This is Exhibit "**11**" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

Lori Brenning

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
Province of Ontario, for the Government of Canada,
Department of Justice.
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Legislative Committee on Bill C-2

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Chair

Mr. Rick Dykstra

Legislative Committee on Bill C-2

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● (0905)

[*English*]

The Chair (Mr. Rick Dykstra (St. Catharines, CPC)): Pursuant to the House of Commons order of reference of October 26, the Legislative Committee on Bill C-2 will now resume its study of the bill.

Good morning, everybody. Welcome back for our final session of this week.

Mr. Landreville, perhaps I could just let you know we do have a little bit of committee business to take care of before we turn the floor over to you. If you could bear with us for a few minutes, we'll get through that and then we'll certainly get started with respect to your presentation and questions to follow. So thank you.

When we finished off yesterday, Monsieur Ménard, you had the floor.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, I have already made my arguments in favour of the motion. Therefore, if any colleagues wish to add something, I am ready to hear them.

[*English*]

I'm going to wait.

The Chair: Thank you.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, it is clear that I have already evoked the main reasons why the Bloc Québécois has tabled this motion.

Now, if ever the government were hesitant despite Ms. Jennings' amendment, which seems quite reasonable to me, would it be possible to at least consider getting a letter signed by the minister stating that studies have been carried out to ensure that the bill is constitutional?

I would rather see the research—and I cannot imagine that the government would have lacked the professionalism to have done the research—but I would like us to have written information regarding the constitutionality of this bill before we begin.

I have to tell you in all honesty that if by chance the government were not to take our request seriously, we would have no choice but to table motions for adjournment of the proceedings so long as we did not have any information allowing us to ensure the constitutionality of the bill.

I still have a baby face, but I have been here since 1993, and it is the first time that I have heard so many witnesses tell us that bill is unconstitutional. I have never sat on a committee where, out of a dozen witnesses, nine informed us that the probability of unconstitutionality was very high.

I want to have something, whether it is research or a letter from the minister. I have confidence in the minister. Before going to cabinet, he is supposed to have signed a memorandum—that is how they refer to it—in which he ensures that he has taken the necessary steps to ensure the conformity of the measure.

If we cannot have access to the research, we must have the letter tabled by the minister. In that way, we will be reassured as to the soundness of the work that was done. But if we do not have that, we will have no other choice than to table motions for adjournment on Tuesday morning when we begin our work.

Therefore, I invite the minister, the parliamentary secretary and Mr. Petit to take our request very seriously. We are parliamentary professionals and we love our work and the committee, but we cannot vote without having some minimum guarantees.

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, Chair.

I read the motion as amended by Ms. Jennings. I think Ms. Jennings and Mr. Ménard know very well and don't need me to tell them—they've actually been here longer than I have—that advice provided to the minister, legal advice from his department, is advice, just that. There is a solicitor-client privilege that goes with that. Frankly, what's being asked would be quite unprecedented.

To address Mr. Ménard's concern on the constitutionality of what's been put forward, the Minister of Justice has already appeared. The question, I believe, was put to him on this bill, and previous to this on the bills that make up Bill C-2 from the last session, as to their constitutionality. The minister has to certify in each case that he believes the bills to be constitutional, based on advice he receives. And that advice is subject to solicitor-client privilege. The minister is not able to provide the type of legal advice that he receives.

Now, as is obvious, we've already received testimony from individuals who have rendered their opinion—not in writing, mind you—and provided legal input as to whether something is, in their opinion, constitutional or not constitutional. But the fact remains....

We can call as witnesses some individuals who are experts in one way or another who may want to give an opinion in that regard, but as to the advice the minister receives—and Ms. Jennings knows this, having been in government at one time—that is subject to solicitor-client privilege. It's up to the client to waive that privilege, which would not happen.

So in the interest of moving things along quickly, I would refer everybody to the testimony that the minister has already given, where he has stated that it's his duty as a minister to certify that legislation coming forward is, in his opinion, compliant with the Charter of Rights.

Mr. Chair, I should add—and I don't necessarily want this to have to happen, because we have a witness here—that we do have individuals here from the department who could give some testimony as to the long-standing history, going way back, that would say that this would not be a practice of the House of Commons, would not be a practice of the committee, and who could explain to honourable members, if they need an explanation, the concept of solicitor-client privilege and the reasons why the client in this case would not be waiving that privilege.

I'll take at face value why Mr. Ménard has introduced this, but the minister has said on this that he believes it's compliant with our Constitution. That's based on the advice he has received, and that advice is subject to solicitor-client privilege. The minister would restate that.

So I don't believe there's any need to proceed on this basis, especially when we have witnesses who are here, ready to testify. We also have witnesses from the Department of Justice who will speak to the bill, but it's not their role to give legal opinions to the committee.

● (0910)

The Chair: Thank you.

Madam Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Mr. Chairman, I greatly appreciate the comments of the parliamentary secretary to the Minister of Justice, Mr. Moore. In fact, solicitor-client privilege could be set aside by the client. In this case, the minister decided not to do so. But according to his statement, Mr. Moore claims that the minister has already stated and affirmed, following a question that was put to him by a member of this committee, that he has already received legal opinions telling him that Bill C-2, more particularly the provisions of Bill C-2 that are directly related to the dangerous offender regime comply with our charter and our Constitution.

Mr. Ménard asked a question of Mr. Moore, and he avoided answering. Mr. Ménard asked if the minister was prepared to simply sign a letter addressed to the chair of the committee giving a written confirmation that, indeed, according to the legal opinions he received—and he would not be obliged to disclose or table those opinions—he certifies that Bill C-2 and more specifically the changes dealing with dangerous offenders, comply with our charter and our Constitution.

A response would satisfy Mr. Ménard as well as my Liberal colleagues. I have not had the opportunity to check the transcript of his testimony before the committee, but if the minister has already made a statement to that effect, it should not cause him any problem to do so in writing. He is not obliged to disclose the legal opinions he received under the protection of solicitor-client privilege. However, he should confirm in writing that Bill C-2 complies with the charter and the Constitution, according to the legal opinions he has received.

Therefore, I would like Mr. Moore to answer that question specifically.

● (0915)

[*English*]

The Chair: I'm going to allow it, if you wish to answer that question before we go to....

Thank you.

Mr. Rob Moore: Ms. Jennings can't seem to take yes for an answer, because the minister's already been here. He's already testified. It's well known that the minister has to certify that in his opinion all legislation complies with the charter.

We're speaking to her motion. Her motion doesn't ask for something written from the minister, some statement to restate what he's already said at committee. So I'm only at this point speaking to the motion, which, as I've already said, we don't support. Now, if Ms. Jennings has another request of the minister, I can ask the minister that question. But right now we're speaking to this motion, which obviously is an unreasonable motion.

The Chair: Mr. Bagnell has the floor.

Hon. Larry Bagnell (Yukon, Lib.): I agree with Ms. Jennings and Mr. Ménard that if we just got a letter it would be solved and we'd be finished; that's easy. But I also think we shouldn't be debating this while we have witnesses waiting.

My other point is that Mr. Ménard and Ms. Jennings haven't asked for the advice to the minister; they've just asked what the department has. So that gets rid of the first complaint against it. Second, on client privilege, this money is paid for by the public. It's in the public interest, and if the minister were acting in the public interest, he would just release it.

The Chair: We have three more speakers, and then we're starting to go around.

I have you down, Mr. Ménard.

We're starting to go around the horn again here, folks. I think we're going to let Mr. Harris speak, and then I beg the committee to consider that we call the question, or if there are any further amendments, that Monsieur Ménard make them. But I'd like to move this forward.

Go ahead, Mr. Harris.

Mr. Richard Harris (Cariboo—Prince George, CPC): I pass my time to the parliamentary secretary.

The Chair: Mr. Moore, I'm going to let you go. I'll just let Mr. Ménard speak finally to his motion.

Mr. Moore.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, point of order.

Time is marching on and out of respect for Mr. Landreville, I propose that we suspend the debate and that we come back to it before hearing from the officials. If not, we will continue.

[*English*]

The Chair: Monsieur Petit is next on a point of order.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Chairman, a point of order.

Yesterday, I changed my schedule for today specifically because the Bloc Québécois had asked that the motion have precedence. We will settle this. We will not postpone it to the end of the meeting, whether there is a witness or not. You knew this yesterday. Therefore, we will prepare the motion today.

[*English*]

The Chair: Folks, we started out all happy this morning. We're going to stay happy because we have a witness here who is going to present, and we have the ministry folks here ready to present. I want to keep things moving along. Let's make sure we direct our comments through the chair.

Mr. Ménard, you'll have a chance to respond, if you like. I'm going to let Mr. Moore go first, and you'll have the final say on this, Mr. Ménard.

Mr. Rob Moore: When the minister appeared here specifically on this issue he said, and I'll read from the blues for all of us:

> Of course I have carefully considered the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights in respect of the totality of these new dangerous offender reforms, and I am satisfied that they are fully constitutional. These measures have been carefully tailored to provide a prospective, targeted, and balanced response to the real and pressing problem posed by these dangerous offenders.

I leave that with the committee. That is in writing. They're the minister's words from the transcript of the committee. He has certified that they're constitutional, and going beyond that would be extremely unusual.

The Chair: Thank you, Mr. Moore.

Monsieur Ménard, you have the final say here.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I think what we are seeing here this morning is rather hypocritical. I remember very well that when the Conservatives were in opposition, they invoked the fact that we were elected, that we were parliamentarians, in order to have a right to all the information before voting.

What are we asking for? First of all, the minister is not a client. He is an elected official and is responsible for a department. Before voting on a bill, we have the responsibility of ensuring that we have all the information. Nine witnesses told us that this bill was not constitutional. I feel I am doing my job as a member of Parliament when I ask for information. If the minister appeared before us and said so, he should give it to us in writing.

Why do we not have faith in the word of members of Parliament? Ms. Jennings tabled an amendment saying that we would keep this information confidential. Is this not paid for with public funds? What is the point of voting on a bill like C-2 on accountability, on access to information, on transparency if you are not even able to give parliamentarians all the information they need? Is it unreasonable, as an elected official, to vote on a bill nine witnesses said was unconstitutional? Is it unreasonable to ask if this was investigated? If the minister said so, that is not enough. We need more information.

An hon. member: [*Editor's Note: Inaudible*]

Mr. Réal Ménard: I was not finished. Calm down! I have the floor.

Mr. Chairman, if we do not have the information by Tuesday morning, I say to the government that we will table motions for adjournment. That is what we will do. We have the right to have that information. If you do not want to give it to us, we will table a motion to extend our deliberations so that the government can invite constitutionalists to come and meet with us. If we do not have the information we require, we will not vote on the bill.

When the Conservatives were the opposition, there was never enough information available. Today, they are trying to make us vote whereas we know that the bill is potentially unconstitutional. May I point out to you that yesterday, we were ready to extend the debate in order to move to the vote but it was the Conservatives who got up to leave.

Therefore, there is a limit to making a travesty of democracy, to being pharisees and philistines. There is no point on voting on bills like C-2 if we cannot give the information to parliamentarians. I regret, but we are not faced with a privileged relationship involving private practice, the minister, and cabinet. I expect officials who have knowledge of constitutional law, who provided opinions to the minister, who are not from the private sector, who are paid with public funds, to give us that information.

Mr. Chairman, let me conclude by stating that if we do not have something in writing guaranteeing the constitutionality of the bill by Tuesday, we will table motion for adjournment after motion for adjournment.

• (0920)

[*English*]

The Chair: Mr. Ménard, in terms of process, I'm reminding you that your motion is on the floor. If this motion carries, a request will be made to the department.

Having said that, we've had all of our speakers and I will now put the question.

We'll first vote on Ms. Jennings' amendment, which is "To provide on a confidential, in camera basis which protects "advice to the Minister"...in its possession...by Friday, November 16th, 2007, 3 pm." I'm reading the bold type part of the amendment here.

We've been asked for a recorded vote.

(Amendment negatived [See *Minutes of Proceedings*])

The general public out there who are listening or watching or who will read this at some time need to know who is actually being targeted here as the dangerous offender. I don't see these individuals who have committed not one, not two, but three violent crimes, including those that involve the use of explosives, intimidation with firearms in the commission of an offence, sexual exploitation of a person with a disability, a parent or guardian procuring sexual activity, child pornography, a householder permitting the sexual exploitation of a child, luring a child, violent crime, sexual assault, living off the avails of prostitution, and unlawfully causing bodily harm.... These are not petty crimes. These are very serious, very violent, very heinous crimes.

I can't help but take note of your comment that violent crime is going down. Does that mean that we as a society and as people, we in the House of Commons who are trying to enact legislation for Canada, should do nothing or that we should be satisfied with mediocrity or that we should suddenly say that if we can do something to prevent violent crime...? We're not talking about petty criminals here, quite frankly. I disagree. We're talking about serious violent offenders.

To compare this to "three strikes and you're out" in California is a disservice to this piece of legislation, because it doesn't even resemble it. In California you can be put in prison for jaywalking, quite frankly, which is too far, and it's ridiculous. That's not what we're talking about here. We're talking about trying to protect the general public from serious violent crime.

I'm not saying the legislation is perfect, but surely we shouldn't settle for mediocrity.

If I have time here—

The Chair: You've a minute left.

Mr. Gerald Keddy: I've a minute. Well, I want to give our witness a chance to speak.

If I could change tack a little bit, my question is on the constitutionality of this particular piece of legislation and, in particular, the designated offender part of the legislation. Do you believe this particular piece of legislation, and the designated offender portion of it, would withstand a constitutional challenge?

● (1025)

[*Translation*]

Mr. Pierre Landreville: I am not going to answer your second question, it is beyond my scope. As for your first question, if I understood correctly, the bill includes a list of offences; you named the most serious ones, but there are also offences such as breaking and entering and assault.

[*English*]

The Chair: Thank you.

I think we're going to have to conclude there.

