step forward to serve.

My thanks to you.

The Chair: Thank you.

Madame Latendresse may ask a short question. Then Mr. Kerr may ask a short question also.

[Translation]

Ms. Alexandrine Latendresse (Louis-Saint-Laurent, NDP): I would like to go back to your opening statement. You referred to the work by O'Brien and Bosc that explains why you consider this to be a breach of your privileges. In the same book, a little further on, in chapter 3 on privileges and contempt of Parliament, O'Brien specifies quite clearly that if the person responsible for the contempt or breach of privilege cannot be identified, the practice is simply to declare that there has been a breach of privilege, but that nothing more can be done. The book explains that there have been many breaches of privilege, and provides a list. We recognize that there has been a breach of privilege. That is unfortunate, it is deplorable, but it seems the committee or the House can do nothing more. Has legal action been instituted? I think that the only authorities who could do something are those who could, with the help of YouTube or something akin to that, track down those who did this.

Concretely, the committee is trying to see what it can do. We fail to see what more we can do here. There is going to be an investigation, that is one thing, but it is not our role to conduct a criminal investigation. Can you tell us where you want us to go with this?

[English]

Hon. Vic Toews: At the risk of repeating myself, I'm not asking this committee to become a court of criminal investigation; I am asking this committee to consider the impact of this type of activity, through the use of the Internet, on the ability of members to carry out their responsibilities. Do we simply say it is a fact of life in the 21st century that members will be intimidated in a criminal fashion, and Parliament has no remedy and can't take steps to lessen the impact of this?

[Translation]

Ms. Alexandrine Latendresse: As Ms. Charlton was saying earlier, it is a little as though you had received an anonymous letter.

[English]

The Chair: Thank you.

Mr. Kerr may finish with one quick question.

Mr. Greg Kerr (West Nova, CPC): Thank you, Minister, for being here.

The Speaker's ruling talks about the flagrant disregard of traditions. I think we're all under attack with that in the social media and all that is taking place. More important is the attack on the fundamental privileges of members.

In that context, I'm wondering if you're suggesting or thinking about not only upgrading information and so on, but also checking with other jurisdictions as to best practices and that type of thing. The fact is that social media are changing dramatically quickly, with the advent of groups and organizations—or disorganizations, whatever you call them—that are interjecting.

Do you see that as the kind of role we should pursue?

Hon. Vic Toews: I can hardly think that what has happened to me and to the privileges of all members in this particular case is unique. There must be other examples in other democracies, and I think it would be worthwhile for the committee to at least contact other jurisdictions to see what steps, if any, they felt were necessary in that context.

The Chair: Thank you for coming today to give us your time and help with this investigation.

We will suspend for a couple of minutes while we change our witnesses.

• _____ (Pause) _____

•

• (1200)

The Chair: I call the second half of our meeting back to order.

We have Professor Franks with us today. He has been at our committee before.

It's always a great day when you're here, sir. I understand you have a bit of an opening statement. Then we'll go to questions from the members. You know how all this works.

Dr. Ned Franks (Professor, Queen's University, As an Individual): I'm always surprised, sir, but it's an honour to be here. I prepared some remarks which, with the permission of the committee, I will read, because I tried to be very precise in my expression of things.

My observations on the privilege issue raised in the House of Commons by the Honourable Vic Toews, the Minister of Public Safety, on February 27, 2012, are those of a non-lawyer and an outside observer of the unfortunate events that occurred in the House of Commons in recent weeks. These events are too well known to be recapitulated here.

Mr. Toews raised three issues of privilege: one, the use of House resources for the so-called Wikileaks30 account on Twitter, which he claimed was used to attack him personally, thereby degrading his reputation and obstructing him from carrying out his duties as a member of Parliament; two, an apparent campaign to inundate his office with calls, emails, and faxes, which he contended hindered him and his staff from serving his constituents and preventing constituents with legitimate needs from contacting their member of Parliament in a timely fashion; three, the videos posted on the website YouTube by the so-called Anonymous on February 18, 22, and 25. These videos contained various allegations about the minister's private life and made specific and disturbing threats against the minister.

