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# Standing Committee on Access to Information, Privacy and Ethics

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Chair: Mr. Chris Warkentin





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• (1105)

[English]

**The Chair (Mr. Chris Warkentin (Grande Prairie—Mackenzie, CPC)):** I call this meeting to order.

This is the 29th meeting of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

I'd like to remind members and the public that today's meeting is televised and will be made available via the House of Commons website.

Pursuant to the motion adopted by the committee on Friday, December 11, 2020, the committee is resuming its study on the protection of privacy and reputation on platforms such as Pornhub.

We have with us today the Minister of Public Safety and Emergency Preparedness, the Honourable Bill Blair; the Minister of Justice, the Honourable David Lametti; and the Commissioner of the RCMP, Brenda Lucki. Since we are starting a little late today, I will ask the ministers to introduce the officials who are joining them.

Before we get started, I will ask for the committee's indulgence for just one second. When we last met, we did have a discussion and there was a growing consensus amongst committee members to hear from the law clerk. We have set aside the third hour of this meeting to hear from the law clerk, so he can provide us with information that would be helpful when making decisions with regard to the issues that were being discussed at our last meeting. The law clerk is prepared to answer those questions at one o'clock today. I just wanted to make members aware of that. We will turn to that after the first two hours of this meeting.

Ministers, we will now hear from you.

Minister Blair, I believe you will be going first.

**Hon. Bill Blair (Minister of Public Safety and Emergency Preparedness):** Thank you very much, Mr. Chair, and good morning to members of this committee.

I'd like to begin by thanking all of you for the invitation to join you this morning for this very important and very timely study on a very significant issue.

As I think as everyone recognizes, the sexual abuse and exploitation of a child—any child—in any context, in any platform and in any place is intolerable and unacceptable. It is the most heinous of crimes and deserves society's strongest condemnation and our effective response.

Recording the sexual abuse of a child can have significant life-long impacts on both the victims and the survivors of this crime. Sadly, as some of these victims grow older, many come to realize that their images continue to be circulated on the Internet, and they are revictimized over and over again as this material is shared.

I'd like to take this opportunity to recognize the remarkable courage and resilience of survivors in coming forward and speaking out. I've had an opportunity to meet with [*Technical difficulty—Editor*], and I think I share this committee's appall at reports that abhorrent material of this kind has been found on platforms. It is unacceptable that the victims have encountered difficulties in getting companies to remove this illegal content.

Their stories and experiences remind all of us of the important work that we must do and are doing to protect children and youth. The Government of Canada plays a leading role in these efforts to combat online child sexual exploitation and, Mr. Chair, we are taking action to increase awareness and to reduce the stigma of reporting. This is important, because we know that the number of reported cases is just the tip of the iceberg when it comes to the true scale of this most heinous of crimes.

Internet companies must also do more to protect children, and we are taking steps to hold them to account for their role in this. We are also taking action to bring more perpetrators to justice by supporting efforts to detect, investigate and prosecute these cases. I have asked the RCMP commissioner to continue to work with her provincial and territorial counterparts to address this crime and to ensure that prosecutions are done when deemed appropriate by evidence and by law enforcement.

Canada's national strategy on this issue is led by Public Safety Canada, which works in partnership with the RCMP, the Department of Justice and the Canadian Centre for Child Protection or, as it's very often known, C3P. We are backing this national strategy with ongoing annual funding of more than \$18 million. That includes support for Cybertip.ca, a national tip line operated by C3P. It also includes \$5.8 million in ongoing funding announced in 2018 to increase the investigative capacity of the RCMP's National Child Exploitation Crime Centre.

On top of this, in budget 2019, we invested \$22.2 million over three years in additional funding to better protect children from this horrendous crime. Of that amount, \$15 million is specifically aimed at enhancing the capacity of Internet child exploitation units in municipal and provincial police services right across Canada. These specialized units are dedicated to investigating cases of online child sexual exploitation. Investments in budget 2019 are also helping to increase public awareness of this crime, reduce the stigma associated with reporting and work with the digital industry to find new ways to combat sexual exploitation of children online.

At the same time, it's important to acknowledge the complexities and jurisdictional challenges involved in what is often a borderless crime. Perpetrators and victims can be located anywhere in the world, and images of child sexual abuse and exploitation can be shared on platforms that may be headquartered in one country but legally registered in another, with servers in yet a third and different country.

This affects the authority and challenges the ability of Canadian law enforcement agencies to investigate, and the application of Canadian laws, but I am confident that law enforcement continues to do everything possible to investigate these horrendous crimes and prosecute those responsible. International co-operation is key in this regard. I want to assure you that the RCMP and the Department of Justice work very closely with international partners on investigations and prosecutions.

We also work closely with our international allies and partners to find solutions to better protect children and youth. Last year, for example, Canada and its Five Eyes partners launched the "Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse". These principles are a guide for industry on how to counter this scourge on their platforms.

We recognize also that there is much more work to do, and that's why we will introduce legislation to create a new regulator that will ensure online platforms remove harmful content, including depictions of child sexual exploitation and intimate images that are shared without consent. Public Safety Canada and other departments are working on this proposed legislation with Canadian Heritage, which leads this effort.

We will continue to do everything we can to protect Canadian children and support Canadian survivors of this terrible crime, and we will continue to work with domestic and international partners to investigate cases in which evidence exists and bring the perpetrators to justice.

Thank you very much, Mr. Chair.

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

We'll turn to Minister David Lametti.

• (1110)

[*Translation*]

**Hon. David Lametti (Minister of Justice):** Thank you, Mr. Chair.

I'm accompanied today by François Daigle, the associate deputy minister of the Department of Justice. Thank you for the invitation to appear before you today.

I'd like to make some general comments on some of the issues raised during previous meetings of the committee's study.

I'd like to emphasize that the government is committed to keeping our children safe, including online, as Minister Blair just said. Canada's criminal legislation in this area are among the most comprehensive in the world.

[*English*]

The Criminal Code prohibits all forms of making, distributing, transmitting, making available, accessing, selling, advertising, exporting and possessing child pornography, which the Criminal Code broadly defines as material involving the depiction of sexual exploitation of persons under the age of 18 years.

The Criminal Code also prohibits luring—that is, communicating with a young person, using a computer, including online, for the purpose of facilitating the commission of a sexual offence against that young person. It prohibits agreeing to or making arrangements with another person to commit a sexual offence against a child, and it prohibits providing sexually explicit material to a young person for the purpose of facilitating the commission of a sexual offence against that young person.

Furthermore, the Criminal Code also prohibits voyeurism and the non-consensual distribution of intimate images, which are particularly germane to both the online world and the discussion we are having today.

Offences of a general application may also apply to criminal conduct that takes place online or that is facilitated by the use of the Internet. For example, criminal harassment and human trafficking offences may apply, depending upon the facts of the case.

Courts are also authorized to order the removal of child sexual exploitation material and other criminal content, such as intimate images, voyeuristic material or hate propaganda, where it is being made available to the public from a server in Canada.

[*Translation*]

In addition to the Criminal Code, as Minister of Justice, I'm responsible for the Act respecting the mandatory reporting of Internet child pornography by persons who provide and Internet service. This act doesn't have a short title, but law practitioners refer to it as the mandatory reporting act.

[*English*]

In English, it's the mandatory reporting act, or MRA.

[*Translation*]

Under the mandatory reporting act, Internet service providers in Canada have two main obligations. The first is to contact the Canadian Centre for Child Protection when they receive child pornography complaints from their subscribers. This centre is the non-governmental agency that operates Cybertip.ca, the national tipline for reporting the online sexual exploitation of children.

The second obligation of Internet service providers is to inform the provincial or territorial police when there are reasonable grounds to believe that its Internet services have been used to commit a child pornography offence.

[*English*]

While Canada's laws are comprehensive, it is my understanding that there has been some concern as to how they are being interpreted and implemented, especially in relation to the troubling media reports about MindGeek and its Pornhub site.

Since I am the Minister of Justice, it would not be appropriate for me to comment on ongoing or potential investigations or prosecutions, but I would also note that the responsibility for the administration of criminal justice, including the investigation and prosecution of such crimes, including the sexual exploitation offences, falls largely on my provincial colleagues and counterparts.

However, as the Prime Minister stated during question period on February 3:

...cracking down on illegal online content is something we are taking very, very seriously. Whether it is hate speech, terrorism, child exploitation or any other illegal acts....

In fact, the government takes these measures so seriously that the Prime Minister has given four ministers the mandate to address different aspects of online harms. Minister Blair and I are two of these ministers. As he has mentioned, the Minister of Canadian Heritage is one of the lead [*Technical difficulty—Editor*] as well.

While the Internet has provided many benefits to Canada and the world, it has also provided criminals with a medium that extends their reach—and thus, their victim base—and a medium that elevates the level of complexity of investigations. One complicating factor is that telecommunications networks and services transcend international borders, while the enforcement authority of police, such as the RCMP, is generally limited to their domestic jurisdiction.

• (1115)

Further, under international law, court orders are generally enforceable only within the jurisdiction of a state. With limited exceptions, their enforcement requires the consent of the other state in which they are sought to be enforced.

[*Translation*]

Canada is obviously not the only country facing these challenges, which is why we continue to work with our international partners to facilitate international co-operation in the investigation and prosecution of these crimes, notably to strengthen bilateral co-operation and negotiation of new international mutual legal assistance treaties in criminal matters in order to address these issues.

Although mutual legal assistance treaties are a universally accepted method of requesting and obtaining international assistance in criminal matters, even in emergency situations, they weren't designed for the Internet age, where digital evidence is a common component of most criminal investigations and where timeliness is essential to the collection of this evidence because of its volatility.

Canada is actively working with its international partners to address these issues. For example, we are currently participating in the negotiation of a second protocol to the Council of Europe Convention on Cybercrime to enhance international co-operation on cross-border access to data.

Thank you.

[*English*]

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

Commissioner Lucki, I'm not sure if you have an opening statement. Do you have an opening statement that you'd like to make? Thank you so much for being here—

**Mr. Charlie Angus (Timmins—James Bay, NDP):** I have a point of order.

I mean no offence to Commissioner Lucki, but she's staying for the second hour. Our two ministers will be leaving, which will really interrupt our ability to ask them questions. I'd prefer to ask them questions and have her make her statement in the second hour—unless they're willing to stay.

**The Chair:** Thank you, Mr. Angus. She did indicate by a head movement that she did not have an opening statement, so we will proceed to questions by members.

Thanks, colleagues.

Mrs. Stubbs, we'll start with you.

**Mrs. Shannon Stubbs (Lakeland, CPC):** Thank you, Chair.

Ministers, thank you for being here.

Minister Blair, 70 MPs across parties have written to you about the cases of child exploitation, child sexual assault material, and instances of human trafficking and rape on MindGeek sites. Early in November and again in December, you assured us of the robust framework on prohibitions in the Criminal Code, which certainly Minister Lametti has just outlined in depth as well.

[*Technical difficulty—Editor*] December, and you sort of alluded to this. You said you reached out to the RCMP to offer support in response to these abhorrent revelations about MindGeek, Pornhub and other sites. Can you tell committee members what exactly and specifically that looked like, what support you offered?

**Hon. Bill Blair:** Thank you very much, Ms. Stubbs.

Yes, I did in fact have a conversation with the RCMP and asked what they needed in order to respond appropriately to the concerns raised by our colleagues with respect to child exploitation and human trafficking. As a direct result of those conversations, we brought forward, in supplementary estimates (C) and the main estimates that were recently voted on, additional funding for the RCMP in response to their concerns.

The responsibility for conducting these investigations is shared between the RCMP and the police of jurisdiction. We asked what they needed in order to do that. We also provided funding available to [Technical difficulty—Editor] police services to have their own child exploitation units. I did have a conversation with the commissioner with respect to what the RCMP needed to respond appropriately to these concerns. As well, we included that funding in the main and supplementary estimates that we brought forward.

**Mrs. Shannon Stubbs:** I won't, of course, ask you to comment on any kinds of details about any specifics, because you can't, and I appreciate that. Can you tell members if you have confirmed, just simply, that there are investigations ongoing?

**Hon. Bill Blair:** Thank you very much, Ms. Stubbs. You quite rightfully identify that the Minister of Public Safety cannot direct an investigation of any kind. Although I can be briefed on certain aspects of the investigation, it's entirely the responsibility of the RCMP to reveal—

**Mrs. Shannon Stubbs:** Right, so is there one going on? For Canadians, have you confirmed that there is one going on?

**Hon. Bill Blair:** I can tell you that it's the responsibility of the RCMP—

**Mrs. Shannon Stubbs:** Okay.

• (1120)

**Hon. Bill Blair:** —to confirm or not the existence of an investigation. Frankly, I would be very concerned—

**Mrs. Shannon Stubbs:** We'll ask them later.

Minister—

**Hon. Bill Blair:** —about compromising their effectiveness by revealing information that isn't appropriate for me to reveal.

**Mrs. Shannon Stubbs:** Sure, but a yes or no, of course, doesn't compromise anything. It would just confirm for Canadians that elected officials and law enforcement have taken action on this very heinous crime, as you've outlined.

In your opening comments, you mentioned funding in the 2018 and 2019 budgets, as well as anticipated legislation for a regulator. I guess what I'm [Technical difficulty—Editor] that, by your own words and also in the words of a variety of experts.... For example, the Friends of Canadian Broadcasting told this committee they had released a report. It is a comprehensive legal analysis showing that under long-standing Canadian common law, these platforms are already liable for the user-generated content they promote and for circulating illegal user-generated content.

Also, as a representative of the Department of Justice said, "The definition of child pornography in the Criminal Code is among the world's broadest. It's not only images that we protect against or criminalize the distribution of, but it is also audio pornography and two forms of written pornography." He continued, "The problem often is the application of the law, and how that works when the rubber hits the road."

On behalf of all Canadians, and most importantly on behalf of victims who are heinously exploited and continue to be victimized in Canada right now, and as a call for justice, accountability and consequences on behalf of all of those innocent Canadians, what

exactly are you going to do as the minister responsible for public safety to ensure that Canada's laws are actually enforced?

**Hon. Bill Blair:** That's an important question.

I agree with you that the legal framework that currently exists in Canada to deal with child exploitation is a robust one. We know that the RCMP and municipal and provincial police services have a very significant job—and a sometimes challenging job—in gathering the evidence they need. That's why we went to them and asked what resources they needed to conduct their investigations. We have, as a government, ensured that we've provided those resources. We've also asked law enforcement and the RCMP what additional support and tools they need. We've always been very responsive to that.

As I mentioned, there are a number of other initiatives on the way, and I think the Attorney General could perhaps provide more insight. With respect to mandatory reporting of online harms and the removal of those harms, there are a number of important initiatives under way.