Thank you, Mr. Landreville, for your detailed statistical perspective. As I know there were a couple of questions about your stats, if you did want to forward them to the clerk, I'm sure she would be more than happy to extend those to members of the committee.

I would like to ask our ministry officials to come forward. We are running into a bit of a time constraint here, so I'm seeking a little bit of a time extension past 11 o'clock so that we can allow for questions to our ministry officials. The second part of it is that we'll probably start immediately with five-minute, rather than seven-minute, rounds.

As I indicated, it would be extremely helpful if we could keep our questions as concise as possible to allow as many of us to ask questions as we can. Certainly if the officials have any opening comments, I would ask that they be extremely brief. I'd like to leave as much time as possible for questions and an opportunity for you to respond to those over the next 45 minutes. I'll probably seek from the committee an extension of about 10 minutes, or perhaps 15 minutes, just to make up for the time we spent dealing with the motion, and that will allow us a full hour to be able to deal with the ministry.

Mr. Cohen.

Mr. Stanley Cohen (Senior General Counsel, Human Rights Law Section, Department of Justice): I have no opening statement to make, but I thought perhaps I should introduce myself since I haven't appeared on this matter.

The Chair: We would really appreciate your doing that. Thank you.

Mr. Stanley Cohen: My name is Stanley Cohen and I am the senior general counsel at the Department of Justice. I give advice on the charter as it applies to criminal justice and national security matters. I have appeared before parliamentary committees before, so I'm a familiar figure to some of you around this table. I have a background in academia and law reform, and I hope that I have what you're looking for. I'm here to be cooperative and to assist you in any way I can.

Thank you.

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

I will immediately turn to our first panel.

● (1030)

Hon. Marlene Jennings: I simply have one question, and then I'll hand over the rest of my time to my colleague Mr. Murphy.

Is it your expert opinion that the provisions of Bill C-2 that are directly related to the dangerous offender system would pass a constitutional challenge? If so, why?

The rest of my time is for Mr. Murphy.

Mr. Stanley Cohen: The way I can answer that question, without straying over any lines that constrain my operation, is to suggest that there is a process in the department for analyzing legislation for its compatibility or inconsistency with the Canadian Charter of Rights and Freedoms. This legislation has been examined and would not be in front of you if an opinion had been issued to the effect that the legislation in question was manifestly unconstitutional and could not be defended by credible arguments before a court.

Mr. Brian Murphy: Thank you, Mr. Chairman.

Drilling down on that answer, there was some suggestion that in the dangerous offender procedure where this evidentiary burden would shift to the accused—it's more than an accused, the convicted person on sentencing—it might in some way infringe the convicted person's right to silence, that is, the right against self-incrimination. In buttressing that position, I believe Mr. Hoover suggested that there was case law to that effect. I believe the name is—I was going to say Grewal, but that's not the right name—Grayer, something like the cheese, not the member of Parliament.

In any event, it was subsequently suggested by witnesses at our last meeting that that case law was not authoritative for the proposition that when there are shifting evidentiary burdens, silence is still protected, just at one's peril. In other words, the convicted person can remain silent, but they bear the consequences of doing so if it means they don't adduce evidence that might help them.

It was quite clear in the testimony we had from the Criminal Lawyers' Association that it was a misinterpretation of that....

Well, Mr. Hoover, you were in the room when it was suggested.

So maybe rightfully to you, Mr. Cohen, what is the implication of these changes to the right to remain silent or the right against self-incrimination in the charter?

Mr. Stanley Cohen: That question, of course, covers a lot of ground.

There is, of course, under the Constitution, a right to silence. Generally that's a right that accrues when one is faced with police interrogation. The relationship between the right to silence and the right against self-incrimination is one that has been commented upon in the case law, and self-incrimination is a somewhat larger concept.

To come back to your question about the significance of the Grayer case as it relates to the right to silence, the Grayer case basically says that an individual who finds himself in the kinds of circumstances that an individual might find himself in, in a dangerous offender application, is entitled to rest and to sit on his or her hands and not to cooperate in any way. There is nothing in this legislation that compels that individual to testify, and there is nothing in a reverse onus that directly causes the person to have to speak.

When an individual is facing this kind of situation—we can call it jeopardy—there is a natural implication or a natural impetus in the individual to want to be able to answer, and that is why, of course, these matters will end up in litigation. But individuals are capable, notwithstanding their right to sit on their hands, of making an informed and tactical decision as to whether or not they will speak up. They don't have to speak up. That does not end the matter.

The individual has—and indeed it emerges from the legislation and from practice—the right to cross-examine, the right to call witnesses, the right to rely upon any evidence that's adduced by the state, in order to answer the case that has been brought forward. So to that extent, this perhaps might not be called silence, but it certainly is silence in terms of the individual speaking or the individual cooperating. That is not a matter that I would suggest implicates the so-called notion of self-incrimination.

I would point out that self-incrimination protections generally are housed either under section 11 or section 13 of the charter, which are premised and preceded by an indication that those rights are guaranteed in relation to persons charged with an offence. When an individual is charged with an offence, then those particular protections arise.

Lyons, which remains the fundamental case and the one to which everyone should return when they look at dangerous offender legislation, written by Mr. Justice La Forest, a balanced and moderate jurist and an expert in this area—

● (1035)

The Chair: Excuse me, Mr. Cohen.

We're going to have to move forward.

Mr. Stanley Cohen: All right. Let me just say what Lyons does say. Lyons says that this is not a situation involving the protection of section 11 because the person is not charged with an offence. This is part of the sentencing process.

The Chair: Thank you.

I apologize. We're on a tight timeframe. I don't want to cut you off, but we do need to try to keep order for everyone.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard: Thank you, Mr. Chairman.

With all due respect, Mr. Cohen, I have been here since 1994 and I can tell you that we have already in the past examined regulations and legislation which the department said was constitutional but which was subsequently invalidated. My colleague may have said that this happened under the Liberals, but the antiterrorism provisions were studied in committee, right? Mr. Comartin was a member of the committee. Some provisions were ruled to be unconstitutional. When Ms. Marleau was Minister of Health, the anti-smoking regulations were invalidated. So I find your assertion to be presumptuous to say the least. Just because the department refers the bill to us does not mean that it cannot be deemed unconstitutional later on.

But since you are telling us with confidence that the bill is constitutional, I would like you for once, as a parliamentarian, to clarify the verification mechanisms. Please be quite precise. When the minister signs a memorandum in cabinet stating that it is constitutional, exactly how is this done?

I also have three questions to ask you about the substance. Like you I am a lawyer and I obviously know that legislation can be challenged. You said that you have checked everything generally, but what, more specifically, have you done, and what are the reasonable guarantees?

[*English*]

Mr. Stanley Cohen: First of all, I've appeared in front of you in a number of these matters that you've mentioned, and I have never offered an opinion that a piece of legislation is constitutional and will be upheld by the court, or is unconstitutional and will be struck down by the court. What I have said is what I said at the beginning. There is a process for making an assessment and the Minister of Justice has an obligation to make this examination. What conclusion we have reached is that the legislation in question is not manifestly unconstitutional. That does not mean that it cannot be—

[*Translation*]

Mr. Réal Ménard: Wait a minute, I'm the one asking the questions. What is the process? Don't tell me that it is constitutional, explain the process to me.

[*English*]

Mr. Stanley Cohen: I said that the legislation is not manifestly unconstitutional and is capable of reasoned defence in the court. The process for making that assessment...you asked me what the process is.

● (1040)

[*Translation*]

Mr. Réal Ménard: That was not my question. Tell me what process the department follows, step by step. That's what I want to understand. And answer my question specifically.

[*English*]

Mr. Stanley Cohen: This is what I'm trying to address.

The process for assessing legislation begins at an early stage, when we are presented with various options for reform. These are the subjects of legal opinions, discussions, round tables, etc. The implications, constitutional or otherwise—policy people also weigh in on these discussions—also are involved. Constitutional considerations are taken into account. Opinions are prepared and they are sent up for consideration by higher-ups and ultimately will make their way to the minister who has the final authority for deciding these things.

[*Translation*]

Mr. Réal Ménard: How many legal opinions have there been for this file?

[*English*]

Mr. Stanley Cohen: I could not tell you the number in particular. I know there have been more than one. I also know there are opinions that are not just written in relation to the charter, that various other parts of the department would weigh in on other legal issues.

What I can say is that when opinions are devised, we attempt to look realistically at the prospects of the legislation that's been contemplated to determine whether or not there is, as I've said, at one level manifest unconstitutionality on the one hand or, on the other extreme, a continuum that would stretch manifest constitutionality.

[*Translation*]

Mr. Réal Ménard: I would like to ask you a second question before my time is up.

Mr. Chairman—

[*English*]

The Chair: Your time is officially up, Mr. Ménard. My apologies. I'm sure you're going to get another round.

Mr. Comartin.

Mr. Joe Comartin: I'm not sure, Mr. Cohen, if this is to you or Mr. Hoover, but I'm concerned about a number of things. The constitutionality with regard to the division of power really concerns me. If you look at some of the exchanges we've had at the meetings between the federal government and the provincial attorneys general over the last couple of decades, they've always been very careful about protecting the administration of justice as their territory, which it obviously is under the Constitution. I think we may be infringing on that, but even more so on the charter.

I've been told that the direction to the department to put these five bills into one came just 48 hours before this session of Parliament started. I don't know when the decision was made. Will you confirm that you got only 48 hours' notice to put these together? That's my first question.

Question number two is, when was the decision made to incorporate the breach of supervision order as a triggering event?

The third one—and I guess this is the one that disturbs me the most—is what kind of consultation went on? We heard from Mr. Cooper when he testified. Here you have the person who prosecutes in a region more than anybody in the country right now. He came forward and said, look, what I really need are amendments to part XXIV so I have access to better evidence to prosecute these applications. He said if he got those amendments they would be of immeasurable assistance.

The other point he made in his testimony was that he really wasn't going to change his practice if these amendments went through. So why are we doing this, and why didn't we pay attention to people like him and do amendments to part XXIV, which would have made his job easier?

Mr. Douglas Hoover (Counsel, Criminal Law Policy Section, Department of Justice): On your first question as to whether we had more than 48 hours' notice to put a bill together, clearly we did.

On the second question regarding how the issue of including the breach of LTSO evolved, I first heard of that issue in November 2004, when it was raised by the Ontario Attorney General. It was in fact tabled officially in January 2005 for consideration. The FPT high-risk offender working group has been tackling that issue for some time.

As you'll recall, in testimony before this committee on June 5, the minister confirmed he was awaiting the deliberations of the FPT working group and consideration by FPT justice ministers, and that he was hoping to come back this fall with inclusion of such a provision. That work was for the most part completed over this past summer and a recommendation was discussed thoroughly. In fact the fruit of that labour is as you see in the bill before you. So there has been extensive consultation, which has been going on for some time, to achieve not only a viable model but one that will work in all jurisdictions.

Mr. Réal Ménard: I would like to talk about the issue of the right to remain silent. Out of 11 witnesses, if I exclude the minister and his officials, six have challenged the constitutionality of the bill, and this includes criminal law professors. You will therefore understand why we are just a little bit worried. The right to remain silent will no longer be able to exist in its integrity if the bill is adopted, given that the reverse onus compels the accused to defend himself. We could obviously say that the individual will refrain from defending himself, but if we use the same logic, there is no longer any constitutional guarantee.

You should know that we are very concerned. I fully agree with Mr. Lee's line of questioning. The right to remain silent is being challenged and, in addition, we have been told that the bill is incompatible with guarantees pertaining to arbitrary detention and article 7, the right to life, security and everything that corresponds to that.

How can you make us feel comfortable about the issue of arbitrary detention and section 7? I have other questions I would like to ask later on, if I have time.

[*English*]

Mr. Stanley Cohen: First, on the suggestion that you've had a number of witnesses who suggested that the bill is unconstitutional, I haven't followed your proceedings or read the blues or anything like that, but I am not surprised that people would come with a different point of view and suggest that there is a constitutional issue that will result in litigation and a constitutional challenge. I would suggest that this is not an issue. None of the issues that you have raised are straightforward. It's not science. We cannot say ipso facto that because there is an infringement there is necessarily going to be a court striking down or not sustaining the legislation.

What I would be curious about is the way in which these individuals have addressed the question, because they have found that there is a violation and they would then have to pass on to the second question, of whether or not the legislation can be capable of reasonable justification in accordance with the standards that govern a free and democratic society. That, I believe, is where much of the —

[*Translation*]

Mr. Réal Ménard: The people who said that are, in my opinion, just as competent as you are. You spoke about your background as a professor, but the people who appeared before us were professors from McGill or the University of Toronto and I feel they are at least as competent as you.

[*English*]

Mr. Stanley Cohen: I'm not doubting that they are, and maybe they have greater competence than I have. What I have attempted to get at here is simply the question that reasonable people at this stage, when considering legislation, will assess the legislation in a certain way. When I say that the legislation is not manifestly unconstitutional and is capable of a credible and reasoned defence, I am saying that if the government presses ahead with the legislation, as it is determined to do, it will have a good case to present in court, and the arguments that will be presented are capable of being accepted by the courts.

To address your larger questions about section 9, section 7, and the others, this is the history of dangerous offender legislation. If we look at Lyons, which again is the fountain, the *locus classicus* in this area, you will find not only sections 7 and 9; you'll find sections 11 and 12 of the charter being invoked and dealt with quite comprehensively and extensively in the course of the challenge to what was then relatively new dangerous offender legislation.

● (1105)

[*Translation*]

Mr. Réal Ménard: I simply want to be reassured that in the federal-provincial-territorial conferences of ministers responsible for Justice—moreover, I know that there is one underway right now and I will be tabling a motion to obtain information about what was discussed there—the provisions that we are about to adopt, if we are in fact going to be voting on them, have already been more or less agreed to.