On the first, the Speaker ruled on March 6 that in view of the unequivocal apology of the interim leader of the Liberal Party, he was prepared to consider this particular aspect of the question closed.

On the second, the Speaker concurred with an earlier ruling by Speaker Milliken, which was that while the member had a legitimate grievance because the normal functioning of parliamentary offices had been affected, the members involved and their constituents had still maintained the ability to communicate through several means, and he thus could not find a prima facie case of privilege.

On the third issue, which to Mr. Toews was the most troubling one, the Speaker ruled that:

...when duly elected members are personally threatened for their work in Parliament, whether introducing a bill, making a statement, or casting a vote, this House must take the matter very seriously.

He concluded that the online videos did, indeed

...constitute a direct threat to the minister in particular, as well as other members. These threats demonstrate a flagrant disregard of our traditions and a subversive attack on the most fundamental privileges of this House.

The House referred the matter to the procedure and House affairs committee for investigation.

My remarks here will deal with only a few of the issues this important matter of privilege raises: first, the context and events that led to the anonymous threats against the minister; second, the issue of harm versus offence in this sort of verbal assault; third, the peculiar difficulties facing the House in pursuing this matter; and fourth, what punishment the House can impose if it makes a finding of a breach of privilege.

First is the context and events. This issue began with the introduction into the House of Commons of Bill C-30. Its long title when it was introduced and received at first reading was An Act to Enact the Investigating and Preventing Criminal Electronic Communications Act and to amend the Criminal Code and other Acts. Its short title, as introduced, was the Protecting Children from Internet Predators Act.

Mr. Toews was posed a question in the House: Mr. Speaker, the government is preparing to read Canadians' emails and track their movements through cellphone signals, in both cases, without a warrant.

How can we trust them not to use private information to intimidate law-abiding Canadians...?

In response, the minister stated:

We are proposing measures to bring our laws into the 21st century and to provide the police with the lawful tools that they need.

He added that the questioner

...can either stand with us or with the child pornographers.

Ms. Elizabeth May told the House that when the bill was first given to the opposition, its short title was the "Lawful Access Act". The government had subsequently changed the short title to the more inflammatory Protecting Children from Internet Predators Act. Ms. May wondered if there was a point of order in this change. The Speaker found that there was not. A cynical observer might suspect that the government made the last change to the bill's title so that the minister could utter his one-liner that the questioner "can either stand with us or with the child pornographers".

• (1205)

Opposition members of Parliament, much of the media, and many others found the minister's comment offensive.

Meanwhile, Wikileaks published the court record of Mr. Toews' divorce case on the web. Several government ministers accused the NDP of releasing the court document. Subsequently the interim leader of the Liberal Party, Bob Rae, informed the House that one of his party's staffers had leaked the information and that this staffer had been fired.

A point of privilege raised by Mr. Toews relates to only a very small part of this long and complicated story, which is the anonymous threat of bodily harm to the minister on a website outside the purview of Parliament. The matter that is the subject of this privilege investigation came to Parliament as one of a long series of events instigated by Mr. Toews' comment that the choice was to stand either with us or with the child pornographers. Nevertheless, it was a product of that statement.

It is worth noting that there were flaws in this bulky piece of legislation, that it deals with far more issues than child pornography, and that the original title, "Lawful Access Act", more accurately described its contents than the title "Protecting Children from Internet Predators Act".

Now I'll make some comments.

First, the minister's claim that a member can either stand with the government or with child pornographers, to say the least, denies the parliamentary principle that it is the duty of Her Majesty's loyal opposition to oppose and not acquiesce meekly to all proposals of

Her Majesty's government. It was an unnecessary, aggressive, and inflammatory comment, in my view.