**Mrs. Shannon Stubbs:** Right, but here's the concern Canadians would have. If it is the case, as you've said and experts have said, that a strong legal framework already exists, how does outlining budget commitments from 2018 and 2019 and planning for yet another law help you to ensure that justice is done for victims, these crimes are cracked down on and the perpetrators are held to account?

**Hon. Bill Blair:** It's really important in these investigations to make sure that law enforcement has the tools and the resources it needs to do its job, and we have ensured that. In fact, we've provided \$15 million, for example.

When I was the police chief in Toronto, Mrs. Stubbs, I ran a child exploitation unit. We did enormously important work there in identifying the perpetrators and even rescuing children from these horrendous situations. It was important that they be adequately resourced and funded, so we've taken steps, as a government, to ensure that municipal and provincial police services and the RCMP have the resources they need to do their jobs.

As for the actual conduct of their investigations, I would, quite appropriately, leave it to them to comment. However, the government recognizes that we have a responsibility to make sure not only that we have strong legislative tools available to law enforcement, but that they have the capacity and resources to address this most heinous of crimes.

It's also, as I—

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

**Hon. Bill Blair:** Thank you.

**The Chair:** I'll stop you there. I know that our time runs short here.

We'll turn to Mr. Sorbara now for the next round of questions.

Mr. Sorbara.

**Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.):** Thank you, Chair.

Good morning, everyone, and happy Monday.

The ethics committee has been undertaking this study for a number of weeks, and we've heard some quite shocking testimony. I can say frankly, probably for the majority of us, that it turned our stomachs in a very bad manner. There were a couple of days when I went home thinking about the testimony I had heard about child exploitation, something we want no child to be put through, whether it is here in Canada or globally. I wish to thank all my colleagues for their work on this, and I thank the ministers here.

I'll first go to Minister Blair and Minister Lametti. I'd like to hear an answer from both of you with regard to the work being done by Minister Guilbeault of Canadian Heritage on a new regulator to address online hate, the sharing of non-consensual images, child pornography and the incitement of violence and terrorism.

Currently within our [*Technical difficulty—Editor*] National Child Exploitation Crime Centre, which is largely responsible for all incoming and outgoing online-based child sexual exploitation reported offences within Canada. How is this new regulator going to work with the existing NCECC?

If you could keep your answers succinct, that would be great, because I do have follow-up questions.

• (1125)

**Hon. David Lametti:** I'm happy to begin here.

Thank you, Mr. Sorbara, for your question. I certainly agree with all the sentiments you raised in your opening remarks and certainly with what Minister Blair has said.

My role in all of this as Minister of Justice is to ensure that Canada's criminal laws and other laws cover the domestic situation, and also to work with a number of different ministers, ministries and international partners to make sure things work, as a matter of international co-operation, and to make sure there aren't any legislative gaps in terms of Criminal Code protections or otherwise.

Without revealing the contents of what might be in a draft bill—you all know that I can't do that—I will say that the kinds of things that have been suggested involve making Internet service providers more responsible in terms of mandatory reporting. Are there ways in which the mandatory reporting act could be made more robust? Are there ways in which information could be protected in a more robust manner, for example, to help law enforcement agencies and prosecutors build and maintain evidentiary cases?

All of those things are the kinds of things that would fall under that category. Those are the kinds of things that have been raised in the public domain, so I won't go into any details about what might be in a proposed bill.

**Mr. Francesco Sorbara:** Minister Blair, do you have any follow-up?

**Hon. Bill Blair:** Thank you very much, Mr. Sorbara.

Again, I will be somewhat cautious in talking about legislation that may be coming forward, but from a public safety perspective and from what we have heard very clearly from law enforcement, there are essentially three principles. There would be a mandatory reporting of online harms, which could include the sexual exploitation of children. There would be steps taken to preserve evidence that would then be used by law enforcement in conducting investigations and ultimately by prosecutors in criminal prosecutions that might arise from those online harms, and then [*Technical difficulty—Editor*] to end the victimization that its presence online represents.

From a law enforcement perspective, we've heard very clearly from the police right across the country about what they would like to see in legislation.

**Mr. Francesco Sorbara:** Thank you.

I wish to thank you as ministers and thank the Treasury Board Secretariat under Minister Duclos. In the 2021 main estimates, there was a substantial increase in funding, \$6.3 million, for the national strategy to combat human trafficking, \$4.4 million for the national cybersecurity strategy and \$4.2 million for protecting children from sexual exploitation online. Budget 2019, I would say, announced funding of \$4.4 million in 2019-20 and \$8.7 million in 2021. It's great to see that.

I wish to pivot in a certain way. I've learned a lot in this study about platforms, and a lot of legalese language and information. I do agree that we have a robust system in place. I think it's section 162, in that realm, in those numbers, for child exploitation, but I do wish to flag something because I think it's important this morning.

I was able to read some papers, and we've received a lot of literature. A lot of briefs have been sent to us, more so than for almost any other study I've seen. One is from the Centre for Gender and Sexual Health Equity. It is called "Impacts of criminalization and punitive regulation of online sex work and pornography: the need for sex workers' voices". Another one was an article written by a gentleman by the name of Justin Ling in *Maclean's*, "Governments have failed Canada's sex workers—and they're running out of patience".

It all goes back to Bill C-36, which was brought in by the Conservatives. Our role as legislators and also in the Bedford case, which I've been reading up on, is to protect all Canadians, protect children from being exploited and allow Canadians to work safely in any sort of environment.

I've looked at other countries—New Zealand and Germany—and it seems to me that we need to make sure we don't drive work underground. Sex workers' voices need to be listened to, and we need to ensure that we are not harming Canadians rather than helping Canadians.

I wish to put to you a broad type of question, Minister Lametti, in terms of how sex work is regulated in Canada.

• (1130)

**The Chair:** I apologize, Mr. Sorbara, but the clock indicates that your time is up.

We'll turn to Madame Gaudreau now.

[*Translation*]

**Ms. Marie-Hélène Gaudreau (Laurentides—Labelle, BQ):** Good morning. Thank you for being with us and for your answers. It's rather clear and encouraging.

I'm going to come at this from a different angle. I want you to know that as a mother, I feel indignant, as do all the people in my riding, about what we're experiencing. We're caught in a situation [*Technical difficulty—Editor*] to change the laws or ensure they're properly enforced. So here's my question.

Given all the legislation we have and the increased amount of money we're investing to support victims and prevent them from being doubly victimized, how is it that some provinces are able to act even more quickly than we are to protect personal information? I'm thinking of the Personal Information Protection and Electronic Documents Act, which we're still thinking about.

Privacy is a very broad issue, and that includes the dignity and the situations we are in right now. Three provinces, Alberta, British Columbia and Quebec, offered assistance. I know that our legislative system doesn't allow us to amend an act with a snap of our fingers, but in the digital age, how is it that we can't adapt the Broadcasting Act to today's realities?

Why aren't we working on the Privacy Act to achieve our objectives?

Although all international co-operation efforts seem to be in place, I'd like to hear what the honourable minister and his colleagues have to say about this.

**Hon. David Lametti:** Thank you for your question, Ms. Gaudreau.

Of course, there are a lot of aspects, legislation, ministers, departments and issues. Federally, there are two privacy acts: the Privacy Act, which affects federal institutions and is therefore under my jurisdiction, and the Personal Information Protection and Electronic Documents Act, which comes under the Minister of Innovation. As you noted, the House is currently considering a bill to modernize the PIPEDA.

Personally, I am investigating. I have been asked to provide my opinion and comment on the Privacy Act. Basically, the challenge is that technology is changing very quickly, and it's changing internationally. So we work with other countries. Obviously, the provinces also have a say through their own legislation. So we must

constantly modernize the act, which creates challenges in its enforcement, as you've just seen in your study.

• (1135)

**Ms. Marie-Hélène Gaudreau:** I understand that this is more the responsibility of the Minister of Justice. But why is it that, when we're able to make the essential changes to help victims, it never happens?

When I talk to these people, they are outraged. They say that governments always change, that bills always end up dying on the Order Paper and that, in the end, they're forgotten. There's assistance, but it doesn't last because an act that should already be in effect isn't being enforced. It would give additional support and relief for victims. Usually they're the ones who support this until the end, when they're already at the end of their rope.

So there's a big gap that we need to respond to as quickly as the Web is evolving, right?

**Hon. David Lametti:** Yes, we're responding. As Minister Blair pointed out, we're investing in this area, improving law enforcement and working with police forces abroad. So we have acted. I truly believe that no government in Canadian history has acted as quickly as we have.

It takes time and investment, and we continue to modernize the act all the time. So it's an ongoing challenge, but we're up to it and we're taking action.

**Ms. Marie-Hélène Gaudreau:** Can you commit, for the sake of victims, to ensuring that they know not only the steps that need to be taken, but also the steps that are being taken? That would reassure them and show them that not only are they being considered, but that the act is being modernized so that it is better enforced.

There's a new victim every second, and victims have a hard time believing that we're there for them.

Are you able to commit to improving transparency and disclose steps that are being taken on behalf of these victims?

**Hon. David Lametti:** It's true that we could always communicate more clearly what we're doing, especially for victims, as you pointed out. You're right.

[*English*]

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

Thank you, Madame Gaudreau.

We'll turn now to Mr. Angus for six minutes.

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

Thank you, Mr. Blair, Madam Lucki and Minister Lametti, for coming.



Feras Antoon, the CEO of MindGeek, lives in Montreal. In fact, he's building his dream home there, apparently quite the mansion, in a neighbourhood called Mafiaville. Now, I've been in Montreal a lot, although I don't know where Mafiaville is, but I mention it because he lives in Montreal, as does his partner, David Tassillo. They have a thousand employees in Montreal, and their office is at 7777 boulevard Décarie.

Mr. Lametti, in your opinion, would this qualify MindGeek as a Canadian company subject to Canadian law?

**Hon. David Lametti:** Again, I'm not going to comment on the actual details. There have been differing opinions. As Minister Blair and I have pointed out, it can depend on where servers are located and on where—

**Mr. Charlie Angus:** Okay, I'm sorry. I'm going to interrupt you. I'm reading the mandatory reporting act, and it doesn't mention the word “servers”. It mentions the word “service”.

I could help you. If you look it up in Wikipedia, the first line in Wikipedia, Mr. Lametti, says that MindGeek is a private Canadian company, but you don't know that it's a private Canadian company. You don't know.

**Hon. David Lametti:** Mr. Angus, as I have said, my role in all of this is to ensure that there are adequate Criminal Code protections and that they are in place. I outlined in my opening remarks, Mr. Angus, and I know you were listening carefully, that there are challenges with respect to companies that operate across the Internet—

• (1140)

**Mr. Charlie Angus:** I get that idea. I'm referring to this—

**Hon. David Lametti:** —and we refer all of these.... There are legal opinions that have been given, but it is a matter of enforcement—

**Mr. Charlie Angus:** Okay, I understand that. I only have a few minutes, Minister Lametti.

I'm referring to this briefing note of December 10, 2020, to the RCMP commissioner. It was done in response to a New York Times article, and it says, “In 2018, the RCMP met Mindgeek and raised the Mandatory Reporting Act (MRA). The company later indicated that the MRA did not apply as they are not a Canadian company.”

When you guys go to talk to companies that you think may have broken Canadian law, but they have other jurisdictions and they just tell you that they're not a Canadian company, is that good enough?

**Hon. David Lametti:** Look, I'm not going to answer on the specifics of whatever.... It's an ongoing investigation.

**Mr. Charlie Angus:** You are aware of the mandatory reporting act. Is that right? You have recommended—

**Hon. David Lametti:** I am very aware of the mandatory reporting act, and a company may also be required to report in another country, such as the United States, which then may be required to report back to Canadian law enforcement—

**Mr. Charlie Angus:** That's interesting because it doesn't say that under the mandatory reporting act, Mr. Lametti. It says under the mandatory reporting act that, if an allegation of child pornography

is made, the service provider has to make that available to the appropriate Canadian law enforcement agency. However, you're saying they can interpret that to maybe apply to someone else, because they have never made a single mention. They have never reported anything to Canadian authorities.

I mention that because Rose Kalemba—

**Hon. David Lametti:** I think in matters of application, Mr. Angus—

**Mr. Charlie Angus:** I'm sorry. I'm not finished my question.

**Hon. David Lametti:** If you will allow me to answer your question, Mr. Angus—

**Mr. Charlie Angus:** I was beginning my question.

**Hon. David Lametti:** I wanted to answer that and respond to that statement.

**The Chair:** Order, members.

Mr. Angus, would you finish your question so that the minister has an opportunity to answer?

**Mr. Charlie Angus:** I was just beginning my question, Mr. Lametti. I'm sorry to interrupt. I don't want to be rude.

Rose Kalemba gave us horrific testimony in writing. She was 14 when she was kidnapped, tortured and raped, and multiple videos of her torture were posted on Pornhub. She begged them to take it down. They wouldn't take it down until over two million people had witnessed it.

She is a Canadian citizen. These tags were posted by a company that is centred in Montreal. Given your reading of the mandatory reporting act, would it have saved Rose Kalemba and the other victims that we talked to if there had been a single instance where Pornhub or MindGeek had actually reported, as per the mandatory reporting act, as we have in Canadian law, to Canadian authorities?

**Hon. David Lametti:** Mr. Angus, I will say, as I have said, that both the Criminal Code and the mandatory reporting act cover Canadian domestic situations. Other international agreements help with respect to the gathering of that evidence.

I won't comment on any past, ongoing or future cases of investigation. That is not in my.... I'm not able to do that without jeopardizing potential investigations.

**Mr. Charlie Angus:** I totally understand. It was just that Ms. Kalemba was Canadian, so I thought you might be able to help us.

I'm interested, though, because we talked about the mandatory reporting act and you're telling us we're going to get this new regulator that's going to come, and it's going to be mandatory as well. However, this RCMP briefing note says that the RCMP strives to maintain partnerships with private companies—Pornhub/MindGeek—as these are effective and support the companies' voluntary compliance and adherence to its own terms of use.

I have read the laws on child pornography and the mandatory reporting act. I'm just really surprised that the RCMP and you seem to have this position that you would prefer voluntary compliance with the law, when we haven't had a single case of their actually reporting anything. How does this voluntary compliance work with our partners at MindGeek if they never report anything?

**The Chair:** Mr. Angus, your time is up, but we will turn to the minister for a response.

**Mr. Charlie Angus:** Thank you.

**Hon. David Lametti:** I think you should address that question perhaps to the RCMP. I have expressed no position, Mr. Angus, for the record, although you seem to have attributed one.

**Mr. Charlie Angus:** You don't have a position whether they should report or not. As the Attorney General, you don't have a position. Okay. Thank you.