Is that what you are trying to tell us, Mr. Hoover? Are you trying to tell us that the five bills that we may be voting on have already been examined by this forum, namely the federal-provincial-territorial conference of the ministers of Justice?

[*English*]

Mr. Douglas Hoover: I think the answer is fairly straightforward. They've certainly considered many issues that are in the bill, and there are other issues that aren't in the bill that they've discussed. There are various opinions at that table. I'm not sure which provision you want me to talk to in particular, but the bill is certainly discussed on a regular basis. All legislation that is going to impact on the administration of justice by the provinces is of concern to them, not just this one.

[*Translation*]

Mr. Réal Ménard: Moreover, as for the former Bill C-27 and the specific provisions on dangerous offenders, do you feel that this was something that was truly wanted, or something that people were lukewarm about or had categorically rejected? Are we dealing with a bill that is really wanted, which one province may be lukewarm about or has come out and rejected categorically?

I know that you are always uncomfortable when you hear references about love, but this is just a figure of speech.

[*English*]

Mr. Douglas Hoover: I think strong desire was expressed, both publicly and during meetings of senior officials, for reforms that specifically respond to the Johnson problem, as the minister stated on June 5 in his testimony and most recently again. Johnson created some conundrums in interpretation in each jurisdiction, and great concern was expressed that we address those. For the most part, provinces are very supportive of the legislation as it currently stands—maybe not all provinces 100%, but at this point we have not received, regarding C-2....

You're asking about Quebec? Again, I am uncomfortable speaking for any particular province. I would say overall there's a strong consensus that this bill is necessary.

The Chair: Monsieur Petit.

It is my understanding that in the reverse onus, as it applies to a parole application, someone who's incarcerated must prove to a parole board that they are worthy to be let out. That's a reverse onus.

Has that ever been challenged? Has that successfully passed the Constitution or charter test, so to speak? I would assume it has, since it's still in existence. Am I correct in assuming that?

• (1115)

Mr. Stanley Cohen: I would have to get back to you on that. I don't profess to be an expert in the validity of or at least the history of challenges to the parole system. I do note that under this statutory arrangement, there is of course a safeguard that there will be eligibility for parole within the system.

Mr. Richard Harris: I realize that, but this is an application to get out early, in which case the incarcerated person must prove that they're worthy to be let out ahead of the—

Mr. Stanley Cohen: I see the analogy you're drawing there.

Mr. Richard Harris: Okay.

Secondly, it's my understanding that in regard to Mr. Lee's concern, the right to remain silent, if someone is appearing before the parole board they also have the right to remain silent if they so choose. Considering that this process, this privilege, still exists, and has for many years now, somewhere along the line someone must have thought about whether this had passed a charter or constitutional test. It must have, because it's still being used.

If either of these things, the reverse onus or the right to remain silent in the case of a parole application, were at some time proven to not pass the constitutional or charter test, I would doubt very much that they would still be used today. I would suggest that because of the similarity between the reverse onus and the right to remain silent, certainly it's similar enough to assume that we're on safe ground on this.

Mr. Stanley Cohen: Just to draw a circle around this, once again we are into a situation where we consider what the charter guarantees actually apply to. Sections 11 and 13, which are the self-incrimination and presumption of innocence provisions, are all formulated in terms of charged with an offence. The case law may very well have something to say on that. I'm not going to point one way or another on that. Section 7 definitely has its application to look for the....

The courts are looking for fair procedure and for fundamental justice.

The Chair: Mr. Bagnell, very quickly.

Hon. Larry Bagnell: Thank you.

The public watching this must find it bizarre that the department has a process that has determined it's not manifestly unconstitutional when a majority of our esteemed legal witnesses have said it is.

I have just one short question. The points they bring up are related to the arbitrary detention and the Constitution, because they'll be arbitrarily detained if they can't somehow prove they're not going to offend again. And how would they prove that?

Second of all, they say it offends the proportionality principle in that of course he already has a sentence for each of the three crimes. So the additional detention would be non-proportional to the crimes.

• (1120)

Mr. Stanley Cohen: Arbitrary detention, of course, is something that will have to shake out in any litigation challenge.

Manifest unconstitutionality is something that basically says it is on its face manifestly unconstitutional.

I would challenge any of the experts you've had before you to suggest that this legislation is manifestly unconstitutional. I would assume that the experts who have been here have testified that in their view, in a properly constructed challenge to the legislation, they are capable of coming up with credible arguments that would convince the court—and I'm sure they can feel certain about this—that the legislation is unconstitutional, or at least that some aspects of the legislation are unconstitutional.

I understand where they're coming from, and I don't think they would be dismissing it off the top of their heads as manifestly unconstitutional.

I'm sorry, I didn't mark down the second part of your—

Hon. Larry Bagnell: It was about proportionality.

Mr. Stanley Cohen: Proportionality is an issue that, of course, comes into the section 1 justification question, the justifiability of the legislation. When looking to whether or not this is a proportional response, the courts will have regard to a number of factors. Certainly they're going to look to the tailoring that goes into the design of the legislation.

You have heard lots of testimony from my colleagues and others about what has gone into the legislation and the safeguards that are built into it. Just to repeat some of them, the person is presumed innocent at trial of the predicate offence; the court can refuse the crown application for an order for an assessment; the assessments are by a neutral party and can provide evidence sufficient in itself to overcome the presumption; there is a prior consent that is necessary from the Attorney General; there is a requirement of notice of the dangerous offender application; the offender is entitled to full disclosure of the crown's case and has full rights of participation, notwithstanding that there's no need to testify; there is a court discretion to refuse indeterminate detention.

And, of course, there is parole review, which was very central to the consideration of Mr. Justice La Forest in the Lyons case. The Lyons case should be revisited.

The Chair: I'm sorry, Mr. Cohen. We're a bit over time here. I want to allow you the time to get your points in, but Ms. Jennings has a question and Mr. Comartin has, and then we're going to finish up.

Hon. Marlene Jennings: Thank you, Chair.

Mr. Cohen, you have consistently used the term that the minister has certified that Bill C-2 is not manifestly unconstitutional. In response to questions of my colleague, you again used the term "manifestly unconstitutional".

For the word "manifestly", one the definitions is this: in a manifest manner, evidently, unmistakably. That's quite a low bar. I think most people would say it's a very low bar, because it would have to slap everyone in the face. Even people who don't necessarily have legal training would look at the law and say there's something wrong with it.

My question to you then is, in your experience as the senior general counsel in the human rights law section of the Department of Justice, are you aware of previous situations where draft legislation has come forward and has been discussed, where the legal opinion was that it is not manifestly unconstitutional, but that there are solid arguments that it might be unconstitutional—and solid arguments that it is constitutional—and where the minister has refused to certify it because the minister has decided to go for a higher bar than simply "manifestly unconstitutional"?

The Chair: Please be very quick in your response.

● (1125)

Mr. Stanley Cohen: What I will say is that I haven't left the words "manifestly unconstitutional" hanging out there alone. I have said that the situation is one in which the legislation is not manifestly unconstitutional and is capable of reason, justification, and credible argumentation such that a court would accept it in a properly argued challenge.

I think that's the best I can do for you on that in short order.

The Chair: Mr. Comartin.

Mr. Joe Comartin: Mr. Cohen, do you believe Gardiner is still good law, or do you have any reason to believe that Gardiner has been overruled by any of the subsequent decisions—Lyons, or Johnson, or whatever?

Mr. Stanley Cohen: Gardiner has not been overruled, to my knowledge. Gardiner is a decision of the common law and Gardiner has some expression in the current Criminal Code.

Mr. Joe Comartin: Thank you.

Mr. Hoover, in spite of Mr. Keddy's protestations to the opposite, there are a number of sections in here that are, or will be, on specific facts, minor crimes—not serious violent crimes. Does the department know how many cases there are each year that would meet the three-conviction test? How many B and Es do we have where people get two years? How many of those do we have in total? My estimation is that there are thousands of cases each year with a third conviction, where they would have had two priors and would have received two years or more.

Mr. Douglas Hoover: In deliberations during the formulation of the policy behind this, we were able, as much as possible, to look at case law and convictions. It's certainly not in the thousands on an annual basis.

Again, based on our review and our discussions with our provincial colleagues who actually do the prosecutions, etc., I think the upper limit we were able to put our finger on for the 12 primary designated offences with at least a two-year conviction in every case —which makes it relatively serious on the scale of things—was that there would be a potential maximum of about 50 cases coming forward. And then again, given the discretion of the crown to bring those forward, I don't think you would see 100% of those actually brought forward. But that was our best estimate of what we would see coming forward on an annual basis.

The Chair: Thank you, Mr. Hoover.

I want to thank both of you, gentlemen. I'm sorry about the time constraints. I'm sure we could have spent another hour or so at this, but I want to thank both of you for presenting this morning and for being at committee.

Just to close this up as the witnesses are moving from the table, we've concluded our witness schedule, so we are going to move into clause-by-clause consideration next week.

Concerning amendments, the motion the committee adopted was that amendments to Bill C-2 be submitted to the clerk 24 hours before the beginning of clause-by-clause consideration, without precluding the tabling of additional amendments from the floor. In order for the office of the clerk to receive a copy of the amendments package submitted by the members for three o'clock on Monday afternoon—in both languages, I would add—the amendments need to be submitted to the clerk by no later than noon. So I'm asking for agreement that we can assume that all members agree to send their amendments to the clerk by noon on Monday to facilitate the clause-by-clause process.

Very good. Thank you.

We are adjourned.

This is Exhibit "**12**" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

Lori Brenning

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
Province of Ontario, for the Government of Canada,
Department of Justice.
Expires December 3, 2016.

CANADA

House of Commons Debates

VOLUME 142 • NUMBER 023 • 2nd SESSION • 39th PARLIAMENT

OFFICIAL REPORT
(HANSARD)

Friday, November 23, 2007

Speaker: The Honourable Peter Milliken

The other part of the bill relates to dangerous offenders, and what we have done, I believe, is very reasonable. We have asked for a declaration to be made by the crown attorney advising the court whether he or she will be bringing a dangerous offender application. This declaration is intended to ensure a more consistent use of dangerous offender sentences by crown attorneys in all jurisdictions. I think that is reasonable and it is a step forward in the right direction.

• (1025)

What we have said, and again I think most Canadians would agree with us, is that for an offender convicted of a third designated offence, a third serious offence, in a narrow and proportionate list of the 12 most violent and sexual offences, it will trigger a dangerous offender designation. Those offenders will be presumed to be dangerous offenders unless they can prove otherwise.

These are individuals who have been convicted three times. All we are saying is that the onus is on them to show why they should not be presumed to be dangerous offenders. I believe most Canadians would say that is very reasonable.

An hon. member: All Canadians.

Hon. Rob Nicholson: My colleague from St. Catharines says "all Canadians". No. We heard from the NDP members that they do not support this, so it cannot be all Canadians, but I think most Canadians will say yes to this and will say that we are on the right track in terms of protecting Canadians.

I want to be absolutely clear for those members and all hon. members of this House. We indicated when we introduced the bill that any attempt to sabotage the bill, any attempt to gut it or water it down, would be considered a confidence measure. I do not want there to be any misunderstanding at all in the House. If the NDP amendment to take this out of the bill passes, we will consider that a confidence measure, and we will go to the people of Canada and let them decide if they want to get serious about fighting violent crime in this country, let there be no mistake about it.

• (1030)

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Speaker, in terms of my comment, we do not have a great relationship with the Senate. I do not know if the Minister of Justice appreciates that. It is rather difficult for us to pick up the phone and call the senators since we do not talk to them. We just want to abolish them.

With regard to the reverse onus section, without exception in committee, except for the minister himself, every witness who came before the committee who had any legal expertise at all made it very clear that the reverse onus section would not survive a charter challenge. We did not have one person tell us otherwise.

I am asking the minister on what basis he is saying this other than his own opinion. I respect his opinion. He and I are graduates of the same law school, the best law school in the country, at the University of Windsor. I respect his opinion, but I think that on this one he is wrong. I am wondering if he has any other opinion from a constitutional or charter of rights expert who says this will survive a constitutional challenge.

Hon. Rob Nicholson: Mr. Speaker, the hon. member covered a number of different areas. Certainly in regard to that part of his comments about the University of Windsor being the best law school in this country he will get no disagreement from me. I want to say that I do not usually disagree with the NDP. I was thinking of the hon. member for Brant. He knows what I am talking about and we can have a unanimous motion on that.

In any case, the member mentioned that he has no relationship with the Senate, but I think he will admit, because I remember seeing in print comments from him that if we had introduced the other four they would go easily through the system, that it is not that easy. That is what I was saying. If there was any help that we could have had last spring it would have been much appreciated, or if there is any help that we can get this fall in getting these through both houses of Parliament it would be much appreciated.

With respect to the constitutionality of these, I am sure he heard from the officials at the Department of Justice. I presume he asked that question of them. In my examination of bills, I always watch for two things, and they are very important to me. I want every piece of legislation to satisfy the Canadian Charter of Rights and Freedoms, and of course I want to make sure that it complies with the Canadian Bill of Rights. Both of those documents are very important. I have satisfied myself on that. Indeed, I would not have introduced the bill into Parliament if I did not believe that it satisfied both of those important documents.

Hon. Robert Thibault (West Nova, Lib.): Mr. Speaker, could the minister clarify the following for Canadians? When he talks about the area of the twelve most violent crimes and the three offences, does he mean that the three offences are in that category and that this does not apply to someone who has had one offence in that category and then two lesser infractions since?

I have a second question, if he has time. His expert who gave testimony, Mr. Stanley Cohen, said that the legislation in question was "not manifestly unconstitutional". Not being a graduate of any law school, I am not sure what that means. I would like the minister to explain it. It sounds to me rather weak and is not like a full-fledged endorsement. Could the minister clarify those comments?

• (1035)

Hon. Rob Nicholson: Mr. Speaker, I would be pleased to provide the hon. member with a graph so that he has the exact enumeration of all the designated offences within the dangerous offender section.