Second, I wonder whether there is a serious and identifiable harm involved in this matter or whether the threats made on the Internet are simply offensive. I take no sides on this; I do want to suggest that for an action or utterance to be found to constitute a breach of privilege, it should come closer to meeting the test of causing a harm rather than the lower threshold of being simply offensive.

Third, if the House determines that there has been a breach of privilege in this matter, what sanctions can it impose? At the time I write this, Parliament has not been able to identify the anonymous perpetrators of the web material at issue. Can the House find that there has been a breach of privilege committed by a person or persons unknown? Even if the perpetrators are unmasked and found guilty, what happens then? The House can put persons found in contempt of Parliament into custody, but this has been done rarely, and only in the distant past.

Fourth is the risk, arising from these events, of reducing public regard for Parliament and politics. The concept of and administrative studies on the tone at the top refer to how an organization's leadership creates the tone at the top and an ethical or unethical atmosphere in the workplace. The tone at the top has a trickle-down effect on employees. If top managers uphold ethics and integrity, so will employees, but if upper management appears unconcerned with ethics, employees will feel that ethical conduct is not a priority. In short, employees will follow the examples of their bosses.

In the question of parliamentary privilege examined here, the public is the parliamentary equivalent of employees. The tone at the top, as shown in the words and behaviour of MPs, affects public respect for and trust in their Parliament and parliamentarians. In my view, and I regret to say this, the tone at the top has not been entirely high in this issue.

Thank you.

• (1210)

The Chair: Thank you, Professor Franks.

I believe I have Mr. Reid first.

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

Professor, this the second March in a row we've had you back here as a witness. The last time we had you in here, the government fell. We're hoping we can have a different outcome after you've been here. I don't hold you personally responsible for that, by the way; in fact, I thought the testimony you gave last time regarding the costing of bills was very good. Of course, as you know, I approached you afterward, and I have since passed that on to other people. I thought it was very sound testimony during what were, frankly, a set of histrionic hearings, so it was much appreciated.

I wanted to get into the dividing line between offensive and threatening. That is a question that is not, I think, dependent upon the kind of technology used. Once we've dealt with that, perhaps we'll have time to talk a little bit about how technology and the use of the Internet may cause something to be different in nature, perhaps, than it was when done in a pre-Internet paper world.

With regard to the question of what is merely offensive and what is threatening, do you have any additional thoughts as to where one draws the line and how one establishes where something becomes threatening?

Dr. Ned Franks: I can do that, but it's simply an opinion on an extremely difficult topic. What I'm trying to suggest is that there's a spectrum here. It begins with things that are obviously offensive, but only offensive at one end. At the other end, it has items that are clearly producing harm and that I believe should be regulated by the law.

The person I'm quoting is a very conservative judge in England, Lord Devlin, who said that the law should be used when the issue at stake involves feelings of intolerance, indignation, and disgust. If we apply that here, we should ask whether the remarks of Anonymous on the web about the Honourable Vic Toews engender in us, and particularly the committee members, feelings of intolerance, indignation, and disgust; any two of those, I think, would do for this.

This is obviously very subjective. We're beyond harm, but we're in an area where we do have to ask whether we should use the power of the law or whether we should leave it as something outside of it. All I can say is that the answer changes over time. It's really up to this committee to ask if they feel, as MPs, that this kind of threat produces not only indignation and disgust but a very real potential harm. Then I think that you go on.

•(1215)

Mr. Scott Reid: I was going to ask about that. One of the thoughts that occurred to me was the distinction between being offensive and being threatening. That which is offensive is to some degree subjective, whereas that which is... As well, we see reversals of valence on this sort of thing; the 8th Army called themselves the Desert Rats. Originally that was a term of disdain, and they said that they kind of liked it.

Offensive is to some degree subjective, whereas threatening presumably is measurably objective. If I threaten to beat someone up as opposed to threatening to kill them, as opposed to threatening to burn their house down, those are three distinct types of objectively definable offences. I'm wondering about your thoughts on that.