**Hon. David Lametti:** That is not what I said, Mr. Angus.

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

We will turn to Mr. Viersen for five minutes.

**Mr. Arnold Viersen (Peace River—Westlock, CPC):** Thank you, Mr. Chair.

Minister Lametti, back in November, I and a number of parliamentarians wrote you regarding documented cases of child exploitation, sex trafficking and rape published on MindGeek sites. This was monetized and viewed by millions. We asked you if the current laws were adequate and what was preventing the lack of enforcement.

You wrote back, "I...assure you that the Criminal Code contains a robust framework that prohibits a broad range of the conduct you reference".

Here we are six months later. Multiple victims have come forward, hundreds if not thousands of examples, and still no charges have been laid. Are you still confident in our robust framework?

• (1145)

**Hon. David Lametti:** Thank you for your question, Mr. Viersen.

I'm very confident in that robust framework. We have domestic coverage, which is more exhaustive I think than any other country in the world. This is a complex international situation, and questions about the application of the law should be addressed to the RCMP, for example, as an investigating body.

Perhaps Minister Blair would have something to add, but certainly, the normative coverage of our laws in Canada are second to none in the world.

**Hon. Bill Blair:** If I might—

**Mr. Arnold Viersen:** Minister Lametti, under the Director of Public Prosecutions Act, the public prosecutions act allows the Attorney General to issue prosecutorial directives. Have you issued any prosecutorial directives in this regard?

**Hon. David Lametti:** Our prosecution service, Mr. Viersen, as you know, is done at arm's length. The times at which I can intervene are structured under the act and very rare.

I am working, obviously, with my counterparts, but I can assure you that law enforcement is, first of all, working on investigations in an independent manner. Then, to the extent that there is enough evidence gathered to proceed with prosecutions, that will be part of an independent prosecutorial decision, and I am confident that those agencies are all doing their work as they are supposed to be.

**Mr. Arnold Viersen:** Mr. Lametti, this has been going on for years. We're discussing egregious offences towards women and children—sex trafficking, child abuse, rape—all published online for years and years, yet we see no charges, no investigations. Don't you think that maybe now is the time for a prosecutorial directive?

**Hon. David Lametti:** Again, my role in this, Mr. Viersen, as you know, is to ensure that the Criminal Code, the mandatory reporting act and other statutes provide adequate coverage—

**Mr. Arnold Viersen:** You have no responsibility in this at all...?

**Hon. David Lametti:** [*Technical difficulty—Editor*] all. I am confident that all aspects of Canadian law enforcement and prosecution, as well as the justice department and the public safety department, are working hand in hand in order to make sure this goes well. What I can't do, as an elected official, is comment on an investigation, and what I can't do as the Minister of Justice or Attorney General is—

**Mr. Arnold Viersen:** We're not talking about a particular investigation. We're just saying, do you have a prosecutorial directive?

**Hon. David Lametti:** —harm the independence of the prosecutorial [*Technical difficulty—Editor*] important. It was established under the previous Conservative government, and I firmly believe that was a very good move by Conservative justice ministers at the time.

**Mr. Arnold Viersen:** Interestingly, MindGeek or Pornhub has over 1,000 employees in this country. They operate in this country, regardless of where they are. Do you believe that regardless of where a company is headquartered they ought to obey Canadian law?

**Hon. David Lametti:** Again, my role in this is to make sure the laws are adequate. Whether Canadian laws are being followed and whether Canadian laws apply are going to be part of the investigative and prosecutorial functions.

**Mr. Arnold Viersen:** If for over nine years they've failed to comply and we have clear evidence of child sexual exploitation happening on their website and no reporting, do you think that is following the law?

**Hon. David Lametti:** Look, these are horrific crimes. We know that. We have confidence in our police services. As I mentioned in my opening remarks, most of it falls at the provincial level, but to the extent the RCMP is involved we have confidence in the RCMP, confidence in the systems that we have put in place to report these crimes and confidence in not only the investigative independence of the RCMP but also the prosecutorial independence of the prosecution services, not just at the federal level but at the provincial and territorial levels across Canada.

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

We're going to turn to Ms. Lattanzio now.

Ms. Lattanzio, you have five minutes.

**Ms. Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.):** Thank you, Mr. Chairman.

Thank you, everyone, for being present this morning, both the ministers and Ms. Lucki. Thank you for partaking and helping this committee move along and undertake this very important study.

My first question will be for Mr. Blair.

Mr. Blair, just last month, Public Safety Canada launched a national awareness campaign targeting children, parents and caregivers in order to raise awareness of online child sexual exploitation and abuse and, more specifically, raising awareness of this heinous crime, how to report it and how to reduce the stigma associated with the reporting. Why are the awareness and stigma reduction practices so important?

• (1150)

**Hon. Bill Blair:** Thank you very much, Madam Lattanzio.

It's a very important question. We understand that public education for children and their parents and an awareness of the issue of child sexual exploitation on the Internet is absolutely critical in giving families and young people the tools they need. We are also working hard to remove the stigma, because we know that many people have been deeply traumatized by this most heinous of crimes and we want to empower people to be able to come forward and take actions to protect themselves.

At the same time, we also recognize the importance of strong support for criminal investigations. I want to acknowledge that the RCMP runs the National Child Exploitation Crime Centre, but we work very closely with the Canadian Centre for Child Protection, which undertakes, on our behalf and with our funding, support for victim identification and victim support strategies to provide assistance to survivors and tailored resources for victims and their families.

We know that this victimization in this most terrible way by this online sexual exploitation of children can have lifelong consequences. It's critically important that we raise public awareness of the issue so that.... We know that during the pandemic a lot of kids are spending a lot more time online, and we want to make sure they

can do it safely. That can be done through public education and working with their families. At the same time, we also recognize that predators are out there, and we need to make sure that we have the tools and the resources necessary to apprehend, deter and prosecute those individuals.

**Ms. Patricia Lattanzio:** Thank you.

Mr. Lametti, I would like to give you the opportunity to tell the committee more specifically what the mandatory reporting act is. I know that my colleague asked you various questions about it, but perhaps you can provide this committee with the broad outlines of what exactly this act is and how it can help combat child pornography in Canada.

**Hon. David Lametti:** Thank you very much, Ms. Lattanzio, for that opportune question, given that the MRA does play an important role in all of this.

The MRA is a federal criminal statute that places obligations on those who provide Internet service to the public, for example, access providers, content providers and hosts. It requires them to report to the C3P, the Canadian Centre for Child Protection, which runs the anonymous tip line, Cybertip.ca, if they're advised of an Internet address where there is child pornography that may be available to the public, or they're required to report to law enforcement if they have reasonable grounds to believe that the Internet service is being used to commit a child pornography offence. That is critically important. It also requires them to maintain the fleeting data for a period of 21 days [*Technical difficulty—Editor*] law enforcement a chance to access that.

Those are important measures in trying to combat a phenomenon that is happening quickly online. It tries to give law enforcement authorities, through the mandatory reporting obligation, some ability to act quickly. It's a critical part of the criminal structure in fighting this kind of crime, which we all believe is heinous and needs to be eradicated.

**Ms. Patricia Lattanzio:** Thank you.

I will go back to Minister Blair.

Minister, I'm hoping that you can speak a bit more today about human trafficking. I believe that our government's national strategy focuses on empowerment as a pillar in itself, and that you actually have an advisory committee and a chief adviser.

Can you please elaborate for us today on the importance of having a representative working with the government who is dedicated to fighting the scourge?

**Hon. Bill Blair:** Thank you very much—

**The Chair:** Minister, the member's time is up, but we'll give you an opportunity for a short answer.

**Hon. Bill Blair:** I'll do my best to give a short answer, Mr. Chair.

A special adviser to combat human trafficking has been named. The purpose is to provide expert advice to the government on our collective efforts to combat human trafficking and to raise awareness about this terrible crime. It builds on some previous investments. It's part of a national strategy to combat human trafficking that the government launched in 2019.

• (1155)

**The Chair:** Thank you.

We're going to turn to Madame Gaudreau for two and a half minutes.

[*Translation*]

**Ms. Marie-Hélène Gaudreau:** I'll come back to what I was saying earlier. In the next year, there will be a change. In fact, it's imminent. I was saying that all bills die on the Order Paper. I hear from all my colleagues that urgent action is needed. Unfortunately, the legislative process being what it is, it's obvious that we can't eradicate this scourge, which claims new victims at breakneck speed, every second of every day.

Given the fragility of bills, which can take years to pass, don't you think that, in such a virulent context—that's a word we can use these days—we should increase the accountability of individuals, agencies and commissioners who have more power to help address this scourge?

It's all well and good to increase investments and develop organizations, but resources already exist. Right now, we're talking about victims, and it's far from partisan or a bill. As legislators, we are caught up in this pace that isn't fast enough for victims.

I'd like to hear what you have to say about this.

**Hon. David Lametti:** Thank you for your question, Ms. Gaudreau.

With respect to investments, we do what we can because the government has the authority to do so.

As far as bills are concerned, we're always willing to improve the current normative framework, whether it is in criminal law or in other areas. I don't have any bills to propose because, as I just said, the Criminal Code and the other laws are robust. That said, we're always open to suggestions for improvement.

I know that members have bills, but it takes the co-operation of members in the House of Commons. I know your leader has shown such co-operation in the context of the medical assistance in dying bill. Sometimes you have to co-operate, especially when there are sometimes delay tactics by other parties.

We're always willing to co-operate.

[*English*]

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

We'll go to Mr. Angus now, for two and a half minutes.

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

Thank you, Mr. Lametti, for coming today.

I'm going to move beyond our attempts to get answers on the mandatory reporting laws that we have in place.

The story of Serena Fleites blew up, and I think it shocked us all. She was a child porn survivor who came forward to The New York Times. She begged Pornhub/MindGeek to take her videos down, and she said there were multiple tags. When we asked Pornhub/MindGeek about this, they said they don't have any records of her. A number of other child survivors have come forward as well.

We have had zero investigations and zero reporting of any of these allegations that have come forward against MindGeek. I know some are not sure whether it's a Canadian company, but it is in Montreal.

Under subsection 163.1(3) of the Criminal Code, any person who “transmits”, “makes available” or “advertises” child pornography is guilty of an indictable offence, with imprisonment of up to 14 years.

I'm thinking here of the tags, the promotions and the selling—the online stuff. Do we not already have laws in Canada that are sufficient? We just don't seem to have the political will to actually apply the law. Why would we need to change anything when the law is pretty clear about transmitting, distributing and advertising child rape?

• (1200)

**Hon. Bill Blair:** Mr. Angus, allow me to—

**Mr. Charlie Angus:** I'm sorry, but I asked the question of Mr. Lametti. Is he still with us?

**Hon. Bill Blair:** Okay.

**Hon. David Lametti:** I'm happy to jump in.

I'm glad, Mr. Angus, that you have understood that Canadian criminal law and the mandatory reporting act provide one of the strongest and most exhaustive frameworks in the world for these kinds of heinous crimes.

**Mr. Charlie Angus:** Exactly, so why have you never had any reporting in Canada? If it's so robust, Mr. Lametti, how come—

**Hon. David Lametti:** As I have pointed out—

**Mr. Charlie Angus:** —there's been zero reporting?

**Hon. David Lametti:** I know you were listening to the opening remarks very carefully, and as I said, the principle of domestic territoriality applies—that is, the Criminal Code applies in Canada.

In the Internet context, there are a variety of different standards that might mean that a company is actually operating in another country. We work with other countries to exchange information.

**Mr. Charlie Angus:** You haven't had any reporting or investigations, though, Mr. Lametti. Come on.

**Hon. David Lametti:** Again, I can't comment on investigations. That's not within my mandate—

**Mr. Charlie Angus:** Given section 163, though, wouldn't you say that these are prima facie cases? You do have the authority. You just haven't used it.

**Hon. David Lametti:** I do not have, as I said.... The Criminal Code is more than adequate as it applies—

**Mr. Charlie Angus:** It's more than adequate...?

**Hon. David Lametti:** —to Canadians. It's actually a very good Criminal Code, and I'm very proud of it.

The investigations and prosecutions are independent functions and their application in an international context is not always as clear as you would have it be, even if that's what we would both like it to be.

**Mr. Charlie Angus:** Would you say, then, that it's okay to set up shop in Canada and not have to worry that you'll be forced to report because there have been no reports?

**Hon. David Lametti:** That is certainly not the case, Mr. Angus.

**The Chair:** Your time is up, Mr. Angus.

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

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

We'll turn now to Mr. Carrie. He'll be splitting his time with Monsieur Gourde.

Mr. Carrie.

**Mr. Colin Carrie (Oshawa, CPC):** Thank you very much, Mr. Chair and ministers.

Throughout this study, we've been talking about the privacy and reputations of those who have had their private sexual images uploaded to adult websites without their consent. We've heard from many of these victims, and many of them are children. They're also victims of sexual violence and human trafficking.

Minister Blair, you called these crimes heinous acts. Do you believe that perpetrators of human trafficking deserve to be punished to the fullest extent of the law, yes or no?

**Hon. Bill Blair:** Yes, sir.

**Mr. Colin Carrie:** Thank you.

Minister Lametti, do you believe perpetrators of human trafficking deserve to be punished to the fullest extent of the law—yes or no?

**Hon. David Lametti:** Absolutely.

**Mr. Colin Carrie:** Thank you.

Minister Lametti, could you please let Canadians know what the maximum sentence is for those convicted of the indictable offence of human trafficking, and what the maximum prison sentence would be for those convicted of a summary offence, just the numbers, please?

**Hon. David Lametti:** I'm sorry but I don't have those provisions in front of me. I will get back to you with those answers.

**Mr. Colin Carrie:** Thank you very much.

Minister Blair, the cabinet colleague that is testifying with you today sponsored Bill C-75 in 2019, which made human trafficking a hybrid offence, thus making modern day slave traders able to be convicted and serve less than two years' prison time, or even just pay a fine of no more than \$5,000.

Mr. Angus was talking about how robust the Canadian system is. Your government actually changed it into a hybrid offence, under which somebody could get off with the same penalty as basically that of causing a public disturbance.

Are you aware of those changes in Bill C-75?

**Hon. Bill Blair:** Thank you, Mr. Carrie.

I am aware of the changes, but I'm also aware that we did not reduce the maximum penalty for the worst offender committing the worst offences for human trafficking.

The penalties that were previously available in those most heinous of circumstances allowed for the courts, based on the evidence and the law, to make the determination of the appropriate sentence for the circumstances before them.

**Mr. Colin Carrie:** When you had the chance to actually change the law, instead of getting tougher and working, as Mr. Angus was saying, to actually apply the law that we had in this robust framework you claim to have, you actually made it a weaker offence.