More importantly, he asked whether it does not manifestly comply; whatever the wording was, I think I got the gist of it, I can tell him that I believe this complies with the Charter of Rights and Freedoms and I believe this complies with Mr. Diefenbaker's Canadian Bill of Rights.

Certainly I can say that there is no legislation to which I would lend my name and my office as Minister of Justice, nor on behalf of the government would we introduce any piece of legislation, were we not convinced that it complied with the Charter of Rights and Freedoms and the Canadian Bill of Rights. I hope that satisfies the hon. member.

This is Exhibit "**13**" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

Lori Brenning

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
Province of Ontario, for the Government of Canada,
Department of Justice.
Expires December 3, 2016.

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 050 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, November 6, 2012

Chair

Mr. Dave MacKenzie

Hon. Rob Nicholson: It's important to have a complete response. This is a very important process, and I don't have to underline that for you. This is the second quadrennial commission that I have been involved with, and I believe it is and was important to have a complete response.

We take the process seriously, as we should. Again, I invite people to have a look at the government's response on this. I think it's well reasoned and it's complete, and that is as it should be. I think that's the fair way to do that, and that's exactly what we've done in this case.

● (0945)

The Chair: Thank you.

Mr. Cotler.

Hon. Irwin Cotler: Thank you, Mr. Chairman.

I want to also express my appreciation for the minister and his officials for being with us today to discuss the matter of judicial compensation set forth in the second budget implementation act, Bill C-45.

Minister, as you are aware, section 4.1 of the Department of Justice Act stipulates that bills must be checked for compliance with the Canadian Charter of Rights and Freedoms. My question is, by what standard was this bill vetted for charter compliance?

Hon. Rob Nicholson: All bills that are drafted by the Government of Canada are vetted to ensure they comply with the Constitution of this country. That is as it should be.

Hon. Irwin Cotler: No, I understand the requirement, Minister, that is set forth in the Department of Justice Act, but the reason I raise the question of the standard that is used is that a previous witness from the Department of Justice said the standard is one that is—and I quote—"manifestly unconstitutional and could not be defended by credible arguments". Others have said—and I quote—that it's one of "whether or not a credible Charter argument can be made".

I'm asking your opinion because I don't think that you yourself have shared your views on what the appropriate standard would be in this regard.

Hon. Rob Nicholson: Well, the standard is that we comply with all the constitutional documents, be it the charter or the Canadian Bill of Rights. We satisfy ourselves that all legislation is in compliance. I think that has been the procedure of this government and previous governments, and that will continue.

Hon. Irwin Cotler: With respect to the legislation before us, Mr. Minister, has this in fact been checked with regard to compliance with the charter? If so, was a different standard used with regard to this particular piece of legislation regarding judicial compensation?

I'm only seeking to appreciate...because under section 4.1, as you know, there's a requirement for a report of "inconsistency" where one exists. Has there been a report prepared for this bill? If so, when will it be tabled?

Hon. Rob Nicholson: Again, I can't tell you anything more than I've already told you. We comply with the tests that have been laid down.

I've indicated I think on a couple of occasions, to Madame Boivin and Ms. Findlay, that in my opinion this completely meets our constitutional responsibilities as set out in the Judges Act and in the Constitution Act of 1867.

I'm not quite sure exactly where you're driving this, Mr. Cotler, but I believe this is in complete compliance with the Constitution of this country, as I believe all the legislation we have tabled before Parliament is. That's a government responsibility.

Hon. Irwin Cotler: The reason I'm asking, Mr. Minister, is that we have not had any tabling of the opinions that the legislation is constitutional. The Department of Justice Act mandates what I might call a constitutional seal of good housekeeping approval. I'm just saying, will this be tabled with respect to—

Hon. Rob Nicholson: I generally don't table legal opinions or legal advice. As the spokesperson for the government in this area, I've indicated that this bill, as with all the other pieces of legislation we've tabled before Parliament, in my opinion is compliant with both the charter and the Canadian Bill of Rights.

Hon. Irwin Cotler: I still don't understand, though, Minister. If you're not tabling it, what standard is being used?

Hon. Rob Nicholson: Well, the standard as set out in the Constitution of this country.

Hon. Irwin Cotler: Because we have—

Hon. Rob Nicholson: Those who work with me are quite familiar with the British North America Act, now known as the Constitution Act of 1867. They're quite familiar with the Canadian Bill of Rights, as introduced by Mr. Diefenbaker, and with the Canadian charter, and with all other constitutional documents going back to the Magna Carta, for that matter. They're quite familiar with those. This is the advice when we draft legislation.

I'm satisfied that the bills we table before Parliament are completely compliant with the Constitution of this country. I believe this bill is, and I believe the response we have tabled with respect to the quadrennial commission is in line with that approach and that it respects the constitutional responsibilities we have with respect to judicial independence, judicial salaries, and judicial benefits.

Hon. Irwin Cotler: Minister, I'm not going to pursue it any further, other than to say that I'm still not aware of what the standard is that is being invoked with respect to the determination, under the Department of Justice Act, of compliance with the charter. I'll leave it at that, but I would hope that at some future occasion that might be shared with us.

On the compensation—

● (0950)

The Chair: Thank you.

Mr. Goguen.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you, Minister, for appearing today.

Thanks to the witnesses.

This is Exhibit "**14**" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

Lori Brenning

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
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HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

House of Commons Debates

VOLUME 146 • NUMBER 223 • 1st SESSION • 41st PARLIAMENT

OFFICIAL REPORT
(HANSARD)

Monday, March 18, 2013

Speaker: The Honourable Andrew Scheer

[*English*]

Having carefully reviewed the matter, it appears to me that the Chair is being asked to examine and define certain terminology to determine if the minister has deliberately misled the House. However, I am limited to the role that the House allows the Speaker to play and to cast the Chair as the interpreter of the meaning of what was said is to go beyond that role.

[*Translation*]

On February 26, 2004, at page 1076 of the *House of Commons Debates*, Speaker Milliken pointed out that:

> As hon. members know, it is not the Speaker's role to adjudicate on matters of fact. This is something on which the House itself can form an opinion during debate.

[*English*]

In another ruling, on January 31, 2008, which can be found at pages 2434 and 2435 of the *Debates*, Speaker Milliken also stated:

> Any dispute regarding the accuracy or appropriateness of a minister's response to an oral question is a matter of debate; it is not a matter for the Speaker to judge.

Our parliamentary practice sets a very high threshold for the Speaker to make a prima facie finding of privilege in cases like the one before us. This was acknowledged by the hon. opposition House leader in his intervention and I also referred to this threshold on May 7, 2012, at page 7650 of *Debates*, in ruling on a similar matter, when I stated:

> ...one, it must be proven that the statement was misleading; two, it must be established that the member making the statement knew at the time that the statement was incorrect; and three, that [it must be proven that] in making the statement, the member intended to mislead the House.

[*Translation*]

Furthermore, Speaker Milliken, in a ruling made on April 21, 2005, at page 5412 of the *House of Commons Debates*, reminded the House of a key element to consider when finding a prima facie instance of privilege. He said:

> In the present case, I must determine whether the minister's responses in any way impeded members in the performance of their parliamentary duties and whether the remarks were intentionally misleading.

[*English*]

Taken together, these precedents demonstrate the demanding threshold established by our practice before the Chair can arrive at a prima facie finding of privilege. *House of Commons Procedure and Practice*, second edition, at page 510, summarizes the approach very well when it states:

[*Translation*]

> In most instances, when a point of order or a question of privilege has been raised in regard to a response to an oral question, the Speaker has ruled that the matter is a disagreement among Members over the facts surrounding the issue. As such, these matters are more a question of debate and do not constitute a breach of the rules or of privilege.

[*English*]

In the current situation, the Chair is faced with just such a disagreement over the facts, and the evidence presented to support the contention that the minister has deliberately misled the House falls short of the threshold required in cases of this kind.

Accordingly, given the precedents cited and our practice in circumstances of this kind, the Chair cannot find a prima facie question of privilege in this case.

I thank all members for their attention.

I understand the hon. Minister of Justice is rising to make further points to the question of privilege raised before the break.

• (1535)

DEPARTMENT OF JUSTICE

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada, CPC): Speaker, I rise to respond to the question of privilege that was raised shortly before the recent constituency week. The member referred to allegations made by an official in the Department of Justice, which are currently the subject of litigation before the Federal Court. He has said that if those allegations are true, then the House was misled. I firmly reject that insinuation.

In the government House leader's remarks made in immediate response, he noted three procedural objections from the outset to this question of privilege: first, that it was not brought at the earliest opportunity; second, that it pertained to a question of law; and third, that the *sub judice* convention ought to be considered.

As noted by my hon. colleague, the plaintiff filed a statement of claim in the Federal Court on December 14, 2012. A motion in relation to this judicial proceeding was heard in Federal Court on January 15, 2013, leading to a series of newspaper articles and other stories about this case in the days following. However, no question of privilege was raised when the House reconvened on January 28, 2013.

When I appeared before the Standing Committee on Justice and Human Rights on February 6, in relation to Bill S-9, the hon. member for Gatineau questioned me about section 4.1. The hon. member for Winnipeg Centre had yet to bring forward his question of privilege, despite his colleague, the NDP's justice critic, being prepared to participate in a thorough discussion on the subject.

Moreover, I understand that the reporting requirement of section 4.1 has come up in no fewer than five different debates on the floor of the House since the start of 2013. Suffice to say, the hon. member could have raised his question much sooner than March 6, 2013.

The second matter raised by the government House leader was that the issue before us is a question of law.

Citation 168(5) of *Beauchesne's Parliamentary Rules and Forms*, sixth edition, advises that the Speaker "will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or question of privilege". This is a long-settled proposition.

The same statement is declared at page 180 of Sir Jean Bourinot's *Parliamentary Procedure and Practice in the Dominion of Canada*. That book was published in 1916. The principle recited can be traced through many Speakers' rulings.

Mr. Speaker Milliken ruled on December 12, 2012, at page 2600 of the *Debates*, on a dispute about whether certain content in the Public Accounts accorded with the requirements of the Financial Administration Act. On this, your predecessor, Mr. Speaker, said:

> It is not of course for the Speaker to decide if the agency is acting in compliance with the law. As I have had occasion to mention in several recent rulings, it is a long-accepted principle that the Speaker does not pronounce on points of law.
>
> There is clearly a difference of opinion...concerning interpretation of the legalities flowing from the facts of this case. That is a matter for debate and a variety of different opportunities are available by which the matter can be raised in this chamber or in committee. There is no procedural issue here and so I need not elaborate on that further.

Mr. Speaker Fraser's ruling on October 9, 1990, page 13620 of the *Debates* lends itself well to the allegations here. He said:

> —it is not for the Speaker of the House to rule on constitutional matters. It is not for the Speaker of the House to try to interpret at any given time different legal opinions that may be expressed across the country.

Deputy Speaker Lucien Lamoureux, as he then was, declined to answer a question of whether a bill came within the constitutional jurisdiction of the Parliament in a ruling on October 25, 1963, at page 488 of the Journals. The authorities he quoted included even an 1864 decision of Mr. Speaker Wallbridge of the Legislative Assembly of the Province of Canada.

Far more recently, though, is a ruling which you, Mr. Speaker, delivered on October 24, 2011, starting at page 2404 of the *Debates*, respecting C-18, the Marketing Freedom for Grain Farmers Act. You summarized the position in which you found yourself then and, I would submit, where you are now:

> —it is important to delineate clearly between interpreting legal provisions of statutes—which is not within the purview of the Chair—and ensuring the soundness of the procedures and practices of the House when considering legislation—which, of course, is the role of the Chair.

• (1540)

The final point noted by the government House leader is that the allegations referred to by the member for Winnipeg Centre are before the courts. Until the matter is resolved, this House should exercise its usual restraint and avoid prejudging or prejudicing the outcome of the case in which I, as Attorney General of Canada, am a party. Nonetheless, I am compelled to respond to the case argued.

In the present circumstances, finding a prima facie case of privilege would require that there be some evidence that the House and its members have been impeded in carrying out their parliamentary duties. Despite the hon. member's allegations, he admitted in his submission that he has "no evidence to suggest that the incumbent Minister of Justice nor any of his predecessors have deliberately provided inaccurate information to the House, even implicitly".

Page 141 of *House of Commons Procedure and Practice*, second edition, observes, on questions of privilege:

> The function of the Speaker is limited to deciding whether the matter is of such a character as to entitle the Member who has raised the question to move a motion which will have priority over Orders of the Day.

To accomplish this, the member for Winnipeg Centre would seek to have the Speaker rely upon the unproven and untested allegations made by a plaintiff in a court proceeding. I would respectfully submit that if this is to become the threshold for setting aside the business of the House sponsored by members, whether they be ministers or private members, we could easily paralyze the business of Parliament by taking up any number of litigants' unproven and untested statements of claim. Therefore, I discourage you, Mr. Speaker, from making a finding of a prima facie case of privilege on that basis.

However, it is incumbent upon me to explain why the member for Winnipeg Centre has not made such a case. While I exercise my statutory responsibilities with the assistance of officials, the duty to examine government legislation under the Department of Justice Act and the Canadian Bill of Rights is mine, as Minister of Justice. It is a duty that I, of course, take very seriously. As I will explain, this government has never introduced any legislation that I believe was inconsistent with the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights.

As to the manner in which I exercise that responsibility, my statutory duty is owed to the House of Commons. Our proceedings make this clear on a daily basis. As Minister of Justice, I regularly answer questions in the House and appear before parliamentary committees studying government legislation. Members can and do ask me questions about the constitutionality of government bills. For example, the hon. member for Mount Royal, a former Attorney General, has, on at least three separate occasions, asked a series of detailed written questions. However, my officials and I are legal advisers to the Crown and not to the House of Commons. As a minister of the Crown, I appear in this House and in committees to explain the government's legal position on the legislation it has introduced, but I am not the House's exclusive source of legal information. Members can and often do receive legal opinions from the law clerk and parliamentary counsel as well as the views or submissions of law professors and other members of the bar who appear before committees to assist them in evaluating the legislation being considered. A similar process unfolds in the other place.