Dr. Ned Franks: Yes, I agree. On the other hand, there are parts of the law that protect people from offensive or potentially harmful speech acts, such as libel, sedition, or obscenity, and there are others.

What we have here is a speech act—well, calling the web “speech” is, I think, acceptable here—that issued a threat and also made other derogatory comments, as far as I can understand. The question is the threat. I have seen members threatened before. Often threats are figures of speech. One doesn't know what lies behind it, but at the minimum, it's an offensive thing to do.

The question before the committee is that if it goes beyond that, is it a breach? Clearly, in the doctrine of parliamentary privilege, threats of death against a member or any threats and efforts to intimidate a member in the performance of his or her duties are a breach of privilege.

Mr. Scott Reid: The only threat that would cause the member to act other than the member would act on the basis of an objective consideration of the issues would, I think, have that effect.

Obviously that doesn't include a threat to not vote for you in the next election, but it includes a threat of some sort that causes the normal thought process to be adjusted.

Dr. Ned Franks: I agree, and I made the point here, which I really did not like making but I think has to be made, that the original statement that those who are not with us are in effect on the side of the child pornographers is certainly objectionable. It classes anybody with legitimate objections to the act, which was flawed, as somebody supporting child pornography. I don't think that statement reaches the threshold of a threat, but I find it offensive.

That's the point that I'm trying to get across here. We're in a territory where the privilege act does not stand by issue, does not stand by itself, but is a consequence of something else.

I've often wondered, looking at this, if a member had raised a question of privilege at the minister's statement that those who are not with us are with the child pornographers, whether that would not have been construed as a question of privilege as well. I find it certainly offensive to members who have legitimate disagreement with the act; whether it's a harm, I can't say.

•(1220)

The Chair: I believe your time is up. Maybe you can go back.

Mr. Comartin is next.

Mr. Joe Comartin: Thank you, Mr. Chair.

Thank you, Professor Franks, for being here.

I must admit that I'm not quite clear on your position. If you could put yourself in the position of the Speaker, Mr. Scheer, having heard the arguments you heard from all sides of the House, would you have ruled that this was a breach of privilege in this case?

Dr. Ned Franks: Yes, I think I would have said there was a prima facie breach of privilege on which I would ask the committee to give me advice. I certainly find it offensive, but if I had been the Speaker, I would have asked whether we had transgressed that boundary between offensive and harmful here.

Mr. Joe Comartin: Okay. In terms of the role that we're now having to play as a committee in making a final determination as to whether there has been a breach of the privilege of the member, is the fact that you have threats combined with—let's assume—only offensive words not sufficient? It's very clear: “You must resign your seat and you must withdraw this legislation, or else”. Are the two combined, along with the clarity of what they are demanding as action on the part of the minister or the member, not sufficient to make a final determination of breach of privilege?

Dr. Ned Franks: You're asking me for an opinion on something. I maintain that I'm not a lawyer. I can't give you a legal opinion on it. I can give my subjective, personal opinion.

Mr. Joe Comartin: This isn't a determination. This isn't a court of law we're in right now. This is the political arena.

Dr. Ned Franks: Sir, you are part of the "High Court of Parliament". I'm a citizen, and you're a member of the court in that sense, and you are dealing with a question of law.

I consider it a breach of privilege, and that's a personal opinion. As I said, I'm not trying to persuade the committee to do that.

Mr. Joe Comartin: Okay.

You didn't address much in this regard.

Assuming we ever do determine who the culprit is, the committee has certainly recommended some punitive or corrective action in any number of other cases in the past. Often when material has been sent out, such as in the case of some of the ten percenters that were sent out, new material had to be corrected and the rest of it, so we've taken positions and made recommendations that were adopted by the House or accepted by the culprit.

In a situation like this, what role do we have in recommending what the penalty or the corrective action should be?