How can these victims trust your government to be on this and be doing the best for Canadians, when, given the opportunity, you actually weakened the law instead of strengthening the law?

As it is now Mr. Gourde's turn, that's my time, but it's very disappointing for sure.

Mr. Gourde.

• (1205)

[*Translation*]

**The Chair:** Mr. Gourde, you have the floor.

**Mr. Jacques Gourde (Lévis—Lotbinière, CPC):** Thank you, Mr. Chair.

My question is for the Minister of Justice.

We're all outraged by the situation surrounding child pornography. I think that some laws should be strengthened so that victims are protected. I have a suggestion for the minister. If we were to pass a bill to strengthen the legislative framework, could we ask the Supreme Court for a legal opinion before it's introduced?

In fact, the companies we're talking about have unimaginable financial and legal resources. They could challenge such a law. Already, having a Supreme Court opinion could frame and limit avenues of appeal, which might allow us to protect victims much more quickly.

Would the minister consider this suggestion?

**Hon. David Lametti:** Thank you for the question, Mr. Gourde.

As I've explained many times before, Canadian laws are quite comprehensive and quite clear. The problem stems from the international nature of the problem. This means strengthening law enforcement and conducting international investigations by working with other countries and other police forces around the world. So the law is there, and it's pretty clear.

Is it a Canadian company or not? This is often a rather difficult question. We have to rely on the facts, and it's not clear that a Canadian court's opinion could decide the issue. We've seen cases involving online businesses where the decision of a Canadian court or even the Supreme Court of Canada wasn't applied. In the case of Equustek Solutions Inc., the Supreme Court decision wasn't applied in the United States. So it wouldn't necessarily decide the issue.

**Mr. Jacques Gourde:** Will it be necessary to go before an international court so that—

[English]

**The Chair:** Mr. Gourde, your time is up unfortunately.

[Translation]

**Mr. Jacques Gourde:** Thank you.

[English]

**The Chair:** We'll turn to Mr. Fergus for the last questions of the second round.

Mr. Fergus, you have five minutes.

[Translation]

**Mr. Greg Fergus (Hull—Aylmer, Lib.):** I'd like to thank the witnesses for being with us.

As I'm sure you've noticed, this is a very thorny issue that deeply affects all members of Parliament who have participated in these meetings. Before I put my question to the two ministers, I'd like to raise a few points.

Mr. Lametti, you said that we have a very powerful law, but that a few things need to be strengthened to better reflect the international nature of cybercrime, if I can use that term, because the actions of MindGeek and Pornhub are indeed criminal. The problem is the location of their computer servers.

I can also note that despite the fact that a willingness to act seems to transcend partisanship, the official opposition voted against increased funding for the RCMP to combat the scourge of online child pornography. That said, I know that the members here are acting in good faith and that they want to do the right thing now.

Mr. Lametti and Mr. Blair, what do you need, both in terms of resources and improvements to the legislative framework, to address these crimes in a way that takes into account their international nature due to the nature of the Internet?

What other tools and funding are needed to properly prosecute these people and bring justice to the victims of these crimes?

• (1210)

[English]

**Hon. Bill Blair:** Thank you very much, Mr. Fergus, for what is a very important question.

As you've already indicated, we do supply funding to the RCMP to run the National Child Exploitation Crime Centre, which has a number of significant responsibilities, including the investigation of these predators to gather the evidence to bring them to court and to prosecute them. It also has the purpose of identifying and rescuing victims on the international front.

Because of the nature of online harms generally, and certainly of this most terrible crime, there is a very significant international component. That's why, in the five-country ministerial meetings that I have attended for each the last three years, the focus in each of those meetings has been on online child sexual [Technical difficulty—Editor] and implementation of principles to guide industry efforts to combat online crimes and child sexual exploitation.

In addition, we are part of an initiative called the WePROTECT Global Alliance, which is a movement dedicated to national and global action to end sexual exploitation of children online. It includes like-minded states, NGOs and civil society organizations.

Finally, Mr. Fergus, I would point out that the RCMP actually chairs a group called the Virtual Global Taskforce on child exploitation. This is an international law enforcement alliance that is engaged in intelligence sharing, data sharing and dealing with this issue globally. I think it is a demonstration of both Canada's commitment and the RCMP's global leadership on this critically important issue.

[Translation]

**Hon. David Lametti:** Mr. Fergus, I would just add that we're working with other countries on mutual legal assistance treaties to facilitate the exchange of information between our police forces, multilateral conventions on cybercrime, as well as bilateral agreements with countries such as the United States, for example, to facilitate the exchange of information in a context where it needs to be done quickly.

**Mr. Greg Fergus:** Mr. Lametti, Mr. Blair, the committee really wants to deal with this issue. We would like to propose amendments that could make your job easier and help you to prosecute these criminals.

What do you expect from the committee? What kind of recommendations could strengthen your capacity so that you have the legal framework necessary?

[English]

**The Chair:** Thank you, Mr. Fergus. Your time is up, but we will allow the ministers to respond to the question.

Ministers.

[Translation]

**Hon. David Lametti:** As I just explained, national laws are very strong. What we would like to see is better co-operation at the international level.

[English]

**The Chair:** Minister Blair, did you have a response to that as well?

**Hon. Bill Blair:** Yes, Mr. Chair.

Let me acknowledge the important work of this committee. We look forward to its findings and recommendations. I think we all share a common commitment to eliminate the sexual exploitation of children online. We look forward to the recommendations of this committee to help inform and support that work.

**The Chair:** Thank you.

We are now finished with the second round of questions.

Ministers, you indicated that you were available for only the first hour. We'd love to have you stay, if you could extend it, but we respect that you are busy people as well. If you're not able to stay, we want to thank you for being here this morning. We appreciate your willingness to be here.

Colleagues, we'll continue. Mrs. Stubbs will begin the third round of questions.

• (1215)

**Mrs. Shannon Stubbs:** Thanks, Chair.

I have some questions for you, Commissioner Lucki. I have been looking at the website for the various child sexual exploitation units in the RCMP. I would also just note the recent reporting by the director of Cybertip, who says that in 2020 his [*Technical difficulty—Editor*] spike over April, May and June [*Technical difficulty—Editor*] youth who had been sexually exploited and reports of people trying to sexually abuse children.

I wonder if you could confirm that cases of child sexual exploitation online have increased during the past year. In that context, could you also shed some light on exactly what the support and resources were that the public safety minister says he offered when he reached out to the RCMP after members of Parliament and victims spoke out on this travesty last year?

**Commissioner Brenda Lucki (Commissioner, Royal Canadian Mounted Police):** Thank you so much for that question.

COVID-19 especially has had a heightened risk to children, as offenders have taken advantage of the fact that children are spending more time online and are often unsupervised. Since the onset of the pandemic, the centre has seen increased online activity related to online child sexual exploitation. From March to May 2020, the centre has recorded an approximately 36% increase in reports of suspected online child exploitation, attributed in part to the increase in viral media and a tangible increase in self-exploitation cases.

We also anticipate more reporting of child exploitation offences, both online and off-line, when the pandemic-related restrictions are slowly lifted and the children have access to trusted adults once again—their teachers, caregivers and community support services. It was largely limited at the onset of the pandemic, likely preventing children from reporting abuse to trusted adults outside of their homes, which is such a crucial part.

In terms of your question with regard to Minister Blair reaching out to the RCMP, whenever a huge...for example, when this arose about the increase in child exploitation, we're always having a conversation about the things we can do to prevent them. Obviously, we're looking at legislation and we're looking at the mandatory reporting act. We spoke about resources. We spoke about technology. We've talked about things within the acts and how that could improve law enforcement and how we could better reach out to law enforcement.

**Mrs. Shannon Stubbs:** Thank you, Commissioner.

I'm assuming that you have followed this committee and are well aware of the clear instances of hundreds of victims—if not thousands—of child sexual assault material, rape, human trafficking and non-consensual images. I'm confident that you're as disturbed by the victims' testimony as each and every one of us is.

Without any specifics whatsoever, can you confirm whether or not there is an investigation into MindGeek and whether or not any charges have been laid?

**Commr Brenda Lucki:** Thank you for [*Technical difficulty—Editor*] the committee is looking for clarity on the investigational status, and generally, unfortunately, we don't comment on whether or not an incident is under investigation. Obviously the main reason is that we don't want to compromise investigational steps or crucial evidence, and data is just so.... It comes and goes so quickly, and we really do try not to compromise that.

What I can say is that specifically in regard to Pornhub or MindGeek, the call for a criminal investigation is under review—and any further action that's required. We've been working with the police of jurisdiction in that case. If there is the necessary information that leads us to launch the investigation, the investigation will be launched—unequivocally. If that investigation gives us the evidence to lay charges, those charges will be laid. I'll tell you that there are no people more committed than those in law enforcement when it comes to child and sexual exploitation.

• (1220)

**Mrs. Shannon Stubbs:** I guess from your answer I can deduce that no charges have [*Technical difficulty—Editor*] but you can understand how deeply disturbing that would be to every single Canadian listening in, given the years during which children and women, against their consent, have been victimized and revictimized over and over.

Can I just ask you, really simply, what the hell is going on, then? How could it be that undertaking an investigation is under consideration right now and there have been no charges?

**Commr Brenda Lucki:** Investigations such as this are very... They don't happen overnight, and there are obviously always gaps in the information. What happens, for example, is that when we get reporting, we have to make sure, especially when we're talking about child exploitation or sexual exploitation, that those files fall within the age group of a child, so that's one challenge. Often we get several reports, and unfortunately they don't fall within that category, so of course they're put to the side. There's a whole science behind that, and there's a lot of work that goes into just identifying the ages online. It's not an easy science. It's based on the maturation, and it's based on experts who have that training. We also—

**The Chair:** Pardon me, Commissioner. I'll let you finish that thought, and then we're going to go to Mr. Dong. I apologize.

**Commr Brenda Lucki:** We've taken the reports that we have received from Pornhub/MindGeek, and many of those reports fell into that category, and the ones that didn't, they get brought to the police of jurisdiction immediately, and those are referred to go into further investigation. As soon as they meet those thresholds, then the investigation is completely launched. Then it takes a while to get through the evidence, of course, and then, once we have the evidence, we lay the charge. The charge will be laid, and that's when it's made public.

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

Mr. Dong, we'll turn to you.

**Mr. Han Dong (Don Valley North, Lib.):** Thank you very much, Chair.

Commissioner Lucki, thank you very much for coming to the committee and answering some questions.

First things first, when the story broke, it raised a lot of tensions in the public. I've been getting a lot of questions from my constituents in Don Valley North who are asking what they should do if they ever encounter a situation like that or any evidence of a child being exploited. I'm hoping that you very quickly can tell us a bit more about the National Child Exploitation Crime Centre.

Does it provide 24-hour service? What kind of service is there? What can any member of the public do if they sense that there's a crime taking place?

**Commr Brenda Lucki:** Obviously, when people are privy to that information, they need to go to their police of jurisdiction first and foremost. We work with the National Child Exploitation Crime Centre and have tried to connect that centre with industry because having [*Technical difficulty—Editor*] increases the education from industry. They are mandated to address the online child sexual exploitation and are available 24-7. They work to try to get voluntary compliance from industry, but they also provide that service.

As soon as they find things that come to their attention, they quickly bring that to law enforcement and then we help law enforcement. If it's not within our RCMP jurisdiction, we make sure that it is brought to the police of jurisdiction and assist in any way we can.

**Mr. Han Dong:** You mentioned that industry has to voluntarily report this. However, as you heard earlier, there have been a lot of questions about whether the law is sufficient in making those requirements on industry and their responsibility of protecting the

kids. Going forward, my suggestion is that, as we complete this study, if you have any suggestions on how to strengthen the legislation in that aspect, we'd be happy to hear about it.

My other question is that it's been reported that since mid last year, the RCMP has received in excess of hundreds of reports related to Pornhub through the National Center for Missing and Exploited Children. Obviously I'm not looking for specifics of an investigation if there's one, but what is the process when the RCMP receives these reports?

• (1225)

**Commr Brenda Lucki:** Obviously the [*Technical difficulty—Editor*] work through the RCMP National Child Exploitation Crime Centre. When they receive those reports, as we also do internationally through the national crime centre in the United States, we take those and ensure that they are referred to a Canadian law enforcement agency. Often we'll put together an investigative package if we can and bring that to our agencies. Once they get that, then they can initiate an investigation.

**Mr. Han Dong:** We heard from a lot of members. There are obviously questions about jurisdictional responsibilities. Is this a Canadian company subject to Canadian law?

In your opinion, is there anything we can do to make it clearer so that these investigations can take place? Obviously, we've heard there's a lot of evidence out there, but an investigation hasn't been launched.

**Commr Brenda Lucki:** It's such a complicated issue because, as you know, the application of domestic criminal laws and territorial limits [*Technical difficulty—Editor*] jurisdiction has been a challenge given the global nature of the Internet, which is not bound by traditional borders. International conflict law is such a complex matter. It's very difficult for the RCMP to monitor and ascertain compliance with the mandatory reporting act, particularly in the cases where the companies have a complex international structure and the data is stored in multiple jurisdictions. Those services flow through the Internet and transcend international borders.

However, that's where having strong partnerships internationally, including with the Virtual Global Taskforce, allows us to exchange intelligence and data. That is where we can maximize and get rid of some of those borders, so to speak, because we have to make sure it falls within our protocol.

**The Chair:** Thank you so much.

I wanted to give time for the question to be answered.

**Mr. Han Dong:** Thank you.

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

We'll go to Madame Gaudreau now for the next two and a half minutes.



[Translation]

**Ms. Marie-Hélène Gaudreau:** Good afternoon, Madam Commissioner.

There was an increase in requests for assistance. We're talking about some 100,000 requests. Despite all the difficulties related to investigations, do we have access to statistics?

In 2019, how many investigations were there in response to requests for assistance? Do you have a figure?

[English]

**Commr Brenda Lucki:** In 2019, 11,376 investigational packages were sent to law enforcement agencies of jurisdiction within Canada and abroad. In addition, approximately 63,000 reports were forwarded to law enforcement, primarily internationally, as investigative leads. There's no real requirement for police of jurisdiction in Canada, or in fact for international law enforcement, to advise the RCMP as to whether or not they commence an investigation based on the investigative packages that we give them. However, through our partnerships with the NCECC, we're aware that many of the packages have led to successful outcomes.

• (1230)

[Translation]

**Ms. Marie-Hélène Gaudreau:** Thank you very much.

Given your limitations in terms of enforcement and the international context, can we create a structure, or even increase the powers, to ensure that we curb this scourge, which is evolving much faster than the legislative system in which we live?