My approach to the constitutionality of government legislation is consistent with that of my predecessors and is a matter of public record. Under the Department of Justice Act, as the Minister of Justice, I am the official legal adviser to the Governor General and the legal member of the Queen's Privy Council for Canada. One of my responsibilities is to examine government bills presented to the House of Commons and to ascertain whether they are inconsistent with the purposes of the Canadian Charter of Rights and Freedoms and to report any such inconsistency to the House of Commons. The Canadian Bill of Rights requires me to conduct a similar review for inconsistency.

• (1545)

The notion that Parliament has somehow been misled reflects a misunderstanding of how the system actually works. Proposed government legislation is reviewed for charter and other legal risks throughout the policy and legislative development processes. The process of examining government legislation for compliance is dynamic and ongoing. Section 4.1 is only one part of a broader process that involves three distinct components: advisory, certification and reporting.

The advisory component takes places throughout the policy development process, up to and including the introduction of legislation. This typically begins with the development of the policy proposal by government departments. It continues as the proposal is refined, as options are developed and put before ministers and throughout the legislative drafting process.

Senior officials, up to and including the deputy minister of justice, other deputy ministers and where necessary, other ministers and I are briefed about policy proposals where legal risks have been identified. The risks that are highlighted are not limited to situations where the proposed legislation is inconsistent with the charter. It is a broader analysis of risks along a spectrum, from low to high risk for charter inconsistency.

Certification of legislation is a separate process that takes place after government bills have been introduced in the House of Commons. It is a formal step whereby the department's chief legislative counsel confirms, that is certifies, that the requisite review of legislation for inconsistency has taken place. Certification takes place for all government bills.

Certification should not be confused with the reporting obligation in section 4.1 of the Department of Justice Act and section 3 of the Canadian Bill of Rights. Certification is a task for government officials and takes place for all government bills. By contrast, the reporting obligation belongs to the Minister of Justice alone and would be triggered only if I, as the minister, formed the opinion that the government bill in question was, at the time of its introduction, inconsistent with the charter or the Canadian Bill of Rights. Section 4.1 and section 3 are quite clear in that regard. They require the minister to ascertain whether there is an inconsistency. This accords with the long-standing approach I and my predecessors have taken in that the minister makes such an ascertainment only when there is no credible argument to support the proposed measure.

A credible argument is one that is reasonable, bona fide and capable of being raised before, and accepted by, the court. This credible argument threshold is qualitative in nature, despite the allegations quoted by the member for Winnipeg Centre. It is not based on a predetermined numerical threshold. Section 4.1 uses very precise language. It does not require that there be disclosure any time there is a risk, only that I ascertain that there is inconsistency.

I must stress that the approach I have described is not new. It originates from the earliest days following the enactment of section 4.1.

Several of my predecessors have answered questions on this duty in the House or before our committees or those of the other place. For example, that could be found when the hon. Pierre Blais, currently Chief Justice of the Federal Court of Appeal, was questioned about his responsibilities at the Standing Senate Committee on Legal and Constitutional Affairs in June 1993. Similarly, the hon. member for Mount Royal answered questions on the topic before the same Senate committee in November 2005. My immediate predecessor, now the Minister of Public Safety, fielded related questions from the Standing Senate Committee on Legal and Constitutional Affairs during its study of Bill C-2, the Federal Accountability Act, on June 29, 2006. I too have had the pleasure of explaining the government's legal position with respect to government bills such as a question in the House on November 23, 2007 about Bill C-2, the tackling violent crime act, or during my recent committee appearance on Bill S-9, the nuclear terrorism act, which I described earlier.

I could go on and quote from those exchanges, but I think the point is clear that this is nothing new and that Parliament possesses, and has long exercised, its ability to query and probe the constitutionality of bills.

• (1550)

Of course, we must remember that constitutional law constantly evolves. The only certainty is that someone will inevitably litigate constitutional questions against the government.

This explanation should put to rest the concerns of the member for Winnipeg Centre, and indeed, all hon. members.

Furthermore, under our constitutional system, all branches of government, Parliament, the executive and the courts have a responsibility to ensure that charter rights are respected. The system of charter review put in place under section 4.1 ensures that each branch performs its appropriate role. Within the executive branch, proposed legislative initiatives are reviewed, taking into consideration any charter risks that have been identified through the advisory process and recertification that the necessary review for inconsistency has taken place upon introduction of a government bill in the House of Commons. It is then for the houses of Parliament to debate the proposed law, including its constitutional implications, and to determine whether or not it will pass and become law.

The approach to reporting requirements in section 4.1 or section 3, as the case may be, and the underlying review process must reflect the role of all institutional actors, including Parliament, to consider, debate, weigh and balance charter interests in light of public policy objectives. Parliamentarians have their own responsibilities in relation to the charter.

In summary, I have great respect for the work of parliamentarians and for the role of this House in debating government legislation. I have explained how I approach my responsibilities under the Department of Justice Act. I take into account a variety of legal opinions and perspectives, which can differ, and then I make the decision.

There is no mystery here. Like all of my predecessors, the approach I apply under section 4.1 is robust and meaningful. Even after I make the decision that there is no inconsistency between the proposed legislation and the charter, it remains open for parliamentarians to debate the proposed legislation, including any charter aspects. If the legislation is passed, it can be challenged before the courts. This process has served governments and parliaments well.

In conclusion, Mr. Speaker, you have several procedural grounds on which you could reject this question of privilege, or you can accept the evidence from me, as a member of the House of Commons. The hon. member's claims, in my opinion, can be dismissed outright.

Finally, I understand that the hon. member for Mount Royal may be making an intervention again on this question of privilege. I would like to reserve the right for myself or a colleague to respond in due course should any new issues not previously canvassed arise.

Hon. Irwin Cotler (Mount Royal, Lib.): Mr. Speaker, I am pleased to rise to discuss the questions addressed by the minister and the question of privilege raised by the member for Winnipeg Centre on Wednesday, March 6, in a broader context.

I have had the benefit of reading his intervention and the government's response thus far, as well as the comments of the leader of the Green Party in preparing my submission. I thank the Speaker for awaiting my submission on this matter.

The issue before us is the way in which the Minister of Justice vets bills for their compliance and consistency with the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. In this regard, the member for Winnipeg Centre read into the record section 3 of the Canadian Bill of Rights and the requirement for examination of legislation for consistency with the provisions of the Bill of Rights.

To complete the record, I will read the relevant section of the Department of Justice Act, section 4.1(1), which therein states that the minister shall:

> ...examine...every Bill introduced in or presented to the House of Commons by a minister of the Crown, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms and the Minister shall report any such inconsistency to the House of Commons at the first convenient opportunity.

There is a related provision in the Statutory Instruments Act, section 3 (c), which requires an examination of a proposed regulation to ensure that:

> ...it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights;...

As the members for Winnipeg Centre and Saanich—Gulf Islands both indicated, there is concern as to whether the minister has fulfilled the purpose and spirit of these provisions as evidenced by courts finding certain legislative dispositions from the government to be unconstitutional.

These cases have run a spectrum. For example, R. v. Sheck and R. v. Smickle, cases from B.C. and Ontario respectively, struck down mandatory minimum penalties. R. v. Appulonappa, a British Columbia case regarding human smuggling, found that the impugned section of the Immigration and Refugee Protection Act violated Charter protections.

Recently, as well, R. v. St-Onge Lamoureux, a Supreme Court case, found that certain provisions of the Criminal Code with respect to drunk driving infringe the Charter's guarantee of the presumption of innocence, a foundational criminal justice precept.

There are other cases and, indeed, a series of cases in which the constitutionality of government legislation has been challenged, though courts have not yet ruled on these matters, and the legality of these government acts may not be known for some time after their enactment and enforcement.

The argument advanced by my colleague in mising this question is that if all these provisions are constitutionally inconsistent, there must be a deficiency in the review process, and the Minister of Justice has sought to address that point.

Indeed, the aforementioned provisions of section 4.1 of the Department of Justice Act require not only a review of proposed government legislation but the tabling of a report in the House in the event of inconsistency. Not only has unconstitutional legislation come before us, but it has been done without such a report.

I share in my colleague's concern that this has raised a serious issue for all parliamentarians.

As members know, and the Minister of Justice references, I had the privilege myself of serving as minister of justice and Attorney General of Canada. As such, I am well aware of the duties of the minister and of the obligations required by statute of that office.

In discussing this issue in the past, one might well question whether a different policy existed when I was minister and why no such reports were tabled when I was minister. My answer to these very valid questions is simple, and I believe it may shed some light on the process and whether or not a privilege violation exists or some other breach exists in this case.

As such, it may help you, Mr. Speaker, in adjudicating the question before you. First, if the review process works as envisaged, constitutional deficiencies are signalled or addressed in the policy development stage. At that point, they can be redressed and can be corrected immediately. Indeed if the inconsistency is corrected prior to legislation coming to the House, no report will be tabled. Indeed, no report is otherwise required.

• (1555)

As well, and this is the point that bears particular mention, the review of the Department of Justice, at whatever standard it has set, does not preclude the minister from seeking to satisfy himself or herself with respect to these issues that the legislation is constitutionally compliant at a much higher threshold—that is to say, the department's standard, which has been set for some time, even while maybe varying over time, may not be the same standard that the minister seeks, and seeking out more scrupulous review is something the minister can and ought to do in certain circumstances.

What is rightly before this House, mised as a question of privilege, is whether the minister has satisfied himself of the constitutional compliance of legislation; an obligation that the minister has, pursuant to statute. The government's contention has been that, because no reports have been tabled, the process is working. By contrast, I am of the view that because there has been a spate of legislation that is constitutionally suspect that has been tabled before this House and also because some of that legislation has been overturned, the process, by these very points, is failing.

This is Exhibit "**15**" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
Province of Ontario, for the Government of Canada,
Department of Justice.
Expires December 3, 2016.

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

House of Commons Debates

VOLUME 146 • NUMBER 230 • 1st SESSION • 41st PARLIAMENT

OFFICIAL REPORT
(HANSARD)

Wednesday, March 27, 2013

Speaker: The Honourable Andrew Scheer

Speaker's Ruling

For those reasons, I do not believe it is necessary to agree to the member's request.

* * *

[*English*]

PRIVILEGE

DEPARTMENT OF JUSTICE—SPEAKER'S RULING

The Speaker: I am now prepared to rule on the question of privilege raised on March 6, 2013 by the member for Winnipeg Centre regarding the Minister of Justice's statutory obligation to examine government bills and regulations to determine whether they are inconsistent with the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights.

I would like to thank the hon. member for Winnipeg Centre for having raised this matter, as well as the Minister of Justice and Attorney General of Canada, the hon. Leader of the Government in the House of Commons, the hon. House Leader of the Official Opposition and the members for Saanich—Gulf Islands, Winnipeg Centre, Mount Royal and Gatineau for their comments.

[*Translation*]

In raising this question of privilege, the member for Winnipeg Centre explained that, pursuant to certain statutory requirements, the Minister of Justice is required to examine all government bills and regulations in order to determine whether they are actually inconsistent with the Charter of Rights and Freedoms and the Bill of Rights. He cited section 3 of the Canadian Bill of Rights, which states:

> ...the Minister of Justice shall...examine every regulation...and every Bill introduced in or presented to the House of Commons by a Minister of the Crown, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons.

[*English*]

The hon. member then claimed that if the allegations contained in an action filed in the Federal Court by Mr. Edgar Schmidt, a Department of Justice official, are proven to be true, the minister has flouted these statutory requirements. He contends that the minister manages the risk of inconsistency in a cavalier fashion, and he argues that by allowing legislation to be introduced in the House that has a possibility of being inconsistent with the Charter of Rights and Freedoms or the Bill of Rights, the minister misleads Parliament, thus leaving members with no reliable assurance that proposed legislation is not in violation of the charter and the Bill of Rights.

The member asked that the Chair find that the minister's approach had thus effectively impeded members in performing their duty to exercise due diligence in considering government bills. I note that to do so, the Chair would first need to establish whether the Minister of Justice had acted in accordance with his statutory obligations.

• (1605)

[*Translation*]

That said, while the member for Winnipeg Centre went on to admit that there exists no evidence that the Minister of Justice deliberately, or even implicitly, gave the House inaccurate information, he claimed that there are serious deficiencies in the examination and vetting of draft government legislation by the Minister of Justice as evidenced by a number of legal challenges to legislation believed to be inconsistent with the charter and the Bill of Rights.

[*English*]

The member contended that even though the matter is before the courts, the *sub judice* convention does not prevent the House from considering this question of privilege, as it is in no way dependent on the findings of the court, nor will the debate on the question of privilege interfere with the court in carrying out its duties. Acknowledging that questions of privilege must be raised at the earliest opportunity, the member for Winnipeg Centre assured the House that he brought this matter to the attention of the House as quickly as he could bring the research together, given the complexity of this question of privilege.

[*Translation*]

In response, the Minister of Justice insisted that the matter was not raised at the first opportunity since the court action in question was filed on December 14, 2012, leaving the member many opportunities to have raised this matter in the intervening months—as many other members had done in both committees and in the House. Second, the minister argued that the Chair has no jurisdiction over questions of law, which are for the courts alone to decide. Third, the minister suggested that the *sub judice* convention dictates that since the matter is before the courts, the House should allow the courts to resolve the matter before undertaking any debate on the matter.

[*English*]

The Minister of Justice noted that the member for Winnipeg Centre had failed to provide any evidence that the House and its members were in any way impeded in carrying out their duties. The minister stated categorically that "this government has never introduced any legislation that I believe was inconsistent with the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights".