Dr. Ned Franks: There seem to me to be two different things. One is the penalties that the House itself can impose. If the House finds and can identify the person, it can bring that person before the bar of the House and find the person in contempt of Parliament. It can put them in jail. Jail, from time to time, has meant either the local municipal jail or a room in a hotel. The person with a jail sentence can continue to the end of the session. The other thing they can do is bring a member, even of the public, before the bar of the House—with the permission of the House, because there is a stranger there—and they can admonish and censure the person. That's it.

For a member of Parliament, you could go as far as you wanted to and declare the seat vacant if you wanted, but the House has a different power over citizens, non-members of the House, who have committed a breach of privilege.

• (1225)

Mr. Joe Comartin: In terms of the way we've approached this historically when an actual criminal act has been committed—and I have to say, Professor Franks, I haven't come across one—and findings of a breach of privilege or contempt of Parliament have been made, whether someone was convicted or not, are we responsible, whether it's been here or in England, for taking into account measures in the criminal justice system that may be applied to the culprit?

Dr. Ned Franks: No. Parliament is free to choose what it wants to do.

If you find a breach of privilege, I believe that the House can refer the matter to the civil authorities and that they can pursue it from then on. A court looking at it could take note of the proceedings of Parliament, and in that sense the record of this committee would be before the courts. The records of this committee would certainly be available for any police investigation.

I'm not sure that answers your question, but I think the role of this House in the matter ends with a report from this committee and what the House does with it. If the House felt that it was a criminal act that

should be dealt with as a criminal act, it could be simply be, as I say, referred to the civil authorities.

Mr. Joe Comartin: Assuming that we have not identified the culprit who made these threats by the time we complete our work, would it be within the normal scope of the work the committee does to say we couldn't identify the person but that if the person ever is identified, we would want the matter referred to the criminal justice system?

Dr. Ned Franks: A committee is free to report whatever it wants, as long as it's in parliamentary language and relevant to the topic. That's certainly both in parliamentary language and relevant to the topic, so the answer is yes.

The Chair: Thank you, Mr. Comartin.

Mr. Garneau is next.

Mr. Marc Garneau: Thank you, Mr. Chair.

Thank you, Professor Franks, for being here.

Am I correct that in your opinion it wasn't entirely clear to you that what Anonymous said on YouTube was of an offensive nature versus a threatening nature? Did you speculate and say that you weren't sure where it was located?

Dr. Ned Franks: Yes, because I have only a limited access to the information available. I have not looked at what happened at this committee before I got here. I don't know the other material that's available, except on the public record—in the newspapers, largely—and I find in civil life that people offer threats frequently. They can say in a joke, "I'll kill you if you do that", but we don't take it seriously.

This is different, because it's a threat to a member of Parliament who is doing his job; the threat is on a public medium, YouTube; and it poses problems, which the minister himself I think very accurately described to the committee. Where you go with it, either as a parliamentary committee or as the police.... At the minimum, I consider it offensive, and offensive in the extreme, but was there an actual harm? I waver on that. I apologize for not being clearer, but I do waver.

Mr. Marc Garneau: It's an interesting thing. I'd like to explore it a little bit more, because I think it is important to establish whether the minister was merely offended or whether he was threatened. Did you see the video or read the transcript?

Dr. Ned Franks: No, sir, I did not.

Mr. Marc Garneau: I'd like to bring up that dimension, because an important element here is that sometimes when something is presented visually, it can be far more powerful in its impact than something that is merely on paper, the exception being Stephen King novels, which scare me just as much when I read them as when I see the movies.

In this particular case, I get offensive tweets on a regular basis and I recognize them clearly as that. I get offensive letters occasionally, and I recognize them as such; however, when I looked at this video, I found it threatening.

I don't know if I would have found it threatening reading it, but I certainly found it threatening looking at it, the reason being that, first of all, you had this character with a mask who was speaking with an artificial voice and was basically saying things to the minister that in my opinion were clearly of a threatening nature. I think that is an important element here. I bring it up because I'm not sure we want the RCMP investigating something that's merely offensive, but we definitely want to get the RCMP investigating something that's threatening.