There has been talk of increased funding. Given the increase in the number of reports and possible investigations, do you have any other needs in terms of financial resources?

What do you need? We want to put those needs in the report, if only to establish an international model to help with the conflict about privacy.

**Commr Brenda Lucki:** Thank you for your question.

[English]

It's a great question. Obviously, we look at multiple things. First of all, we look at legislation. We have the mandatory reporting act, as Minister Lametti spoke about. We have to look at compliance within that act, and it has to be more inclusive of all the service providers. It would be very helpful, of course, to have basic subscriber information for that, because that would lead to quicker responses and more fulsome responses. Increased resources never hurts. I would never turn down increased resources.

We also have to look at technology. For instance, I think earlier you spoke of the Arachnid project. That's using technology. That's for children, but we should be using similar technology for adults as well, something that can scour the Internet and take multiple images down. Even if we hit one service provider, like a Facebook or a Twitter or a Pornhub, that image gets downloaded to other platforms. It grows exponentially. The only way to get rid of all that is to have technology scan and scour.

Obviously, we need mandatory reporting of online harm. We need those steps, like the minister spoke about, to preserve that evidence and have that content removed in a timely manner as per what the minister said. All of those are very important.

We always need to be speaking with our international partners. It's interesting that you say that, because when I talk with the Five Eyes partners, obviously we're talking about national security, so we talk about terrorism, but we talk a lot about child exploitation. It's a growing industry. One statistic that shocks me is that since Project Arachnid, which scours the net and takes down images, or requests for images to be taken down, as of April 1 of this year it has sent over 6.9 million requests to [Technical difficulty—Editor] platforms for removal. That number is incredibly huge.

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

We'll turn to Mr. Angus now for the next round of questions.

Mr. Angus.

**Mr. Charlie Angus:** Thank you so much, Madam Lucki, for joining us today. We really appreciate it.

I'm looking at the briefing note that was given to you on December 10, 2020. The subject is The New York Times article titled "The Children of Pornhub". It's interesting, because you talked about strong partnerships, but this is what really struck me when I was reading it: "The RCMP strives to maintain partnerships with private companies"—in this case, we're talking about Pornhub and MindGeek—"as these are effective and support the company's voluntary compliance and adherence to its own Terms of Use."

I'm wondering why, when we're talking about whether or not criminal acts have been committed, the RCMP is interested in supporting voluntary compliance and the terms of use that are put on the website by the company, as opposed to adhering to Canadian law.

**Commr Brenda Lucki:** It's all about a combination, because there's the legal side and there's the regulatory side. Of course, we don't deal with the regulatory side.

Let's face it, if we can get companies to voluntarily comply with the regulations, then we are so much further ahead. I know that we've been working with the companies, especially through the NCECC. We've been sharing best practices of other companies who obviously have it right or are doing better. We discuss mechanisms for reporting. We provide the awareness and the education of the mandatory reporting act in the first place, because many of these companies aren't aware of that. It's a combination of—

**Mr. Charlie Angus:** Thank you.

I guess what was shocking to us at committee was to learn that they had never actually complied at all or brought forward anything under their obligations in the mandatory reporting act.

I bring it up—and I know you can't deal with specific cases—because I want to talk about a survivor who reached out to us who's an adult survivor of non-consensual abuse, as we've been talking about children. She's had numerous conversations with the RCMP and she's logged them. In an April 6 phone call with the RCMP, the RCMP told her that Pornhub can't be charged because they're under a blanket waiver. The survivor asked if that meant their terms of service, and the RCMP said, yes, that the terms of service state that they are not liable and it's the user's responsibility. This is a survivor of non-consensual sexual assault.

I know you can't speak to specifics, but it says in your briefing notes that the terms of use were identified, and this is what a police officer is telling a survivor as to why they can't bring forward her case. Why is that?

• (1235)

**Commr Brenda Lucki:** I would never suggest to any law enforcement that a survivor should not be bringing their case forward. They absolutely should be going to their police of jurisdiction and bringing that case forward so it can be properly reviewed and investigated. It's so important. Obviously that reporting is important for the companies, but it's also important for the survivors to come forward so that we can follow the leads and make sure that it is properly investigated.

**Mr. Charlie Angus:** The problem is that the RCMP—

**The Chair:** Thank you, Mr. Angus. Your time, unfortunately, is up. I wanted to offer the opportunity for an answer, so that was an extension of the time.

We'll go to Mr. Viersen now for the next round of questions.

Mr. Viersen, you have five minutes.

**Mr. Arnold Viersen:** Thank you, Mr. Chair.

I want to thank the commissioner for being here today as well.

I will probably stick to a vein similar to Mr. Angus. MindGeek appears to have close to a thousand employees based here in Canada. If I see sexual exploitation here in Canada, regardless of where it originated, would I not have the duty to report it?

**Commr Brenda Lucki:** Yes, but MindGeek.... The actual company, MindGeek, is not all involved with.... Pornhub is but one subsidiary and there are many others subsidiaries of MindGeek. I'm not sure, but many of those employees may not even be aware of some of that.

**Mr. Arnold Viersen:** Okay. If you're sitting in an office building in Canada and you come across child sexual exploitation, do you not have a duty to report it, regardless of where it originated?

**Commr Brenda Lucki:** Yes. Any citizen, not just employees but any person in Canada, any person anywhere, should be reporting it. Absolutely.

**Mr. Arnold Viersen:** RCMP documents show that they met with MindGeek in 2018, and MindGeek at that point said that they didn't

need to report to Canadian law enforcement because they weren't a Canadian company. Can you confirm that?

**Commr Brenda Lucki:** Yes. When we had that discussion with MindGeek back in 2018, they asked for support in relation to some automated software to assist in the detection of the online sexual exploitation material, so the NCECC directed them to a third party so that they could have that type of software.

Also, at that time, the issue of the mandatory reporting act was raised, and at the time they said that it doesn't apply to them because they're not a Canadian company, although that doesn't mean they weren't reporting it. They were actually reporting it through the United States. Then the United States gives us that information, and we actually, through MindGeek, have asked them to do a monthly report on what they report to the United States.

It's kind of a non-traditional way that it is being done, but the bottom line is that we are getting the reports.

**Mr. Arnold Viersen:** Okay, but this whole piece of jurisdiction still baffles me. Why would they not report it in Canada?

**Commr Brenda Lucki:** They believe that their servers, the ones to which this applies.... They report through the NCMEC that operates in the States. I can't speak to that particular legislation. However, there's article 2 and article 3 of the mandatory reporting act.

I do have my subject matter expert, Mr. André Boileau, who can give you a more fulsome response. He's more adept on the actual articles that they fall under.

• (1240)

**Mr. André Boileau (Officer in Charge, National Child Exploitation Coordination Centre, Royal Canadian Mounted Police):** Good day.

As per the way that MindGeek is structured, it is unclear at the moment whether the company is fully Canadian or not. The NCECC did have some communications, both with the NCMEC in the United States and the company. To prevent the duplication of reporting, we were able to get monthly summaries. They help us to assess the reports that are coming our way so that we can move them very quickly.

**Mr. Arnold Viersen:** Commissioner, have you read the letter that over 78 members of Parliament and senators have sent to the RCMP?

**Commr Brenda Lucki:** Yes, I have, and we do have a response. I apologize for the delay. It isn't your traditional one-page response. I think it's almost seven or eight pages. We did have it prepared, and it was ready to go last week until we realized that it needed to be translated. The committee will be getting a response to that letter today. We might slightly delay it if there are other outstanding questions as a result of this committee appearance. We'll add those responses to it.

**Mr. Arnold Viersen:** Okay.

**The Chair:** You have about 15 seconds left.

**Mr. Arnold Viersen:** I'll cede my time. Thank you.

**The Chair:** Thank you.

We'll turn to Ms. Shanahan for the next round of questions.

You have five minutes.

[*Translation*]

**Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.):** Thank you very much, Mr. Chair.

My thanks to the commissioner, Ms. Lucki, for joining us today.

I have listened with real interest to all the testimony we've had today. Again, it's important to note that this study has generated a lot of public interest, which has been very helpful in our efforts to combat child exploitation on the Internet.

I would like to thank all my colleagues who are here today.

In particular, let me thank Mr. Dong and Mr. Erskine-Smith for introducing the motion to the committee in the first place.

[*English*]

That being said, we have to put our money where our mouth is. That's what all colleagues here are very concerned about. I heard the ministers and Commissioner Lucki refer to the challenges in enforcement and the resources that they require. We can understand that, with technology evolving as it does on a constant basis, the challenge today to identify and investigate child pornography online is tremendous.

More than \$35 million of funding was recommended by the government in the supplementary estimates and in the mains, and it was voted down by the official opposition. They voted against this additional support for federal policing. What's even more shocking to me is that when other specific allocations were made in the 2021 main estimates, including \$6.3 million for the national strategy to combat human trafficking, \$4.4 million for the national cybersecurity strategy and \$4.2 million for protecting children from sexual exploitation online—exactly what we're talking about here—the Conservatives, the official opposition, voted against them.

Just by the by, as we're talking about the importance of the RCMP and federal policing in this work, at the NDP convention on the weekend there was a motion wanting to defund the RCMP altogether.

I think colleagues can agree—

**Mr. Charlie Angus:** I have a point of order. We are talking about child rape here. If she wants to do Liberal handstands, she can do

them someplace else. We have a few minutes to get answers on whether the laws of this nation are being applied. If she has ridiculous points to make, she can do it elsewhere.

**The Chair:** I don't think that's a point of order, but I think in an effort to bring things to order, Ms. Shanahan will probably note that concern.

• (1245)

**Mrs. Brenda Shanahan:** I will get my time back, Chair, because—

**The Chair:** Mrs. Shanahan, you have about two minutes left.

**Mrs. Brenda Shanahan:** Very good, as I do have important questions for the commissioner, because I am struck by the incredible challenges that we have in the identification and investigation of child pornography in this incredibly complex cyberspace world, which in many respects resembles the wild west.

Commissioner, can you comment on the kind of work that you are doing? We heard earlier that the RCMP is chairing the Virtual Global Taskforce. Can you comment on that work and what initiatives are being undertaken at this time?

**Commr Brenda Lucki:** Although law enforcement is facing a ton of challenges in addressing this crime, we have made some significant progress. In 2019, for example, there were over 100,000 reports that were received, and 362 Canadian victims were identified and uploaded to the Interpol's child sexual exploitation database. That was an increase of 32% from the previous year.

We also have developed and implemented a new and efficient file management system. All of this is with the funding that we got in budget 2018 and 2019-20. It's specific to online child sexual exploitation investigations to increase the effectiveness of analysis capabilities because they are so important.

Like you mentioned, we led a global study related to health and wellness as a part of the partnership with the Virtual Global Taskforce. I can't understate the negative effect of viewing these images day in and day out for anybody who is in this line of work. That study was so important.

Also, there's an international police alliance dedicated to the protection of children. That's what happens with the chair of the Virtual Global Taskforce. With the intel sharing and the data sharing, there's a lot of outreach and education.

We also we work with our national and international partners to help ensure that all citizens are as informed as possible, because it's about that reporting and that information sharing, and it's not just about victims or survivors. It's about the people who are [*Technical difficulty—Editor*] as well.

The Canadian Centre for Child Protection, the C3P, as we call it, is our national strategy partner. They have developed numerous resources for children, parents, police officers and community members so that they are educated.

Information is power, and I can't stress that enough because it's about people seeing something and then saying something and bringing it forward. That's the best way we can deal with this.

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

We will turn to Mr. Carrie now.

**Mr. Colin Carrie:** Thank you very much, Mr. Chair.

Commissioner, I want to explore a point that was mentioned by the ministers and you in regard to the international front.

I was honoured to be part of a round table in Oshawa, and I want to thank the Durham Regional Police human trafficking unit for that. They had representatives from the FBI and Texas. What I found out is if you commit these offences and human trafficking offences in the United States, there's a mandatory minimum of 10 years per person trafficked.

When the Liberals had a chance to do something about this in 2019, they passed Bill C-75, which turned human trafficking into a hybrid offence where somebody could serve fewer than two years in prison, or just pay a fine of \$5,000.

What I wanted to ask you is this. As a police officer, if you wanted to have a disincentive to doing this type of business in Canada, what do you think is the greater disincentive? If I'm this business and want to use these exploitive images on the Internet or to engage in human trafficking via the Internet, and I could do the business in Canada versus the United States, which is the greater disincentive to doing the business in Canada versus the United States, the 10-year mandatory minimums or the potential \$5,000 fine? I ask because my sources say that these human slave traders can make \$250,000 to \$300,000 per person trafficked. Where is the better place to do business?

• (1250)

**Commr Brenda Lucki:** Mr. Carrie, that is a very difficult question. I would pass that to my colleagues from the Department of Justice. I think Robert Brookfield and Normand Wong are on the line as well, and they would probably be better suited to answering that question.

**Mr. Colin Carrie:** Maybe you can't answer the question, but I think it's quite obvious to anybody watching this right now that, when we had a chance to get tougher on these types of crimes, we actually made the penalties less severe.

You mentioned some statistics in response to my Bloc colleague about how many investigations you've done since 2019, when the Liberals changed this. You have been quite busy, and I understand the numbers. There were thousands of investigations, but how

many charges have you actually laid since 2019, since Bill C-75 came into effect?

**Commr Brenda Lucki:** I don't have the specific numbers since the onset of Bill C-75. I would have to get you [*Technical difficulty—Editor*] numbers with regard to the RCMP jurisdiction, and not the entirety of Canada, which would be a disservice because many of the areas that we police are not the centre of where this crime occurs. It tends to gravitate towards the bigger urban centres.

**Mr. Colin Carrie:** Absolutely. Thank you very much, Commissioner Lucki.

When you're looking at the situation that we're facing.... I come from Oshawa. We're along the 401 corridor, and we have seen an increase in this type of business, which is upsetting to all of us who have been involved in this study. I was wondering if you could provide the committee, first of all, the number of charges that have been laid by the RCMP, but if you could mention how many have been [*Technical difficulty—Editor*] jurisdiction.

I know the government was having challenges appointing judges for a period of time for federal courts. When the changes were made for human trafficking to be turned into a hybrid offence, it was disappointing to see these indictable offences that originally carried some significant penalties for people in human trafficking to be pushed down to the provincial courts.

Would you be able to tell us off the top of your head how busy the federal courts are right now when they do have to prosecute these types of crimes? Is there a long waiting period between the time charges are laid and the time that victims have to go to court to become revictimized and testify against the perpetrators?

**The Chair:** There are about 30 seconds remaining, but I will allow the commissioner to answer.

**Commr Brenda Lucki:** I would love to be able to answer that question, but with regard to the delays in the courts, obviously, COVID has contributed to that. I can't give you those specific answers. There is no distinction between the provincial and the federal when it comes to the laying of a Criminal Code charge. It's just brought to court. Obviously, I don't have those specific numbers or the delays.