He went on to remind the House that the member for Winnipeg Centre had acknowledged that he had "no evidence" to suggest that the minister provided deliberately inaccurate information to the House about government bills.

[*Translation*]

The Chair has listened attentively to members' interventions on this matter and it seems to me that this question of privilege involves three key points: namely, the timeliness of the question of privilege; the *sub judice* convention; and the Speaker's role in determining matters of law.

[*English*]

Regarding timeliness, both the member for Winnipeg Centre and the opposition house leader explained that it was only after some time-consuming initial research that the member felt compelled to raise the matter in the form of a question of privilege.

Furthermore, I was interested in the statement of the member for Gatineau, who noted that this question of privilege was raised only after efforts to consider the matter in committee had failed.

While I might come to a different conclusion if the question at issue related directly to a specific incident in the House with regard to this particular question of privilege, I am satisfied with the explanations offered and will not rule this question out of order purely on the basis of timeliness.

The suggestion has also been made that the *sub judice* convention, in and of itself, prevents the consideration of this question of privilege at this time.

House of Commons Procedure and Practice, second edition, at page 627 states:

> The interpretation of this convention is left to the Speaker since no "rule" exists to prevent Parliament from discussing a matter which is sub judice.

[*Translation*]

As Speaker, I must endeavour to find a balance between the right of the House to debate a matter and the effect that this debate might have. This is particularly important given that the purpose of the *sub judice* convention is to ensure that judicial decisions can be made free of undue influence. While O'Brien and Bosc states on page 628, in reference to a March 22, 1983, ruling by Speaker Sauvé,

> ...the *sub judice* convention has never stood in the way of the House considering a prima facie matter of privilege vital to the public interest or to the effective operation of the House and its Members.

it also speaks of another aspect of this convention that is too critical to ignore when at page 100 it states:

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

[*English*]

Strictly speaking, in the case before us, while the *sub judice* convention does not prevent debate on the matter, the fact remains that the heart of this question of privilege is still before the courts, which have yet to make a finding. I believe that it would be prudent for the House to use caution in taking steps that could result in an investigatory process that would, in many ways, run parallel to the court proceedings, particularly given that the Minister of Justice and Attorney General of Canada is already a party to the court proceedings and would be a central figure in any consideration the House might give this matter.

Arguments over the timeliness of the intervention of the member for Winnipeg Centre and the extent of the restraints we might choose to impose on ourselves because of the *sub judice* convention are ancillary matters. It seems to me that the central element of this question of privilege asks the Speaker to determine if the government is meeting its obligations under the law, as set out in section 3 of the Canadian Bill of Rights and section 4.1 of the Department of Justice Act and their relevant regulations. The member for Mount Royal distilled this issue down to its fundamental element in stating:

> What is rightly before this House, raised as a question of privilege, is whether minister has satisfied himself of the constitutional compliance of legislation.

This is the very matter the member for Winnipeg Centre has placed before me for my consideration in raising this question of privilege.

[*Translation*]

Numerous previous Speakers' decisions point to a very clear practice for the Chair to follow in instances such as this. In a ruling given by Speaker Fraser, on April 9, 1991, which can be found at pages 19233 and 19234 of the *House of Commons Debates*, he said:

> The Speaker has no role in interpreting matters of either a constitutional or legal nature.

In a ruling given by Speaker Jerome, on June 19, 1978, which can be found at page 6525 of the *House of Commons Debates*, he addressed a complaint that the government of the day may have acted illegally. He stated:

> The hon. Member also alleges the Government acted illegally in the manner in which postal rates have been increased. Hon. Members will be aware that I have a duty to decide questions of order, not of law, and furthermore, I understand that this issue is now before the courts. In my opinion, therefore, it is an issue to be settled by the courts, and the Chair should not intervene.

[*English*]

House of Commons Procedure and Practice, second edition, at page 261, also provides valuable insight. It states:

> ...while Speakers must take the Constitution and statutes into account when preparing a ruling, numerous Speakers have explained that it is not up to the Speaker to rule on the "constitutionality" or "legality" of measures before the House.

In a ruling on a similar matter, Speaker Milliken, on April 12, 2005, at page 4953 of the *Debates*, did articulate the limited kinds of legal or constitutional matters the Chair could rule on.

He stated at that time:

> What they may decide is whether the terms of a bill are in compliance with a prior resolution of this House, a ways and means motion, for example, or a royal recommendation in respect of a money bill, but beyond that, Speakers do not intervene in respect of the constitutionality or otherwise of provisions in the bills introduced in this House.

[*Translation*]

More recently, I have also been called upon to make rulings which effectively asked me to interpret the law. On October 24, 2011, at page 2405 of the *Debates*, I stated:

> ...it is important to delineate clearly between interpreting legal provisions of statutes—which is not within the purview of the Chair—and ensuring the soundness of the procedures and practices of the House when considering legislation—which, of course, is the role of the Chair.

[*English*]

Given the Chair's limited scope to consider legal matters, and based solely on what is within my purview to consider, I cannot comment on the adequacy of the approach taken by the government to fulfill its statutory obligations. I can therefore find no evidence that the member for Winnipeg Centre's privileges have been breached and cannot see how this rises to a matter of contempt. Accordingly, I cannot find a prima facie question of privilege.

I thank all members for their attention.

This is Exhibit "**16**" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

Lori Brenning

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
Province of Ontario, for the Government of Canada,
Department of Justice.
Expires December 3, 2016.

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

STANDING ORDERS

OF THE HOUSE OF COMMONS

INCLUDING THE CONFLICT OF INTEREST CODE FOR MEMBERS
(*Consolidated version as of January 27, 2014*)

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DE LA CHAMBRE DES COMMUNES

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RÈGLEMENT

CHAPTER XI

PRIVATE MEMBERS' BUSINESS

Notice

Notice of item by one Member.

86. (1) Any one Member may give notice of an item of Private Members' Business.

More than one seconder.

(2) Notwithstanding the usual practices of the House, not more than twenty Members may jointly second an item under Private Members' Business and may indicate their desire to second any motion in conjunction with the Member in whose name it first appeared on the *Notice Paper*, by so indicating, in writing to the Clerk of the House, at any time prior to the item being proposed.

Appending seconders' names.

(3) Any names received, pursuant to section (2) of this Standing Order, shall be appended to the notice or order as the case may be. Once proposed to the House, Members' names shall not be added to the list of those seconding the said motion or order.

Similar items. Speaker to decide.

(4) The Speaker shall be responsible for determining whether two or more items are so similar as to be substantially the same, in which case he or she shall so inform the Member or Members whose items were received last and the same shall be returned to the Member or Members without having appeared on the *Notice Paper*.

Private Members' Business to continue.

86.1 At the beginning of the second or a subsequent session of a Parliament, all items of Private Members' Business originating in the House of Commons that were listed on the *Order Paper* during the previous session shall be deemed to have been considered and approved at all stages completed at the time of prorogation and shall stand, if necessary, on the *Order Paper* or, as the case may be, referred to committee and the List for the Consideration of Private Members' Business and the order of precedence established pursuant to Standing Order 87 shall continue from session to session.

CHAPITRE XI

AFFAIRES ÉMANANT DES DÉPUTÉS

Avis

Avis d'une affaire par un député.

86. (1) Tout député peut donner avis d'une affaire à inscrire aux Affaires émanant des députés.

Plus d'un appuyeur.

(2) Nonobstant les pratiques habituelles de la Chambre, au plus vingt députés peuvent appuyer conjointement une affaire émanant des députés et peuvent indiquer qu'ils souhaitent appuyer toute motion présentée par le député au nom duquel l'affaire a d'abord été inscrite au *Feuilleton des avis* en prévenant le Greffier de la Chambre par écrit, n'importe quand avant que l'affaire ne soit proposée.

Noms des appuyeurs ajoutés.

(3) Les noms reçus conformément au paragraphe (2) du présent article sont ajoutés à l'avis ou à l'ordre, selon le cas. Une fois l'affaire proposée à la Chambre, les noms des députés ne sont pas ajoutés à la liste des appuyeurs de la motion ou de l'ordre en question.

Affaires semblables. Le Président décide.

(4) Le Président a la responsabilité de décider si deux affaires ou plus se ressemblent assez pour être substantiellement identiques. Il en informe alors les députés dont l'affaire a été reçue en dernier et ladite affaire leur est retournée sans avoir paru au *Feuilleton des avis*.

Affaires émanant des députés maintenues.

86.1 Au début de la deuxième session d'une législature ou d'une de ses sessions subséquentes, toutes les affaires émanant des députés venant de la Chambre des communes qui étaient inscrites au *Feuilleton* au cours de la session précédente sont réputées avoir été examinées et approuvées à toutes les étapes franchies avant la prorogation et sont inscrites, si nécessaire, au *Feuilleton* ou, selon le cas, renvoyées en comité, et la Liste portant examen des affaires émanant des députés et l'ordre de priorité établi conformément à l'article 87 du Règlement sont maintenus d'une session à l'autre.

Reinstatement of Senate public bills after prorogation.

86.2 (1) During the first sixty sitting days of the second or subsequent session of a Parliament, whenever a private Member proposing the first reading of a bill brought from the Senate pursuant to Standing Order 69(2) states that the bill is in the same form as a Senate public bill that was before the House in the previous session and the Speaker is satisfied that the bill is in the same form as at prorogation, notwithstanding Standing Order 71, the bill shall be deemed to have been considered and approved at all stages completed at the time of prorogation and shall stand, if necessary, on the *Order Paper* pursuant to Standing Order 87 after those of the same class, at the same stage at which it stood at the time of prorogation or, as the case may be, referred to committee, and with the votable status accorded to it pursuant to Standing Order 92(1) during the previous session.

Rétablissement de projets de loi d'intérêt public émanant du Sénat après la prorogation.

86.2 (1) Durant les soixante premiers jours de séance de la deuxième session d'une législature ou d'une de ses sessions subséquentes, lorsqu'un député proposant la première lecture d'un projet de loi émanant du Sénat conformément à l'article 69(2) du Règlement déclare que le projet de loi est identique à un projet de loi d'intérêt public émanant du Sénat que la Chambre a étudié au cours de la session précédente et que le Président convient que le texte du projet de loi est inchangé par rapport à la version à l'étude au moment de la prorogation, nonobstant l'article 71 du Règlement, le projet de loi est réputé avoir été examiné et approuvé à toutes les étapes franchies avant la prorogation et est inscrit, si nécessaire, au *Feuilleton*, conformément à l'article 87 du Règlement après ceux de la même catégorie, à l'étape où il se trouvait au moment de la prorogation ou, le cas échéant, renvoyé en comité, et avec la désignation qui lui avait été accordée conformément à l'article 92(1) du Règlement au cours de la session précédente.

Member not to lose place on List.

(2) A Member shall not lose his or her place on the List for the Consideration of Private Members' Business by virtue of sponsoring a Senate public bill or a private bill, but no Member may sponsor more than one such bill during a Parliament.

Le député conserve son rang dans la Liste.

(2) Le député qui parraine un projet de loi d'intérêt public émanant du Sénat ou un projet de loi d'intérêt privé conserve son rang dans la Liste portant examen des affaires émanant des députés, mais un député ne peut parrainer de projet de loi de ce genre qu'une seule fois par législature.

Order of Precedence

Ordre de priorité

Establishing List and order of precedence at beginning of session.

87. (1)(*a*)(i) At the beginning of the first session of a Parliament, the Clerk of the House, acting on behalf of the Speaker, shall, after notifying all Members of the time, date and place, conduct a random draw of the names of all Members of the House to establish the List for the Consideration of Private Members' Business, and, on the twentieth sitting day following the draw, the first thirty names on the List shall, subject to paragraph (*c*) of this Standing Order, constitute the order of precedence.

Liste et ordre de priorité établis au début de la session.

87. (1)*a*)(i) Au début de la première session d'une législature, le Greffier de la Chambre, après avoir informé tous les députés de l'heure, de la date et du lieu du tirage, tire au sort, au nom du Président, les noms des députés de la Chambre en vue d'établir la Liste portant examen des affaires émanant des députés, et, le vingtième jour de séance suivant la date du tirage, les trente premiers noms figurant dans la Liste constituent, conformément à l'alinéa *c*) du présent article, l'ordre de priorité.

Ineligible Members.

(ii) Following the draw referred to in subparagraph (i) of this section, the names of the Speaker, the Deputy Speaker, Ministers and Parliamentary Secretaries, who are ineligible by virtue of their offices, shall be dropped to the bottom of the List for the Consideration of Private Members' Business, where they will remain as long as they hold those offices.

Députés non admissibles.

(ii) Après le tirage au sort visé au sous-alinéa (1)*a*)(i) du présent article, les noms du Président et du Vice-président de la Chambre, des ministres et des secrétaires parlementaires, tous députés qui ne peuvent soumettre d'affaires à étudier en raison de la charge qu'ils occupent, sont portés au bas de la Liste portant examen des affaires émanant des députés et y restent tant que les députés en question occupent leur charge.

Members becoming eligible.

(iii) Members who become eligible during the course of a Parliament shall be added to the bottom of the eligible names on the List for the Consideration of Private Members' Business, provided that their position shall be determined by a draw if more than one Member becomes eligible on a given day.

Députés devenant admissibles.

(iii) Les noms des députés qui deviennent admissibles au cours d'une législature sont inscrits à la fin de la liste des noms des députés admissibles, dans la Liste portant examen des affaires émanant des députés, et lorsque plus d'un député deviennent admissibles le même jour, leur rang dans la liste est déterminé par tirage au sort.

Member to specify item.

(*b*) Not later than the ordinary hour of daily adjournment on the second sitting day after the day on which the order of precedence is established or replenished, each Member whose name has been newly placed in the order of precedence, and who has given notice of more than one item, shall file with the Clerk an indication as to which item is to be placed in the order of precedence. If a Member does not file such an indication within the time specified, the first bill standing on the *Order Paper* in the name of that Member under Private Members' Business will be included in the order of precedence. Where there are no bills standing in the name of the Member, the first motion standing in the name of that Member shall be selected or, if required, the first motion in the name of that Member under the heading "Notices of Motions (Papers)."