I'd like to have your views, please.

• (1230)

Dr. Ned Franks: That's for the committee to decide. As I said, I've had limited opportunities to see the videos and other things.

If this committee feels there is a threat involved and that it's a serious one, rather than being offensive—and I would hope that both sides of the House and both sides of the committee would agree—then I think you have a duty to report that. My recommendation would be for the House to report the whole matter to the civil authorities to pursue it from there.

Mr. Marc Garneau: Thank you.

The Chair: Mr. Zimmer is next.

We'll try to do one round, and I think we're going to time out.

Mr. Bob Zimmer: I'll try to talk faster this time.

Thanks for coming, Mr. Franks.

First of all, when you appear before a committee specifically to deal with the video issue, I would question why you didn't know what the script was before you came. You seemed to offer quite a strong opinion toward Minister Toews. You seemed to feel that what he said was really antagonistic and that what he received was somewhat justified. To me, it is striking that you didn't look at the conversation.

Dr. Ned Franks: I can plead two things there. One is ignorance: I didn't realize the video was available. I'm not very good at dealing with the Internet. That's a failure on my part, for which I apologize.

The second reason is that I was before another parliamentary committee yesterday. I try to give the best I can to a committee when I appear before it. I put a lot of work into yesterday's presentation; I'd been working flat out for over a week. I've tried to do the best I could on this by dealing with the material I had available.

If I could do it again, I would like to look at the video, but for my own mind I did not really want to get into trying to make a judgment on the threat. What I tried to do was to present how I would approach the subject rather than give you my conclusions.

Mr. Bob Zimmer: My time is short, but with such an important issue, to me it seemed as though you said the ends justified the means. I suppose I have a problem with your speaking at a public broadcast and sounding as though you're condoning the behaviour as though it were simply another offensive term.

Dr. Ned Franks: I did not try to suggest that, sir.

Mr. Bob Zimmer: I would just challenge you that the next time you appear before a committee you know the script.

Dr. Ned Franks: I make no apologies for that. I have done the best that I could. I have no research resources available to me, and what I tried to deal with—I make no apologies for this—is not to give an answer to this committee that I believe there was a threat here or I don't believe there was a threat.

I've tried to give to this committee how I approach an issue like this and the things that I take into account. I still maintain it is not my job to give you my opinion on whether this is a threat or not and whether there is a question of privilege or not. It is my job to try to discuss it in terms of the history of parliamentary government and the rules regarding Parliament on what has to be taken into account by this committee.

Mr. Bob Zimmer: I would just put it back to you, since I guess you don't fully understand the threat that was made, as Mr. Garneau alluded to. I would put it in perspective. I think all Canadians are watching this issue. They need to put it in their perspective, as Minister Toews is a regular Canadian citizen.

How would a regular Canadian citizen feel if they were threatened—had not had just offensive language used toward them, but threatened—with no act or no result to counter that threat? How would you feel sitting in your house with that threat being lorded over you? How would you feel walking out the door the next day?

• (1235)

Dr. Ned Franks: Many citizens are often threatened, and the threats can be for serious damage. It's a fact of life. I think that it's reprehensible when a public official, doing what he feels is his duty, is threatened for doing it. I'm glad the committee is looking at it.

I'm not sure if I'm answering your question, but as I said, I'm not going to tell this committee what I think it should decide on this issue. I think the threat itself came at the end of a process of other actions and statements, some of which, I think I made clear, I do not like, and that the threat itself was made as a consequence of these previous things.

As a committee you can certainly deal with the issue of the end threat as an issue in itself. I, as a citizen and a student of Parliament, want to again make the point that the threat came as a consequence of other statements and other actions. I will again make the statement that I personally, and I can just say personally, consider Mr. Toews' statement—that those who aren't with us on this are with the child pornographers—to be offensive.