**Mr. Colin Carrie:** Thank you for your testimony. I look forward to some of those numbers if you can give them to us.

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

We'll [*Technical difficulty—Editor*].

**Mr. Francesco Sorbara:** Thank you, Chair.

Good morning again to everyone.

Commissioner Lucki, thank you for coming today and thank you for your comments to date. I had the pleasure of growing up in a small town in British Columbia with an RCMP detachment there, in Prince Rupert. I know during my high school years we were visited by RCMP officers, for good things, of course, for educational items and so forth, so I want to thank all the RCMP officers. Here in Ontario, many people may not see the RCMP officers on a daily basis, but growing up, we certainly did and I say thank you to them.

With regard to the response that was given, the letter dated February 22, 2021, it was a response, actually, to my colleague Mr. Dong's question in terms of whether [*Technical difficulty—Editor*] Mr. Stephen White, that three-page letter, which I found to be very insightful, very informative and gave an excellent summary of the RCMP's responsibilities with regard to this area of jurisdiction we're looking at in terms of the study.

In terms of the committee's recommendations, because we'll have to write a report and provide recommendations, on page 3, with regard to the RCMP's ask and recommendations to improving the law.... I can just read it. It's the second paragraph on that page. It says:

Some of the RCMP's proposed recommendations included the amendment to the MRA Regulations to name the NCECC as the designated agency for notifications with respect to Section 3 (Duty to Notify a Police Officer). This change will better align the reporting activity and make standardization possible. The RCMP understands that the requested change, among others, are now being reviewed by the DOJ.

Can you go into and elaborate on how that change would strengthen the RCMP's ability to prosecute and investigate instances of child exploitation?

• (1255)

**Commr Brenda Lucki:** That is a really great question.

I'm going to pass that over to my colleague, André Boileau.

**Mr. André Boileau:** Thanks.

To answer your question, it actually would strengthen it, because at the moment, if you look at the MRA, you see that under section 3 Canadian companies actually do their reporting to law enforcement across the country—police officers. There are no specifics as to whom in particular they can actually do their reporting, contrary to section 2, where it is specific because C3P has been identified as the entity to which the reporting needs to be done.

By naming the NCECC in section 3, this would actually allow it to concentrate all the information toward us—all the reporting—and we'd be able to take care of the duplication or the conflicts and then disseminate the information very quickly across the country to the police of jurisdiction.

**Mr. Francesco Sorbara:** Thank you, Mr. Boileau. I'm sure I'm going to be reading the blues on your answer there to understand everything, since I'm not a lawyer by training, but I thank you for that explanation.

Secondly, the NCECC, on behalf of the RCMP, is the current chair of the Virtual Global Taskforce. Very bluntly, how important is Canada's leadership on this Virtual Global Taskforce?

**Commr Brenda Lucki:** That's another great question.

I can't overstate the importance of the leadership of the RCMP in general in many ways. We're sort of the glue that connects all the police agencies together. We are the national repository for intelligence. For us to share that information or to be the lead of that speaks volumes also to the fact that much of our legislation is ahead of that of many countries. That's part and parcel of why it is important that we lead that global task force.

It helps on many fronts, not just domestically, but it does help, and obviously it's a great forum to share best practices and to learn what other countries are doing to combat this. It's also really good to share the intelligence and to do the data sharing as well. I'm just so honoured that Canada is the lead of that.

**Mr. Francesco Sorbara:** Thank you.

Mr. Chair, how long do I have left?

**The Chair:** You have about 20 seconds left.

**Mr. Francesco Sorbara:** With that, I just wish to say thank you to the commissioner and also to you, Mr. Boileau. Excuse me, but I don't have your title offhand. Thank you for your answers. I wish everyone great work.

To the folks at the NCECC, thank you for what you do.

I know that we've only gotten a very small portion of what child exploitation is about. I know that it turned my stomach, and I went home to my young daughters and gave them a big hug when that day was over.

For what they do, I just want to say thank you to those individuals for their professionalism and dedication to service.

**Commr Brenda Lucki:** I'll be sure to pass that on. Thank you.

**Mr. Francesco Sorbara:** Thank you.

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

We have two final questioners.

Madame Gaudreau, we will go to you for the next two and a half minutes.

[*Translation*]

**Ms. Marie-Hélène Gaudreau:** Good afternoon, Ms. Lucki.

I would like to have a little more information about the Five Eyes. We talked about the fact that Canada has become a leader. I have one concern: our legislative model is used to maintain the structures. Yet the need to respond is changing so quickly. Earlier, I heard you talk about the increased need for resources.

Who are the Five Eyes? What is the specific role of the group?

Reassure me and reassure the victims that we are thinking about enacting international laws that could help to eliminate the problem. If you are telling us that we are a leader, could you elaborate?

• (1300)

[*English*]

**Commr Brenda Lucki:** For the Five Eyes, the countries that are involved are Australia, New Zealand, the U.K., the United States and us. It's important that we work together and, first of all, exchange the intelligence and the data, but also work towards developing and investing in technological solutions. Often some of these countries are working towards technological solutions, so we can use that.

We're also the lead, when you look at child exploitation and you look at [*Technical difficulty—Editor*], the technology there is the first of its kind and what they've done with the Phoenix group is so incredible. When we look at companies, we like to work with the voluntary principles to counter online child sexual exploitation and abuse, which were developed by the Five Eyes governments through consultation with a wide range of stakeholders, including a leading group of industry representatives. These principles are intended to provide a consistent and high-level framework for industry actors to review safety processes and respond to risks facing users. There's lots of great exchange, all with the goal of eliminating these heinous acts.

**The Chair:** Thank you, Commissioner. We have one—  
[*Translation*]

**Ms. Marie-Hélène Gaudreau:** Does this continue over time, is it always the same group?

[*English*]

**The Chair:** Thank you, Madame Gaudreau.

We're going to turn to Mr. Angus as our final questioner this morning.

**Mr. Charlie Angus:** Thank you so much.

Madam Lucki, in the briefing report to the commissioner there are recommendations, but there's nothing there. I thought maybe they were blanked out, but after hearing from the justice minister and your testimony, maybe there aren't recommendations.

Would you provide whatever recommendations you received in that briefing note to our committee?

**Commr Brenda Lucki:** I'm looking at the—

**Mr. Charlie Angus:** Our version is blanked out, so if you could forward that to us, it would help us in our work.

**Commr Brenda Lucki:** Some of the recommendations, obviously, are subject to cabinet confidence because they're in the midst of an MC, but we're having discussions with the DOJ about the mandatory reporting act and how to strengthen that.

**Mr. Charlie Angus:** Okay, but I have very little time. I'm just asking if you could forward them to us. It would make things simpler.

**Commr Brenda Lucki:** We can put in a little section in that letter.

**Mr. Charlie Angus:** Thank you so much for that.

Madam Lucki, we hear time and time again from survivors that they're not believed. I want to put this on the record because we've heard about how, when you spoke with Pornhub in 2018, Pornhub believed the rules didn't apply and then they were allowed to do this in a roundabout way. I don't see in the Criminal Code that we let companies under investigation do things in a roundabout way.

I'm dealing with a survivor who called the RCMP about non-consensual...a sexual assault video, and they asked, "How does Pornhub know that was illegal?" That's what they said to her on April 6. On May 23 they said, "There are lots of rapes on that site and some of them are acting, so how is Pornhub supposed to know

that this survivor isn't acting? How could she prove that she did not consent?"

Then the RCMP asked her how she could prove that Pornhub did it on purpose, meaning posting something that's illegal. Then they asked her how they knew that Pornhub knew what was being uploaded. How did she know they'd even had a chance to view it in advance? Then the RCMP said, yes, but on *W5*, they said there weren't enough moderators to do the job properly, so they might not have known that it was not consensual, because they didn't have enough people to moderate it.

These are the questions that are being asked of a survivor, time and time again, and on April 6 the RCMP writes to her and says, if she has a complaint regarding Pornhub's actions, she needs to contact the police where Pornhub is located.

For this woman, the RCMP is her provincial police force. She's told that Pornhub is not a Canadian company. Can you tell this survivor where she has to go to make a complaint about Pornhub?

• (1305)

**Commr Brenda Lucki:** The revictimization of survivors is totally unacceptable. It is not acceptable by any means. Victims of online child exploitation should really reach out to their local law enforcement agency to file the complaint.

**Mr. Charlie Angus:** She did.

**Commr Brenda Lucki:** It's unfortunate. I have no words to say—

**Mr. Charlie Angus:** Do you know where she could make her complaint? The RCMP told her she has to contact the police where Pornhub is located.

**Commr Brenda Lucki:** Okay, that's not an—

**Mr. Charlie Angus:** Pornhub's terms of reference say "Cyprus". They're based in—

**Commr Brenda Lucki:** No, that's not an acceptable answer. We need to get better.

We have the Cybertip line as well, so we need to get better so that the survivors are not revictimized every time they have to come forward. It just saddens me when I hear that. It's just not acceptable.

**Mr. Charlie Angus:** Thank you.

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

Thank you, Commissioner.

Thank you to all of the supporting officials who came as well for this afternoon's meeting. I am here in Alberta so I keep saying that [*Technical difficulty—Editor*] it's in the afternoon. Anyway, thank you for being here.

Colleagues, we will just suspend for a short period of time to allow the witnesses from the first two hours to log off, and we'll allow the law clerk to sign in.

**Mr. Han Dong:** I have a point of order, Chair.

It's actually a point of clarification. I receive a lot of correspondence from organizations across the country that are concerned that we [*Technical difficulty—Editor*]. When I first put notice forward to start this study, I didn't expect the amount of information and evidence that we're getting. I know that my Liberal colleague has proposed to hear from sex workers or a sex work advocacy group, like Stella. They have openly said that they want to be here, but they were denied the opportunity.

Can you give us an update on how many remaining witnesses there are, and exactly why we are opposing Stella in coming forward to testify?

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

The committee has not yet determined future witnesses, so the committee will certainly look at the witnesses and, at that point, we will make those determinations. That will be something I will be asking committee members to make some decisions on, in terms of how long the opportunity will remain open for witnesses or individuals who believe they have something to contribute to this study.

We, as a committee, need to give some clarification to people who are watching our study progress. At some point when we have a future business opportunity, I think we'll consider all of those witnesses.

I would remind every person who believes they have something to contribute to this hearing that, while committee members may not agree to hear from every witness who believes they have something to contribute, this committee has made a determination that we will accept all correspondence from people who believe they have something to contribute to this hearing, and it will be considered to be testimony. That was a decision of committee members some time ago.

Therefore, while not every person who believes they have something to contribute will be heard in the way that this committee meeting was held today, the committee has made a decision that we will accept all testimony via written form, and it will be treated in the same way as if those witnesses testified in person—the same provisions of confidentiality, if that is requested, or in terms of parliamentary privilege. Those things will be included. That was a decision of committee members some time ago.

I am certain we will have an opportunity to hear from additional witnesses. I am not sure that anybody [*Technical difficulty—Editor*] down, Mr. Dong.

**Mr. Han Dong:** Okay.

**The Chair:** If committee members do make that determination at some future time, then that will be conveyed. However, as of yet, I haven't heard of any witness who has had their brief or their request rejected.

Thanks so much.

**Mr. Han Dong:** That will help us to have a comprehensive study, and that's a very important aspect. I think it will be beneficial for the committee members to hear from them.

**The Chair:** Thank you.

We will, I'm sure—

**Mr. Charlie Angus:** I'm sorry. I have a point of order.

• (1310)

**Mrs. Brenda Shanahan:** Point of order...?

**The Chair:** We'll go to Mr. Angus, and then we'll turn to Mrs. Shanahan.

Mr. Angus.

**Mr. Charlie Angus:** Thank you.

Just in terms of how things are done, we did have a meeting. Normally we don't discuss witnesses in public. We discuss witnesses at the planning meeting and then bring them forward. That was what was done. It was also understood that all witness testimony was being brought forward, even in written form.

We could have a planning meeting, and I am certainly open to that. I think it's probably a better way to deal with it than as points of order on the floor, as Mr. Dong seems to love his points of order.

**The Chair:** Thank you, Mr. Angus. I appreciate that. I think there is an opportunity on Friday to schedule one of those meetings.

Go ahead, Mrs. Shanahan.

**Mrs. Brenda Shanahan:** Mr. Chair, I have a point of order about our proceedings from here on in.

We received the briefing about the law clerk's appearance just shortly before this meeting, and I've been trying to communicate with the clerk about it. Are we proceeding to hearing from the law clerk, and will the rounds be the normal rounds? That's what I'm asking for clarification on.

**The Chair:** We will start the rounds from the top. This is a new witness. I consider this to be a new witness on a different subject, so we will start the rounds from the top. The law clerk has prepared a brief opening statement. We'll hear from him and then we will proceed to those.

Colleagues, if there's still a desire to suspend for a few minutes, we can do that. Then we can proceed to hearing from the law clerk.

We'll suspend for the next four minutes. The meeting is suspended.

• (1310)

(Pause)

• (1315)

**The Chair:** I think I see most people's faces returning, so we'll call this meeting back to order.

Colleagues, we are moving back to a discussion with regard to our study on questions of conflict of interest and lobbying in relation to pandemic spending, but specifically with regard to the order of reference of March 25, 2021, and the motion that was adopted by the House of Commons. There were some questions with regard to how to proceed. Monsieur Fortin had brought forward a motion. It was the desire of the committee members of all parties to hear from our law clerk, to provide some additional clarification and some support in terms of decisions that this committee is prepared to make.

Monsieur Dufresne, thanks so much for being with us today. We appreciate your willingness to come on such short notice. Thank you so much for providing your insight and wisdom with regard to this matter.

I believe you have a short opening statement. We'll turn to you for your statement and then we'll have some questions for you.

[Translation]

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

Members of the committee, thank you for inviting me to appear before you. As Law Clerk and Parliamentary Counsel of the House of Commons, I am pleased to be here today to answer any questions that the committee may have.

My office provides comprehensive legal and legislative services to the Speaker, the Board of Internal Economy, the House and its committees, members of Parliament, and the House Administration. As legal counsel to the House, its committees and its members, we understand the interests of the legislative branch of government. We provide legal and legislative services to the House that one might say are similar to those provided by the Department of Justice to the government.

With me is Michel Bédard, Deputy Law Clerk and Parliamentary Counsel, Legal Services. I hope my answers will be helpful to the committee.

[English]

At the outset, I want to take a few moments to highlight the committee's powers to send for persons.