Indication du député.

b) Au plus tard à l'heure ordinaire de l'ajournement quotidien le deuxième jour de séance suivant le jour où l'ordre de priorité a été établi ou complété, chaque député dont le nom a été ajouté à l'ordre de priorité et qui a donné avis de plus d'une affaire doit indiquer au Greffier, par écrit, celle de ses affaires qui doit être placée dans l'ordre de priorité. Si un député ne donne pas cette indication dans le délai prévu, le premier projet de loi inscrit en son nom au *Feuilleton*, sous la rubrique des Affaires émanant des députés, sera inclus dans l'ordre de priorité. Si aucun projet de loi n'est inscrit au nom du député, la première motion inscrite à son nom, ou si nécessaire, la première motion inscrite en son nom sous la rubrique « Avis de motions (documents) » sera choisie.

Eligibility for order of precedence.

(*c*)(i) In order to be placed in the order of precedence pursuant to paragraph (*a*) of this Standing Order, a Member must have a notice of motion on the *Order Paper* or *Notice Paper* or a bill on the *Order Paper* set down for consideration at the second reading stage.

(ii) If at the end of the time provided for in paragraph (*b*) of this Standing Order, a Member whose name is in the order of precedence does not have a notice of motion on the *Order Paper* or *Notice Paper*, or a bill set down on the *Order Paper* for consideration at second reading stage, then the name of the Member shall be dropped from the List for Consideration of Private Members' Business.

Admissibilité à l'ordre de priorité.

c)(i) Pour pouvoir être inscrit dans l'ordre de priorité en vertu de l'alinéa *a*) du présent article, un député doit avoir fait inscrire à son nom un avis de motion au *Feuilleton* ou au *Feuilleton des avis* ou un projet de loi à étudier en deuxième lecture au *Feuilleton*.

(ii) Si, au terme du délai défini à l'alinéa *b*) du présent paragraphe, le député dont le nom figure à l'ordre de priorité n'a pas fait inscrire un avis de motion au *Feuilleton* ou au *Feuilleton des avis*, ou n'a pas un projet de loi à étudier en deuxième lecture au *Feuilleton*, le nom dudit député est rayé de la Liste portant examen des affaires émanant des députés.

Designation as non-votable.

(*d*) Not later than the ordinary hour of daily adjournment on the second sitting day after the day on which the order of precedence is established or replenished, a Member whose name has been placed in the order of precedence may indicate that he or she wishes to have his or her item designated non-votable by informing the Clerk in writing.

Désignation d'une affaire comme non votable.

d) Au plus tard à l'heure ordinaire de l'ajournement quotidien le deuxième jour de séance suivant le jour où l'ordre de priorité est établi ou complété, le député dont le nom a été inscrit dans l'ordre de priorité peut aviser le Greffier par écrit qu'il souhaite voir son affaire désignée non votable.

During a Parliament.

(2) The Clerk of the House, acting on behalf of the Speaker, shall, when necessary during a Parliament, replenish the order of precedence with the names of the next fifteen Members on the List for the Consideration of Private Members' Business.

Durant une législature.

(2) Au besoin, au cours d'une législature, le Greffier de la Chambre, agissant au nom du Président, complète l'ordre de priorité en y inscrivant les noms des quinze députés qui suivent dans la Liste portant examen des affaires émanant des députés.

Establishing new List.

(3) If during the course of a Parliament, there are fewer than fifteen eligible names remaining on the List for the Consideration of Private Members' Business, the Clerk, acting on behalf of the Speaker shall, after notifying all Members of the time, date and place, conduct a random draw of the names of all Members of the House to establish a new List for the Consideration of Private Members' Business.

Renouvellement de la Liste.

(3) S'il arrive, au cours d'une législature, que la Liste portant examen des affaires émanant des députés compte moins de quinze noms de députés admissibles, le Greffier, après avoir informé tous les députés de l'heure, de la date et du lieu du tirage, tire au sort, au nom du Président, les noms des députés de la Chambre pour renouveler la Liste portant examen des affaires émanant des députés.

Notice of other items.

(4) The establishment of an order of precedence for Private Members' Business shall not be construed so as to prevent Members from giving notice of items of Private Members' Business.

Avis d'autres affaires.

(4) L'établissement d'un ordre de priorité pour les Affaires émanant des députés n'empêche pas les députés de donner avis d'affaires émanant des députés.

Only order of precedence items to be considered.

(5) The House shall not consider any order for the second reading and reference to a standing, special or legislative committee or for reference to a Committee of the Whole House of any bill, nor any Notices of Motions or Notices of Motions (Papers) unless the said item has been placed in the order of precedence.

(5) La Chambre ne prend en considération aucun ordre portant deuxième lecture et renvoi d'un projet de loi à un comité permanent, spécial ou législatif, ou à un comité plénier de la Chambre, ni aucun avis de motion ni avis de motion (documents), sauf si ladite affaire fait partie de l'ordre de priorité.

Prise en considération des seules affaires qui font partie de l'ordre de priorité.

88. Deleted (*June 30, 2005*).

88. Supprimé (*le 30 juin 2005*).

Order of bills on precedence list.

89. The order for the first consideration of any subsequent stages of a bill already considered during Private Members' Business, of second reading of a private bill and of second reading of a private Member's public bill originating in the Senate shall be placed at the bottom of the order of precedence.

89. L'ordre portant examen pour la première fois soit, à une étape subséquente, d'un projet de loi déjà étudié sous la rubrique des Affaires émanant des députés, soit de la deuxième lecture d'un projet de loi d'intérêt privé, soit de la deuxième lecture d'un projet de loi d'intérêt public émanant d'un député qui a pris naissance au Sénat, est placé au bas de l'ordre de priorité.

Ordre des projets de loi dans l'ordre de priorité.

On adjournment or interruption.

90. Except as provided pursuant to Standing Order 96, after any bill or other order standing in the name of a private Member has been considered in the House or in any Committee of the Whole and any proceeding thereon has been adjourned or interrupted, the said bill or order shall be placed on the *Order Paper* for the next sitting at the bottom of the order of precedence under the respective heading for such bills or orders.

90. Sauf dans les cas prévus à l'article 96 du Règlement, après que la Chambre ou un comité plénier a étudié un projet de loi ou un autre ordre émanant d'un député et que toute délibération à ce sujet a été ajournée ou interrompue, ledit projet de loi ou ordre est inscrit au *Feuilleton* de la séance suivante, au bas de l'ordre de priorité, sous la rubrique respectivement assignée à ces projets de loi ou ordres.

Délibérations ajournées ou suspendues.

Suspension of Private Members' Business until order of precedence established.

91. Notwithstanding Standing Order 30(6), the consideration of Private Members' Business shall be suspended and the House shall continue to consider any business before it at the time otherwise provided for the consideration of Private Members' Business until an order of precedence is established pursuant to Standing Order 87(1).

91. Nonobstant l'article 30(6) du Règlement, la prise en considération des Affaires émanant des députés est suspendue et la Chambre continue d'étudier toute affaire dont elle était saisie à l'heure autrement prévue pour la prise en considération des Affaires émanant des députés jusqu'à ce que l'ordre de priorité soit établi conformément au paragraphe 87(1) du Règlement.

Suspension des affaires émanant des députés jusqu'à ce que l'ordre de priorité soit établi.

Subcommittee on Private Members' Business.

91.1 (1) At the beginning of the first session of a Parliament, and thereafter as required, the Standing Committee on Procedure and House Affairs shall name one Member from each of the parties recognized in the House and a Chair from the government party to constitute the Subcommittee on Private Members' Business, which shall be empowered to meet forthwith after the establishment or replenishment of the order of precedence to determine whether any of the items placed in the order of precedence are non-votable according to the criteria adopted by the Standing Committee on Procedure and House Affairs, provided that no item shall be considered by the House unless the condition set out in section (2) of this Standing Order or one of the conditions in Standing Order 92(1)(*b*) has been satisfied. If necessary, the item shall be dropped to the bottom of the order of precedence.

91.1 (1) Au début de la première session d'une législature et au besoin par la suite, le Comité permanent de la procédure et des affaires de la Chambre constitue le Sous-comité des affaires émanant des députés en y nommant un membre de chacun des partis reconnus à la Chambre et un président du parti ministériel. Le Sous-comité est habilité à se réunir dès que l'ordre de priorité a été établi ou complété afin de décider si les affaires inscrites dans l'ordre de priorité sont non votables d'après les critères établis par le Comité permanent de la procédure et des affaires de la Chambre. Toutefois, seules les affaires qui remplissent les conditions énoncées au paragraphe (2) du présent article ou au moins une des conditions énoncées à l'alinéa 92(1)*b*) peuvent être examinées par la Chambre. Si nécessaire, les affaires retombent au bas de l'ordre de priorité.

Sous-comité des affaires émanant des députés.

Report of the Subcommittee.

(2) After it has met pursuant to section (1) of this Standing Order, the Subcommittee on Private Members' Business shall forthwith deposit with the clerk of the Standing Committee on Procedure and House Affairs a report recommending that the items listed therein, which it has determined should not be designated non-votable, be considered by the House, and that report, which shall be deemed to have been adopted by the Standing Committee on Procedure and House Affairs, shall be presented to the House at the next earliest opportunity as a report of that Committee and shall be deemed concurred in as soon as it is presented.

(2) Après s'être réuni conformément au paragraphe (1) du présent article, le Sous-comité des affaires émanant des députés dépose auprès du greffier du Comité permanent de la procédure et des affaires de la Chambre un rapport recommandant à la Chambre d'examiner les affaires qui, selon le Sous-comité, ne devraient pas être désignées non votables. Ce rapport, qui est réputé adopté par le Comité permanent de la procédure et des affaires de la Chambre, est présenté à la Chambre à la première occasion et réputé adopté dès sa présentation.

Rapport du Sous-comité.

Report of Subcommittee on non-votable items.

92. (1)(*a*) When the Subcommittee agrees that an item of Private Members' Business originating in the House of Commons, or a Senate public bill which is similar to a bill voted on by the House in the same Parliament, should be designated as non-votable, it shall forthwith deposit a report of its decision with the clerk of the Standing Committee on Procedure and House Affairs.

(*b*) When the Subcommittee on Private Members' Business has reported that an item should be designated non-votable pursuant to paragraph (*a*) of this Standing Order, the item may be considered by the House only after:

(i) a final decision on the votable status of the item has been made pursuant to section (4) of this Standing Order; or

(ii) the sponsor of the item has waived the right to appeal by so notifying the Speaker in writing.

Appearance of sponsor.

(2) Within five sitting days of the deposit of a report referred to in paragraph (1)(*a*) of this Standing Order, the sponsor of an item that is the object of the report shall have the opportunity to appear before the Standing Committee on Procedure and House Affairs and to provide a written submission to the Committee to explain why the item should be votable.

Report to House.

(3)(*a*) Where the Standing Committee on Procedure and House Affairs, following proceedings pursuant to section (2) of this Standing Order, concurs in the report of the Subcommittee on Private Members' Business, it shall report that decision to the House forthwith, and, notwithstanding Standing Order 54, no notice of a motion to concur in the Committee's report shall be receivable.

(*b*) Where the Standing Committee on Procedure and House Affairs, following proceedings pursuant to section (2) of this Standing Order, does not concur in the report of the Subcommittee on Private Members' Business and is of the opinion that the item should remain votable, it shall report that decision to the House forthwith, and the report shall, upon presentation, be deemed concurred in.

Filing of appeal.

(4)(*a*) Where a report pursuant to paragraph (3)(*a*) of this Standing Order has been presented to the House, the sponsor of the item which is the object of the report may appeal the decision of the Committee by filing with the Speaker within five sitting days of the presentation of the said report, a motion to that effect signed by the sponsor and five other Members of the House representing a majority of the recognized parties in the House, and, if no appeal is filed with the Speaker during the period provided for in this paragraph, or if the sponsor has waived the right to appeal by so notifying the Speaker in writing, the report is deemed adopted.

Rapport du Sous-comité sur les affaires désignées non votables.

92. (1)*a*) Lorsque le Sous-comité convient qu'une affaire émanant d'un député présentée à la Chambre des communes, ou un projet de loi d'intérêt public émanant du Sénat qui est identique à un projet de loi déjà mis aux voix à la Chambre au cours de la législature, doivent être désignés non votables, il présente immédiatement au greffier du Comité permanent de la procédure et des affaires de la Chambre un rapport avisant le Comité de sa décision.

b) **Lorsque le Sous-comité des affaires émanant des députés désigne une affaire non votable conformément à l'alinéa *a*) du présent paragraphe, ladite affaire ne peut être examinée par la Chambre que si :**

(i) une décision finale a été rendue au sujet de la votabilité de ladite affaire conformément au paragraphe (4) du présent article;

(ii) son parrain a signifié par écrit au Président qu'il renonce à son droit d'appel auprès de la Chambre.

Comparution du parrain de l'affaire.

(2) Dans les cinq jours de séance suivant la présentation du rapport visé à l'alinéa (1)*a*) du présent article, le parrain de l'affaire qui fait l'objet du rapport peut comparaître devant le Comité permanent de la procédure et des affaires de la Chambre et présenter des arguments par écrit pour lui expliquer pourquoi il estime que l'affaire devrait pouvoir être mise aux voix.

Rapport à la Chambre.