After all, the duty of the opposition is to oppose. If the government, every time a bill comes before Parliament, says that anybody who disagrees with this is with the villains of this world in the sense that was stated so firmly in Parliament, I think our parliamentary democracy is in a sorry state.

The Chair: We'll end that one there, because we're more than a minute over.

Mr. Toone, you have four minutes, but I was pretty good with the other side, so I'll be flexible with you too.

Mr. Philip Toone: Thank you so much. Thank you, Mr. Franks, for your interventions. I appreciate the fact that you came here today and I think that it's very useful information.

I don't expect you're going to be able to answer all the questions that are put to you. I don't think that's the role of any witness; if we did find that kind of a witness, our job would be much simpler. If we could find that super-witness who could answer all our questions, we might be able to appoint that person Governor General or something. Until we find that special person, thank you for the interventions you brought us today.

I want to go back to one of the points. You're saying that Parliament is sovereign and can go as far as it likes. In many ways, that's probably true. I am a little concerned, though; this committee is still trying to find its bearing. It's still trying to find out where it should be going next on this. There seems to be a discussion that we could go into a criminal investigative mode at this point, and I'm a little concerned by that. We already have a parallel structure that offers that as an option.

I don't know if this committee should be going forward with that kind of investigation. If it does, and if it came down with a decision or an opinion—and we heard from the minister that there are ongoing investigations—that would mean we would perhaps have a jurisdictional conflict. We would have two separate institutions coming up with two separate conclusions or possible remedies for the same facts. I wonder where that would put us.

Are we sovereign over all other remedies that are possible in this country? Is Parliament above the courts, for instance?

Dr. Ned Franks: Parliament is a court. We are now in the “High Court of Parliament”. I tried to give an answer there.

On sanctions, if you find that there is a serious breach of privilege of the member and that something needs to be done about it, the sole remedy available to Parliament, as I understand it—and I could be corrected, but I think I'm correct on this—is to find the person, if you can identify him or her, or persons unknown, if you can't, guilty of a breach of the privileges of Parliament.

The sole remedy that the House can do, apart from finding that guilt, is to bring the offending person in front of the bar of the House and condemn that person to arrest. That incarceration can last until the end of the session. Those are the sanctions, but that has not happened in Canada for over 100 years, I believe.

So the remedy is your report, and the House can certainly admonish the person.

• (1240)

Mr. Philip Toone: When there are constitutional conventions that haven't been used in a very long time, we tend to believe they've been extinguished. I'm not sure if we would want to go back to a convention that hasn't been used in over 100 years, especially since we have a process that's already available to us. I don't know why we wouldn't avail ourselves of it, so I'm still a little confused.

If we were to hold somebody until the end of the parliamentary session while he was being investigated by the criminal division or

the police, who has jurisdiction? I would tend to think we would normally be leaving this to professionals with day-to-day experience, but I think this committee is still trying to find its bearings.

Dr. Ned Franks: You don't want to get into the double jeopardy issue. If you want to avoid that, then you as a committee can determine that a possible criminal or civil offence has occurred and you can recommend that the House refer the matter to the appropriate authorities, which would be the police forces. You have that power, and I think that's the way it would go. I would rather not see the committee act as a court of law in this, going apart from the conclusions on the issue in hand.

The Chair: I have Mr. Albrecht and Mr. Lukiwski.

Mr. Tom Lukiwski: Since I think we both have the same question, I'll cede my time to Mr. Albrecht.

Mr. Harold Albrecht: I don't know if it's the same question or not, but I wanted to follow up on this issue of an offence versus a threat. I want to consider a few excerpts that were posted on the Internet to try to give you a handle on this.

Anonymous tells Minister Toews they're not bluffing, and that they'll give him seven days to reflect upon his personal and political crimes. Anonymous then demands Minister Toews' immediate resignation, as well as the scrapping of Bills C-30 and C-11 in their entirety. They say they “know all about” Minister Toews and threaten to release more information during Operation White North unless he accedes to their demands.