The House has certain powers that are essential to its work and part of its collective privileges. As the grand inquest of the nation, the House has the right to [*Technical difficulty—Editor*]. This right is part of the House's privileges, immunities and powers, which are rooted in the preamble in section 18 of the Constitution Act, 1867, and section 4 of the Parliament of Canada Act. These rights in this role have been recognized by courts and include the constitutional power to send for persons, documents and records.

[Translation]

If a witness fails to comply with an order issued by a committee or by the House to appear before a committee to testify, the committee itself cannot impose sanctions on the witness. The committee can accept the situation and the reasons presented, decide to do nothing, or report to the House, which has the power to take appropriate action.

With that, I would be pleased to answer any questions you may have.

Thank you.

• (1320)

[English]

**The Chair:** Thank you, Mr. Dufresne. We appreciate your willingness to be here.

We'll begin the opening rounds of questions with Mr. Barrett.

**Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC):** Mr. Dufresne, thank you for joining us today.

What obligations come with an order of the House?

**Mr. Philippe Dufresne:** The orders of the House [*Technical difficulty—Editor*] powers, and part of its powers are to send for persons and records. The order is there and ought to be followed.

**Mr. Michael Barrett:** What recourse is available to the House should an order duly issued by the House be disobeyed?

**Mr. Philippe Dufresne:** A House order falls under the House's privileges and the management of the House's procedural matters. In a situation where there is a concern over compliance with a House order, the process to raise those concerns, if it's a House order, would be raising it with the House itself. If there's a concern with a committee order, the matter would first be raised with the committee, but concerns would ultimately need to be raised with the House if additional steps were desired.

**Mr. Michael Barrett:** In this specific case, sir, of an order of the House being issued for persons to appear at committee and documents to be presented or delivered to committee, what process needs to be followed? Does it first need to be referred by the committee chair to the House, or as it is an order of the House, can the issue simply be raised by a member to the Speaker directly?

**Mr. Philippe Dufresne:** Normally, the Speakers have indicated in rulings that, if a matter relates to a committee and to information to be provided to a committee, it would generally be the practice to wait for the committee to first address it, giving the opportunity to the committee to determine it is satisfied.

Often when information is not provided, there are reasons given for why it's not been provided and claims of confidentiality made, so the committee is usually first given the opportunity to turn its mind to that and determine if it is satisfied or not, or if it wishes to consider different approaches or wishes to have the matter considered by the House.

**Mr. Michael Barrett:** What precedent is there for an order of the House like this one to be disregarded or disobeyed?

**Mr. Philippe Dufresne:** There have been instances where orders of the House have not been followed for the provision of information, situations where the government was invoking cabinet confidence so as to not provide information and/or documents, or invoking national security. In these instances, the question was ultimately referred back to the House as a question of privilege.

One instance was the Afghan detainee matter, in which the Speaker, in a ruling on a question of privilege, gave some time to the parties to find a solution to resolve the matter, to allow the committee to do its work but at the same time protect the imperatives that were being raised by the government, in that case, of national security.

In another case dealing with information about public spending, the matter was referred to the House committee on House affairs so that it could consider it and make a report to the House.



**Mr. Michael Barrett:** Did both of those instances deal with documents, or did one of the two deal with individuals being ordered to testify?

**Mr. Philippe Dufresne:** Those two matters dealt with documents.

**Mr. Michael Barrett:** Is there precedent with respect to an individual?

**Mr. Philippe Dufresne:** There are precedents with respect to individuals being summoned, to orders of committees asking for appearances of witnesses, and these being raised with the House.

**Mr. Michael Barrett:** Is there precedent for ministers ordering witnesses not to appear or to disregard an order of the House?

**Mr. Philippe Dufresne:** There was a precedent in 2010, where the government instructed its political staffers not to appear in front of a committee. I believe it was this committee. The argument made then was similar to the argument being made now, namely, that this was a matter of responsible government and that the ministers were the more appropriate witnesses to respond to questions from the committee. In that instance, in 2010, there was no order of the House. It was an order of the committee, but the claim made and the grounds given were the same.

• (1325)

**Mr. Michael Barrett:** Thank you.

Mr. Dufresne, in this particular order of the House, was there a provision for ministerial accountability included in the order?

**Mr. Philippe Dufresne:** There was a provision in the order that gave the alternative that the Prime Minister could appear, if I read the order correctly, and that should the Prime Minister appear instead of the named political staffers, those employees would be released.

**Mr. Michael Barrett:** Right. Would that satisfy the argument made with respect to ministerial accountability?

**Mr. Philippe Dufresne:** That's a determination to be made by the committee and ultimately the House.

**Mr. Michael Barrett:** In the case of individuals being ordered to appear, is there anyone who can lawfully exempt an individual from appearing at committee by order of the House, in this case, ministers of the government telling people lawfully ordered to appear that they should not appear? Is that a power the government has?

**Mr. Philippe Dufresne:** In my view, this power rests with the House. The House issues the order and it's up to the House to interpret whether it is satisfied with the compliance with its order. It's the same with a committee's order, where the committee is given the opportunity to consider. There have been, again, in the precedent of the Afghan detainees, statements by the Speaker very clearly to that effect, that the House has a constitutional power to request this information.

At the same time, there is very strong encouragement to the House and committees to consider public policy imperatives when exercising those powers.

**The Chair:** Sir, your time is up.

Ms. Lattanzio, we'll turn to you for the next six minutes.

**Ms. Patricia Lattanzio:** Thank you, Mr. Chair.

Thank you Mr. Dufresne and Mr. Bédard for being present today and answering these questions on ministerial responsibility.

The principles of ministerial accountability guide the ministers and their officials when they appear before parliamentary committees, including when officials appear in their capacity as accounting officers. I understand that ministers are responsible for providing answers to Parliament on questions regarding the government's policies, programs and activities, and for providing as much information as possible about the use of their powers, including those delegated by them to others.

Ministers are also responsible for deciding which questions they should answer personally and which questions may be answered by officials speaking on their behalf. This has been a long-standing practice of the House.

Beyond the broad scope that committees can compel anyone residing in Canada to appear before a committee, do you think that using the committee's power to compel staff, who have, in many cases, no authority over decisions of the government, and forcing them to appear [*Technical difficulty—Editor*] political gamesmanship?

**Mr. Philippe Dufresne:** I would point to the recognition in *Procedure and Practice*—where there's a discussion about the role of public servants and their particular function—that indeed they are not the ones making the policy decisions. That is being done by the ministry and by the minister.

There is a discussion there about the types of questions and the questions and topics that are appropriate—or not—for public servants, and that generally committees will accept reasons given by public servants if there are areas where it's beyond the public servant's authority or knowledge. That's where you've seen these types of concerns very much in terms of topics that would be appropriate for public servants, given their very different role in terms of decision-making and also in terms of accountability.

**Ms. Patricia Lattanzio:** You spoke earlier about the precedent that was set in 2010. My understanding is that then Conservative minister Jay Hill made it clear that political staff would not appear before committees. He stated:

These employees are accountable to their superiors, and ultimately to their minister, for the proper and competent execution of their duties.

He followed with this:

There is a clear case to be made that the accountability of political staff ought to be satisfied through ministers. Ministers ran for office and accepted the role and responsibility of being a minister. Staff did not.

I know you may find it hard to answer, but do you find it somewhat hypocritical that now the Conservatives, or other members of this committee, are arguing the opposite when it suits them politically?

Can you also tell us what happened in 2010? Who ended up showing up at the committee to testify?

• (1330)

**Mr. Philippe Dufresne:** In terms of the 2010 precedent, it was the ministers who appeared instead of the political staffer. The opposition, many members of the committee, were concerned with that position being taken. There was a debate on a motion to report that to the House, and that was defeated at committee, so that motion was not adopted.

These are the types of issues that we see arising. A government will take a position, and committees will consider that and whether they accept the reasons—or not—given by the government in those instances. My view is that, ultimately, it is up to the committees and to the House to make the determination. The determination may well be that it's appropriate to have a different witness for different purposes or different types of information. These are considerations for the committee.

**Ms. Patricia Lattanzio:** I want to follow up on that, because you're highlighting that it would be for various purposes or reasons. That's basically the crux of the question here: for various reasons. If there is no value to compelling a witness to come before a committee and it is purely political, would you not conclude that it would be futile to proceed in the way that this has proceeded?

**Mr. Philippe Dufresne:** As highlighted in the book in terms of the powers of committees, the issue is always whether you have what you need to fulfill your fundamental mission as the grand inquest of the nation, and whether you are doing that, exercising those powers, in a way that is not harming other public interests, public policy issues or individuals.

It's really a case-by-case situation as to what you need, as a committee, to do your work. What information do you need to be able to fulfill those functions of legislating, deliberating and holding the government to account?

**Ms. Patricia Lattanzio:** I'm going to finish off with another quote by Mr. Hill. He said, "The tyranny of the opposition majority has turned its attention to the men and women who make up our political staff, men and women who did not sign up to be tried by a committee, to be humiliated and intimidated by members of Parliament."

Mr. Dufresne, do you believe that dragging political staff before a committee is likely to benefit Parliament and the government of the day in general? This is for questions that are not relevant. I'll say that as a preface.

**Mr. Philippe Dufresne:** At the end of the day, it's not for me to make the determination of what is needed or not in a committee's mandate. What I will point to again, though, is the discussion in *Procedure and Practice* regarding the particular role of public servants. Political staffers have a different role than the one of ministers.

The general advice given to committees is to seek the information they need, but treat all witnesses with courtesy and ensure that no unnecessary harm is caused to any individual or any public policy consideration.

**The Chair:** Thank you so much.

We'll turn to Monsieur Fortin, for six minutes.

[Translation]

**Mr. Rhéal Fortin (Rivière-du-Nord, BQ):** Thank you, Mr. Chair.

Good afternoon, Mr. Dufresne. Thank you for being with us today. Your clarifications are valuable to us in the current situation, as it's often the case.

As I understand it, the authority that makes an order, in this case the House of Commons, is the only one that can deny, withdraw, or change that order.

Am I mistaken?

**Mr. Philippe Dufresne:** You are right, Mr. Fortin. If it's a matter of changing the wording of the order, the House can do so. However, the order gives the committee the possibility of releasing the witnesses in question. The committee retains some discretion.

**Mr. Rhéal Fortin:** Okay. Otherwise, we must stick to the wording of the order that was issued on March 25 by the House of Commons.

**Mr. Philippe Dufresne:** That is the distinction that must be made. If the order came from the committee, the committee could change it on its own initiative.

**Mr. Rhéal Fortin:** Are you telling us that in 2010 the government ordered someone to disobey an order of the House? Is that what you said?

• (1335)

**Mr. Philippe Dufresne:** In 2010, the order was issued by a committee.

**Mr. Rhéal Fortin:** If I understand correctly, this has never happened for a House order.

Is that the case, to your knowledge?

**Mr. Philippe Dufresne:** To my knowledge, we have not seen a situation dealing with the appearance of a witness. We have seen cases related to the disclosure of information, when information or documents were requested, but the government invoked cabinet confidence or national security.

The distinction here is that the government is invoking ministerial responsibility as a reason.

**Mr. Rhéal Fortin:** I would actually like us to talk about ministerial responsibility. As I understand it, this principle implies that, before the House, and even before the public at large, ministers are accountable for the management of their offices. They are responsible.

But am I to understand that they are the only ones who have this obligation? In other words, the House could not hold anyone else accountable except the minister.

I also understand that a House committee would not be able to review, with other witnesses or with other documents, the position taken by the minister.

Is that actually the case?

**Mr. Philippe Dufresne:** In my view, committees and ultimately the House have the authority to determine what reasons they will accept. There is a great incentive to—

**Mr. Rhéal Fortin:** I apologize, Mr. Dufresne. It was not my intention to interrupt you. We are not being very polite, but we have very little time. I think I misspoke.

Here is what I meant to say. The minister, because of his accountability, could describe his position to us in several points. But because of the principle of ministerial responsibility, would the committee be unable to check the facts with other witnesses? Could we, for example, subpoena someone to confirm what the minister has said and to tell us whether they agree with what he has said?

Do we have the right to do that or not?

**Mr. Philippe Dufresne:** According to the decision of Speaker Milliken in the Afghan detainee case, the House is sovereign and can decide whether or not to accept the reason given, including by the government. In the Afghan detainee case, the government was invoking national security. In the current situation, ministerial responsibility is being invoked. A dialogue needs to take place.

**Mr. Rhéal Fortin:** Okay.

We want to examine some aspects of the WE Charity matter. We want to check facts and we need to hear from certain witnesses, because other witnesses have told us that Mr. So-and-so said this or did that. We want to hear from these witnesses of fact, whom we are not accusing of anything. They are not here to be held accountable for anything. But we want to hear their testimony and their side of the story.

Do we not have the right to check these facts with the individuals in question, because they are employees of a minister?

**Mr. Philippe Dufresne:** As far as I know, there is no recognition of immunity indicating that employees of ministers are not obliged to testify before a committee. In my opinion, it is rather a reason given to you, when you are presented with this important principle of ministerial responsibility that makes ministers accountable to Parliament. Since employees are accountable to the minister, they put forward this argument.

If the matter is brought forward, it is up to the committee and ultimately the House to determine what course of action to take.

**Mr. Rhéal Fortin:** I understand that we have the right to ask witnesses questions, even if they are employees of a minister.

**Mr. Philippe Dufresne:** You have the right to ask them to appear in order to hear this information. It is up to the committee and ultimately the House to determine whether this right to [technical difficulties].

**Mr. Rhéal Fortin:** So the House decides that.

However, when an employer, a minister in this case, orders a particular individual to disobey an order of the House, what is the range of sanctions that the House has at its disposal?

**Mr. Philippe Dufresne:** When a concern is raised in the House about a breach of privilege concerning an order to produce a document or, in this case, to summon a witness, the House can refer the matter for examination to a committee, which is generally the Standing Committee on Procedure and House Affairs. The House

can give an order. In his case, it has already done so, but it could amend that order if it is of the opinion that the matter is one of concern.

The increasing range of measures can include summoning an individual to the bar of the House, declaring that an individual is in contempt of Parliament, or withdrawing confidence in the government, as was done in 2011.

• (1340)

[English]

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

[Translation]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

[English]

**The Chair:** Monsieur Fortin, you're out of time, but hopefully we will get back to you.

Mr. Angus, we'll turn to you for six minutes.

**Mr. Charlie Angus:** Thank you.

I'm very honoured and pleased that you're with us today. For me, having sat on this committee for so many years, it's almost bizarre to watch the Liberals now taking the position of Jay Hill. I remember my good friend Wayne Easter, who was outraged that the Conservatives did not want political staffers coming to this committee. Now it's something that would be a fundamental threat to democracy if we did have them come.