I recognize those are not physical threats, but it appears to me that they are clear threats against our democracy. If a person or a group can threaten to subvert the legislative agenda of any government, is that not a threat?

Dr. Ned Franks: Yes, it is. On the other hand, if you went back into the history of the Canadian Parliament and the relationships between members of Parliament and the greater public, I wonder if you wouldn't find that threats like this have been a constant at public meetings and in the newspapers and other things.

Now, these threats are exaggerated at the far end of the spectrum. As you quote them, they go beyond the merely offensive into the realm of the fairly serious, but they've always been there, and you can't look at them as unique. The unique thing, to my mind, is the anonymity.

In the past we've known who makes the threats. If somebody at a meeting throws a tomato at a member of Parliament, it's a pretty clear threat, and you know who did it, but the anonymity of the web has added a dimension that was much less important before, and this raises problems.

• (1245)

Mr. Harold Albrecht: In addition to the anonymity, there is the sheer magnitude of the dispersion of this kind of threatening communication to a large segment of our population. I think this is a crucial issue that we cannot forget.

Dr. Ned Franks: In the past, police power was often used against the mob. There were many occasions when the state regarded the citizens as the enemy. This is more clear in continental jurisprudence than it is in our British tradition. The ultimate law is the safety of the state. That's an old legal principle—*lex ultimus salus populi est*.

The state has always had the power, whether it admits it or not, or whether political theory admits it or not, to ensure that the state itself survives. In that sense, an attack on a minister of Her Majesty's government is a threat that I think the state, in the form of Parliament, has to respond to. Surely a basic element of our democracy is the right of elected members to go about their business.

Mr. Harold Albrecht: Thank you.

The Chair: Mr. Lukiwski, do you want to finish that up?

Mr. Tom Lukiwski: The question I wanted to get to is quite fundamental. It appears to me quite clear that despite your observations about the minister's musing about you're either with us or with the child pornographers, Anonymous was not reacting to that; they were reacting to the bill. They don't want any bill that might be able to uncover the guise of their own anonymity. They were reacting to Bill C-30. They made no reference in any of their comments to Minister Toews about his musings on either being with us or with the child pornographers.

My question, then, is simply this: do you not believe that the threat was based on the legislation introduced rather than on anything he might have said in an offhanded comment?

Dr. Ned Franks: I would be astonished if the members of Anonymous would have read that legislation without the attention paid to the original comment by the minister. I confess that I have not read the legislation and I have no opinion about it, but I do ultimately trust Parliament and the courts in this country to establish a boundary in this vexatious issue of what happens on the web, a boundary between what is acceptable under the law and what isn't. We're not there yet. This is a very new and very difficult area, because in some ways the web is private communication between people and in other ways the web is a statement of a public utterance. Sometimes the border is not clear between them.

Mr. Tom Lukiwski: My final comment would be this, and we won't get into a long conversation because you haven't read the legislation—

The Chair: Good, because we don't have time.

Mr. Tom Lukiwski: Anonymous not only called for the removal, in its entirety, of Bill C-30, but also Bill C-11, the Copyright Modernization Act. It is clear to me, at least, and I believe to those of us on this side of the table, that there was a threat against the legislation, not against anything else. I think that's the fundamental issue we have to deal with here. There is a group out there trying to prevent a government of the day from introducing and passing legislation.

The Chair: Thank you.

Do you have a quick comment, Professor?

Dr. Ned Franks: I did look at the legislation. I must confess that I have not memorized it, but I took a great interest in it. I felt that it was a pretty decent piece of legislation, save for that question of when must the government go to the courts for a warrant to intrude into the privacy of communications on the web. That, it seems to me, was the basic issue that still lurks in this legislation and that Parliament is going to have to come back to.

The Chair: I'm going to let a different committee of Parliament deal with that one, Professor.

Thank you very much for your time today. Thank you for coming and sharing with us. It is great to have you here again.

We will suspend for one minute while we go in camera to talk about committee business.

[Proceedings continue in camera]

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