I'd like to just put it in the perspective of the times. You spoke about the Afghan detainee documents. Canada was in a very messy war. There were allegations of torture. There were international implications. These documents were extremely explosive. I disagreed with the Conservatives at the time on how they were handling the Afghan detainee documents, but we understood that it was a hugely sensitive issue that could have massive ramifications.

In this case, we're dealing with the WE Charity brothers and the fact that they called the Prime Minister's Office three days before cabinet was told that half a billion dollars was to be given to the WE Charity. We're not allowed to talk to the key person in the Prime Minister's Office who was giving them the thumbs-up on that because it's somehow a threat to national security. I think it's just worth putting that into perspective.

I remember when the opposition called the staffer for Christian Paradis to testify. The Conservatives weren't very happy about that. Is it a parliamentary rule that the political staffers, the people close to the Prime Minister, can't testify before a committee? Is that some kind of fundamental rule of democracy?

**Mr. Philippe Dufresne:** As I've indicated in previous discussions, there is no immunity for political staffers or public servants vis-à-vis a request to testify before a parliamentary committee. Generally, how we've seen this dealt with had to do with the topics and the types of questions, given the very different role that public servants and political staffers have, as opposed to ministers.

**Mr. Charlie Angus:** They have different roles, but they're also the key people who are moving files forward, particularly, apparently, politically explosive and sensitive files like the WE brothers' relationship with the Prime Minister and the half a billion dollars they were about to get. I'm going to put that aside for a minute now to consider what our committee needs to do.

We heard a lot about ministerial responsibility from my Liberal colleagues, but the ministers they brought forward didn't know anything about the file, so it was pretty much a waste of our time. Now we have a motion to report it back to the House.

Is there anything outrageous—a threat to democracy, a threat to the survivability of this Parliament—if the committee reported to the House that the witnesses that the House said should come before this committee did not appear? If we reported back and said that those witnesses had not appeared, would it be something that you think could cause an election?

**Mr. Philippe Dufresne:** It's one of the options the committee has in the situation where it feels that a witness the committee wishes to have before it does not come before it. The committee, in that situation, has options. It can accept the situation. It could look for other ways to get the information. However, if it wishes to have this particular witness, and the committee itself doesn't have the power to enforce that request, then its option is to report the situation to the House.

**Mr. Charlie Angus:** The situation with the Kielburgers and the WE scandal is that we had been on this for eight months. We were finalizing this. There were some outstanding questions, and that's why we asked for these staffers to appear. I think we know what we need to know, but I think it would look very strange if we didn't put in our report that the last three witnesses did not appear.

To me, it's a straightforward issue. The committee was supposed to hear from these witnesses. This was called for by Parliament. Parliament named them. When they were supposed to appear, they did not appear. Hence, we should simply report back to the House that they did not appear.

Is that a rather straightforward function of what the committee's powers are?

• (1345)

**Mr. Philippe Dufresne:** As indicated, it's certainly something the committee can do. It can report the situation to the House. Then the matter becomes one for the House to consider what to do in the face of that report.

**Mr. Charlie Angus:** Would it be the Speaker who decides? If we were to simply say that we wanted the House to be aware that, following the vote it took, the witnesses did not appear, would that be something the Speaker then decides what to do with?

**Mr. Philippe Dufresne:** That becomes something that can be raised as a question of privilege. If it's raised as a question of privilege, then the Speaker would need to rule on that.

**Mr. Charlie Angus:** Therefore, someone would have to rise in the House and say that their privileges as an MP were abused. Then the Speaker would rule. Can the Speaker then send it to committee?

**Mr. Philippe Dufresne:** When a question of privilege is raised, the Speaker will rule whether it is a valid question of privilege, whether it has been raised at the earliest opportunity and whether it raises a prima facie case. If the Speaker finds such a prima facie case of privilege, then a motion can be put forward. It's that motion, then, that would put to the House the remedy, whether that be sending it to PROC, which is the normal course, or other mechanisms.

In the Afghan detainee case, there was an invitation given to parties to find a solution. In other cases, there were findings of contempt. In another, the opposition [*Technical difficulty—Editor*] take to raise concerns with confidence.

**Mr. Charlie Angus:** Thank you very much for that. It helps clarify this for me.

**The Chair:** Thank you.

Mr. Carrie, we'll turn to you now for the next questions.

**Mr. Colin Carrie:** Thank you very much, Mr. Chair, and I want to thank Mr. Dufresne for being here.

I want to go back to the 2010 precedent. You have been clear that it was different. At that time it was a committee order, versus a House order, but I was here at that time and, as Mr. Angus said, it was a very serious situation. Anybody watching that video....

I'd like to refer to Ms. Lattanzio. When those witnesses, those staffers, were brought to committee, they weren't just asked to be there for one day to fill in information that the opposition didn't have. They were actually berated. It was almost to a point of character assassination.

When she talks about political reasons, Mr. Chair, I would say that the Liberals seem to have a standard now that is different from the standard they had when they were in opposition. I would like to quote Mr. Easter, who was there at the time. He said:

If we want to invite the minister to come before the committee, then we will do so, and we'll expect him to be here. When we invite other people to come before the committee, as is our right, we expect them to be here and not to be shut out from coming by an edict from the Prime Minister's Office.

To quote Ms. Lattanzio—and I actually agree—she referred to questions not being relevant. We are asking relevant questions and we need those answers to fully complete our report.

Mr. Dufresne, would you clarify? Am I clear in understanding your explanation to us to mean that the committee order in 2010 is different from a House order this year?

**Mr. Philippe Dufresne:** A committee order is different from a House order in the sense that, as I've indicated, a committee order can be modified by the committee itself. A House order cannot be modified by the committee. When there are concerns raised with a committee order and it is reported to the House, sometimes the outcome is that it becomes a House order.

In this instance, you are [*Technical difficulty—Editor*] House order, but I am flagging that there are similarities in the arguments being raised by the government in that case and by the government now, and also in some of the reactions in the committee, including my predecessor appearing in that committee and talking about issues similar to the ones that we're discussing now.

**Mr. Colin Carrie:** Thank you for that clarification.

I have been asked by media about the term “contempt” and about “contemptuous behaviour” of the government. In this motion, it's not just our committee, as you're aware. It talks about national defence as well and the horrific sexual allegations that seem to have been ignored by the Prime Minister's Office. The Minister of National Defence—right before an election, conveniently—did not want to bring that forward.

Could you please help committee members understand the definitions, as you understand them, of “contempt” and “contempt of Parliament”?

• (1350)

**Mr. Philippe Dufresne:** Usually when the notion of contempt of Parliament is raised, it's in instances where committees or the House found that certain actions were preventing the House from doing its work, were preventing the members, were preventing information from being provided. Cases of contempt were found, for instance, in the instance of someone found to have deliberately misled a committee. These are the types of concerns that we see addressed in that rubric.

**Mr. Colin Carrie:** I'm assuming that you saw the testimony of Minister Rodriguez when he was in front of our committee. He was asked very clear questions. I found one question was, frankly, embarrassing for him. When Mr. Poilievre said, “What is your response?”, he went from one response to another response to saying that he didn't know the response. Obviously the government sent in substitutions for the actual witnesses, when—we could be very clear—we just want the gaps filled in. They sent a minister who had no idea what he was talking about and who actually gave opposing answers to the same question he was asked by the member of Parliament.

When somebody gives an answer that is the exact opposite of what they have stated previously, is that something that you find contemptuous by your understanding of the definition?

**Mr. Philippe Dufresne:** This is something for the committee to consider in terms of whether it is satisfied with the information that it has received. It's not for me to make that determination.

**Mr. Colin Carrie:** I appreciate that. Thank you.

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

We'll go to Mr. Dong for five minutes.

**Mr. Han Dong:** Thank you, Chair.

First of all, I want to thank the law clerk for coming to the committee to help us out on this issue.

You talked about the former clerk, Rob Walsh, testifying in 2010 at this very committee, and on similar issues. He said that “there would be limitations on the questions that could be asked. There

would be some questions that should properly be directed to the minister and not to the political staff person.”

Do you agree with Mr. Walsh's opinion, and could you expand on what questions would be off limits to ask the staff?

**Mr. Philippe Dufresne:** The point being made by Mr. Walsh is similar to the point being made in [*Technical difficulty—Editor*] the role of the individual is relevant, and the authority or lack thereof. Generally, there is an indication, in terms of the role of public servants, that they should not be asked to take political accountability for the decisions that are ultimately made by the government or by cabinet. With these types of things, in terms of defending the policy basis, it may not be appropriate to have a public servant do that. A public servant would be there for other purposes.

It's really having in mind what is the role and function. The accountability should guide the types of topics that are raised.

**Mr. Han Dong:** In this case, “public servant” would include political staff.

**Mr. Philippe Dufresne:** Public servants are distinct from political staff in the sense that the public servant is removed completely from the political arena. The political staff is recognized as having or being entitled to have political affiliations with the ministers, so there's a distinction in that sense, in terms of the non-partisanship or neutrality. However, there is nonetheless certainly a difference between the political staff and the minister in terms of the authority and the accountability.

**Mr. Han Dong:** I'm glad we're talking about this. In my opinion, ministers' political staff are tasked by ministers with understanding the various implications of options presented to them for decision-making. Some staff serve as political advisers, advising on different impacts of political options presented to a minister. Some serve as communications staff, working to help the minister to effectively communicate the decisions they've taken.

However, in the end, these staff [*Technical difficulty—Editor*] are just staff. They're advisers and they provide advice, but they don't make the decisions. That's why, in the end, ministers are ultimately responsible for the decisions they make.

Do you believe that this model of ministerial responsibility is a good one and should be followed?

• (1355)

**Mr. Philippe Dufresne:** I can say that responsible government is based on that. It's the ministers and the government itself that [*Technical difficulty—Editor*] and to Parliament, and the staffers and the employees are serving and are supporting [*Technical difficulty—Editor*] and this government. I see that certainly as a very valid principle.

On the other side, there is also the authority of the House as the grand inquest of the nation, and its constitutional powers to determine what it needs in terms of information.

**Mr. Han Dong:** I just want to add a bit more to the context, though, of what we are talking about here.

One of the witnesses is called Ben Chin, and his entire link to the study is one line of correspondence initiated by an executive assistant to Marc Kielburger. It reads as, “Hello Ben, Thank you for your kindness in helping shape our latest program with the gov't. Warmly, Craig.”

He responded two days after, saying, “Great to hear from you Craig. Let's get our young working!” The story goes that this was his only interaction with the WE Charity on this specific issue.

Is it fair, because of this one line of communication, to call in a witness for questioning for two hours, in your opinion?

**Mr. Philippe Dufresne:** What matters there is not my opinion, but the committee's [*Technical difficulty—Editor*] for the committee to decide in terms of any witness or question or issue that it feels it needs, or not, in the context of its constitutional authority.

**Mr. Han Dong:** As my very quick last question, you mentioned the question of privilege. Is privilege a debatable motion in the sense that, if the committee feels that there has, in fact, been an abuse of privilege, it would be a debatable motion?

**Mr. Philippe Dufresne:** The first step with respect to a question of privilege being raised would be for the Speaker to determine if there is a *prima facie* case of privilege or not, and whether a motion can be presented thereafter.

My sense is that it is a debatable motion, but I would defer to experts, and my colleagues in procedural services would have more expertise than I do on that particular procedural point.

**Mr. Han Dong:** Do I have any more time, Chair?

**The Chair:** No, you're out of time, and we'll turn to Mr. Fortin.

**Mr. Han Dong:** Thank you.

**The Chair:** Thank you.

Go ahead, Monsieur Fortin.

[*Translation*]

**Mr. Rhéal Fortin:** Thank you, Mr. Chair.

Mr. Dufresne, if I understood your testimony correctly, we have to distinguish between a summons to testify and a summons to be accountable. The principle of ministerial responsibility, which the two ministers in this case were invoking, would apply if we were asking for accountability from anyone. But we are within our rights to ask for individuals to testify, even though they are members of the staff of those ministers.

Did I understand correctly?

**Mr. Philippe Dufresne:** What I am saying is that individuals do not have immunity strictly by reason of their positions. It may affect the relevance of what they are asked in terms of their level of responsibility, their role, and the information they have in their possession.

**Mr. Rhéal Fortin:** Okay. Let me ask you one more question, Mr. Dufresne.

Clearly, if the House sanctions an individual for failing to testify, that is one thing. The individual did not obey the order and there are consequences for that. I imagine there are precedents for those kinds of situations.

However, are there precedents for the sanctions that the House might impose on a minister who orders someone not to obey an order of the House?

**Mr. Philippe Dufresne:** We have discussed the precedent in 2010. In that case, it wasn't an order of the House, it was an order of the committee. But a motion to report the situation to the House was still introduced. That motion was defeated but it did raise the same kind of concern.

• (1400)

**Mr. Rhéal Fortin:** So I gather that there is no precedent for the sanctions. Could the Speaker of the House tell the minister that he is guilty of contempt of Parliament and remove him from his position or consider that he's no longer a member of Parliament, for example?

Are there consequences of that nature? Has that ever happened?

**Mr. Philippe Dufresne:** As for the sanctions when a concern is raised about the information provided, the House can refer the matter to the Standing Committee on Procedure and House Affairs.

In the 2011 precedent I mentioned, the government had not produced the information that was asked for and had invoked Cabinet confidence. Basically, there was an order from the House and a motion stating that the government had lost the confidence of the House.

**Mr. Rhéal Fortin:** Okay, Mr. Dufresne. I will move to another question.

At this stage, we have established that people have not obeyed orders from the House, and we are going to report to the situation to the House.

Do we have to suggest sanctions or consequences for that, or do we simply report the situation to the House and leave it to the House to decide itself on the consequences as a matter of privilege?

**Mr. Philippe Dufresne:** It is up to the committee to decide what it wants to include in its report to the House. On page 154 of *House of Commons Procedure and Practice*, mention is made of describing the situation, summarizing the events, naming any individuals involved, and indicating any concerns as to a breach of privilege or contempt. If the committee wants to suggest any measure to the House, it may do so.

Ultimately, the House will have to decide on the matter and determine whether it has enough information to do so.

[*English*]

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

We're going to turn to Mr. Angus now for two and a half minutes.

[*Translation*]

**Mr. Rhéal Fortin:** Okay. So—

[*English*]

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

Being that it is past two o'clock, I move to adjourn.

**The Chair:** That is not a debatable motion.

We'll move to a recorded vote.

(Motion agreed to: yeas 6; nays 4)

**The Chair:** Thank you, Madam Clerk.

Mr. Dufresne, thanks so much for being with us this afternoon.  
We appreciate your coming on short notice.

This meeting is now adjourned.

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