(3)*a*) Lorsque le Comité permanent de la procédure et des affaires de la Chambre, après la comparution visée au paragraphe (2) du présent article, adopte le rapport du Sous-comité des affaires émanant des députés, il fait immédiatement rapport de sa décision à la Chambre et, nonobstant l'article 54, aucune motion pour adopter le rapport du comité n'est recevable.

b) Lorsque le Comité permanent de la procédure et des affaires de la Chambre, après la comparution visée au paragraphe (2) du présent article, n'adopte pas le rapport du Sous-comité des affaires émanant des députés et est d'avis que l'affaire devrait demeurer votable, il fait immédiatement rapport à la Chambre de sa décision. Ce rapport est réputé adopté sur présentation.

Appel.

(4)*a*) Lorsque le rapport visé à l'alinéa (3)*a*) du présent article est présenté à la Chambre, le parrain de l'affaire qui en fait l'objet peut appeler de la décision du Comité en soumettant au Président, dans les cinq jours de séance suivant la présentation du rapport, une motion d'appel signée par lui et cinq autres députés représentant la majorité des partis reconnus à la Chambre. Si aucune motion d'appel n'est soumise au Président dans le délai prévu au présent paragraphe, ou si le parrain signifie par écrit au Président qu'il renonce à son droit d'appel auprès de la Chambre, le rapport est réputé adopté.

Secret ballot on appeal.

(*b*) Where the Speaker is satisfied that a motion in appeal filed pursuant to paragraph (*a*) of this section is in conformity with the Standing Orders, he or she shall inform the House to that effect and shall cause a vote on the appeal to be held by secret ballot during the hours of sitting of the House on two sitting days to be designated by the Speaker, during which time Members may deposit their completed ballot papers in the ballot box placed on the Table for that purpose.

b) Lorsque le Président de la Chambre estime que la motion d'appel soumise en vertu de l'alinéa *a*) du présent paragraphe est conforme au Règlement, il en informe la Chambre et ordonne la tenue d'un vote secret sur l'appel pendant les heures de séance de la Chambre des deux jours de séance désignés par le Président, au cours desquels les députés peuvent déposer leurs bulletins de vote dûment remplis dans l'urne placée à cette fin sur le Bureau.

Vote secret sur l'appel.

Intention to substitute item.

92.1 (1) Where a report pursuant to Standing Order 92(3)(*a*) has been presented to the House, the sponsor of the item that has been designated non-votable may, within five sitting days of the presentation of the said report, give written notice of his or her intention to substitute another item of Private Members' Business for the item designated non-votable.

92.1 (1) Lorsqu'un rapport conformément à l'alinéa 92(3)*a*) du Règlement est présenté à la Chambre, le parrain de l'affaire désignée non votable peut, dans les cinq jours de séance suivant la présentation du rapport, donner avis écrit de son intention de remplacer l'affaire désignée non votable par une autre affaire émanant d'un député.

Intention de remplacer l'affaire désignée.

Sponsor to specify another item on *Order Paper* or *Notice Paper*.

(2) When notice has been given pursuant to section (1) of this Standing Order, the sponsor of the item who has other notices of motion on the *Order Paper* or *Notice Paper* or bills on the *Order Paper* set down for consideration at the second reading stage shall, when forwarding that notice, inform the Clerk which of his or her items is to replace the non-votable item in the order of precedence and, notwithstanding any other Standing Order, that item shall retain its place in the order of precedence and shall remain subject to the application of Standing Orders 86 to 99.

(2) Lorsqu'un avis a été donné conformément au paragraphe (1) du présent article, le parrain de l'affaire qui a fait inscrire à son nom d'autres avis de motion au *Feuilleton* ou au *Feuilleton des avis* ou des projets de loi à étudier en deuxième lecture au *Feuilleton* doit, lorsqu'il transmet ledit avis, indiquer au Greffier celle de ses affaires qui doit remplacer l'affaire non-votable dans l'ordre de priorité et, nonobstant tout autre article du règlement, cette affaire conserve son rang dans l'ordre de priorité et demeure sujette à l'application des articles 86 à 99 du Règlement.

Indication du parrain d'une autre affaire au *Feuilleton* ou *Feuilleton des avis*.

If no item, Sponsor to submit one within 20 days.

(3) When notice has been given pursuant to section (1) of this Standing Order, the sponsor of the item who does not have a notice of motion on the *Order Paper* or *Notice Paper* or a bill on the *Order Paper* set down for consideration at the second reading stage shall, within 20 days of the deposit of the report pursuant to Standing Order 92(3)(*a*), have another notice of motion on the *Order Paper* or *Notice Paper* or a bill on the *Order Paper* set down for consideration at the second reading stage and, notwithstanding any other Standing Order, that item shall be placed at the bottom of the order of precedence and shall remain subject to the application of Standing Orders 86 to 99.

(3) Lorsqu'un avis a été donné conformément au paragraphe (1) du présent article, le parrain qui n'a pas fait inscrire à son nom d'autres avis de motion au *Feuilleton* ou au *Feuilleton des avis* ou des projets de loi à étudier en deuxième lecture au *Feuilleton* doit, dans les 20 jours suivant la présentation du rapport conformément à l'alinéa 92(3)*a*) du Règlement, avoir fait inscrire à son nom un avis de motion au *Feuilleton* ou au *Feuilleton des avis* ou avoir un projet de loi à étudier en deuxième lecture au *Feuilleton* et, nonobstant tout autre article du règlement, cette affaire doit être inscrite au bas de l'ordre de priorité et demeure sujette à l'application des articles 86 à 99 du Règlement.

Si aucune affaire, parrain doit en déposer une dans les 20 jours.

No item submitted. Name dropped.

(4) If at the end of the time provided for in section (3) of this Standing Order, the Member whose name is in the order of precedence does not have a notice of motion on the *Order Paper* or *Notice Paper*, or a bill set down on the *Order Paper* for consideration at second reading stage, then the name of the Member shall be dropped from the *Order Paper*.

(4) Si, au terme des délais définis au paragraphe (3) du présent article, le député dont le nom figure à l'ordre de priorité n'a pas fait inscrire un avis de motion au *Feuilleton* ou au *Feuilleton des avis* ou n'a pas un projet de loi à étudier en deuxième lecture au *Feuilleton*, le nom dudit député est rayé du *Feuilleton*.

Aucune affaire déposée. Nom rayé.

Time limit on items. Dropping of item to bottom of order of precedence.

93. (1)(*a*) Except as provided for in Standing Order 96(1), unless previously disposed of, bills at the second reading stage or motions shall receive not more than two hours of consideration and, unless previously disposed of, an item having been once considered, shall be dropped to the bottom of the order of precedence and again considered only when it reaches the top of the said order.

93. (1)*a*) Sauf disposition contraire de l'article 96(1) du Règlement, à moins qu'on en ait disposé plus tôt, les projets de loi à l'étape de la deuxième lecture ou les motions sont pris en considération durant au plus deux heures et, à moins qu'on en ait disposé plus tôt, une affaire qui a été abordée une fois retombe au bas de l'ordre de priorité et n'est prise en considération de nouveau que lorsqu'elle parvient au sommet de l'ordre de priorité.

Durée des délibérations pour les affaires. Affaire retombe au bas de l'ordre de priorité.

Question put.

Provided that, unless otherwise disposed of, at the end of the time provided for the consideration of the said item, any proceedings then before the House shall be interrupted and every question necessary to dispose of the motion or of the bill at the second reading stage, shall be put forthwith and successively without further debate or amendment.

Toutefois, à moins qu'on en ait disposé plus tôt, à la fin de la période prévue pour l'étude des affaires émanant des députés, le Président interrompt toute délibération dont la Chambre est alors saisie et met aux voix, sur-le-champ et successivement sans autre débat ni amendement, toute question nécessaire en vue de disposer de la motion ou du projet de loi à l'étape de la deuxième lecture.

Mise aux voix.

Deferral of recorded divisions.

(*b*) Any recorded division on an item of Private Members' Business demanded pursuant to Standing Order 45(1) shall be deferred to the next Wednesday, immediately before the time provided for Private Members' Business.

b) Tout vote par appel nominal sur une affaire émanant d'un député demandé en vertu du paragraphe 45(1) du Règlement est différé au mercredi suivant juste avant la période prévue pour les affaires émanant des députés.

Report des votes par appel nominal.

Ten sitting days to elapse.

(2) At least ten sitting days shall elapse between the first and second hour of debate on items referred to in section (1) of this Standing Order.

(2) Il doit s'écouler au moins dix jours de séance entre la première et la deuxième heure de débat sur une affaire visée au paragraphe (1) du présent article.

Intervalle de dix jours de séance.

Consent of the sponsor.

(3) Amendments to motions and to the motion for the second reading of a bill may only be moved with the consent of the sponsor of the item.

(3) Il ne peut être proposé d'amendement à une motion ou à une motion portant deuxième lecture d'un projet de loi qu'avec l'autorisation du parrain de la mesure.

Autorisation du parrain.

Speaker's responsibility.

94. (1)(*a*) The Speaker shall make all arrangements necessary to ensure the orderly conduct of Private Members' Business including:

94. (1)*a*) Le Président prend toutes les dispositions nécessaires pour assurer le déroulement ordonné des affaires émanant des députés en s'assurant notamment :

Responsabilité du Président.

Notice of items to be considered.

(i) ensuring that all Members have not less than twenty-four hours' notice of items to be considered during "Private Members' Hour"; and

(i) que tous les députés aient au moins vingt-quatre heures d'avis au sujet des affaires qui seront abordées au cours de l'heure réservée aux affaires émanant des députés;

Avis des affaires qui seront abordées.

Publication of notice.

(ii) ensuring that the notice required by subparagraph (i) of this paragraph is published in the *Notice Paper*.

(ii) que l'avis requis en vertu du sous-alinéa (i) du présent alinéa soit publié dans le *Feuilleton des avis*.

Publication de l'avis.

Private Members' Hour suspended when notice not published.

(*b*) In the event of it not being possible to provide the twenty-four hours' notice required by subparagraph (i) of this section, "Private Members' Hour" shall be suspended for that day and the House shall continue with or revert to the business before it prior to "Private Members' Hour" until the ordinary hour of daily adjournment.

b) Lorsqu'il est impossible de fournir l'avis de vingt-quatre heures requis en vertu du paragraphe (1)*a*)(i) du présent article, l'heure réservée aux affaires émanant des députés est suspendue pour la journée et la Chambre poursuit l'étude des affaires dont elle était alors saisie, ou y revient, jusqu'à l'heure ordinaire de l'ajournement quotidien.

Heure réservée aux affaires émanant des députés suspendue lorsque l'avis n'est pas publié.

Forty-eight hours' notice required when Member unable to move his or her item. Speaker to arrange an exchange.

(2)(*a*) When a Member has given at least forty-eight hours' written notice that he or she is unable to be present to move his or her motion under Private Members' Business on the date required by the order of precedence, the Speaker, with permission of the Members involved, may arrange for an exchange of positions in the order of precedence with a Member whose motion or bill has been placed in the order of precedence, provided that, with respect to the Member accepting the exchange, all of the requirements of Standing Order 92 necessary for the Member's item to be called for debate have been complied with.

(2)*a*) Lorsqu'un député a donné, par écrit, avis d'au moins quarante-huit heures qu'il sera incapable de présenter sa motion sous la rubrique des Affaires émanant des députés à la date requise par l'ordre de priorité, le Président peut, avec la permission des députés en cause, prendre des dispositions pour qu'il soit procédé à un échange de positions sur l'ordre de priorité avec un député dont la motion ou le projet de loi figure sur l'ordre de priorité, pourvu que, quant au député ayant accepté l'échange de positions, les exigences de l'article 92 du Règlement permettant la mise en délibération de son affaire soient respectées.

Avis de quarante-huit heures requis lorsqu'un député est incapable de présenter sa motion. Le Président procède à un échange.

When no arrangement can be made, business before House to continue.

(*b*) In the event that the Speaker has been unable to arrange an exchange, the House shall continue with the business before it prior to "Private Members' Hour."

b) Si le Président n'a pas pu organiser un échange, la Chambre poursuit l'examen des affaires dont elle était saisie avant l'heure consacrée aux affaires émanant des députés.

Quand aucun échange n'est possible, l'étude des affaires dont la Chambre est saisie se poursuit.

Limitation on exchanges.

(*c*) When an item is placed at the bottom of the order of precedence pursuant to Standing Order 42(2) or 94(2)(*b*), that shall be indicated on the *Order Paper* by marking the item with an asterisk and

(i) the sponsor shall be prohibited from requesting an exchange pursuant to Standing Order 94(2)(*a*); and

(ii) notwithstanding the provisions of Standing Order 42(2), if the item is not proceeded with when next called, it shall be dropped from the *Order Paper*.

Échanges interdits.

c) Lorsqu'une affaire est inscrite au bas de l'ordre de priorité en vertu du paragraphe 42(2) ou de l'alinéa 94(2)*b*) du Règlement, on le signale au *Feuilleton* en la marquant d'un astérisque, auquel cas

(i) son parrain ne peut demander d'échange en vertu de l'alinéa 94(2)*a*) du Règlement;

(ii) nonobstant les dispositions du paragraphe 42(2), si l'affaire n'est pas mise à l'étude à son appel suivant, elle est radiée du *Feuilleton*.

Time limit on speeches. Votable item.

95. (1) When an item of Private Members' Business that is votable is under consideration, the Member moving the motion shall speak for not more than fifteen minutes followed by a five minute period for questions and comments. Thereafter, no Member shall speak for more than ten minutes. The Member moving the motion shall, if he or she chooses, speak again for not more than five minutes at the conclusion of the second hour of debate, or earlier if no other Member rises in debate.

Durée des discours. Affaire qui fait l'objet d'un vote.

95. (1) Quand la Chambre étudie une affaire émanant des députés faisant l'objet d'un vote, le député qui propose la motion à l'étude peut parler pendant quinze minutes au plus suivies d'une période de cinq minutes pour les questions et commentaires. Par la suite, aucun député ne peut parler pendant plus de dix minutes. Toutefois, le député qui propose ladite motion peut, s'il le désire, parler encore pendant cinq minutes au plus à la fin de la deuxième heure de débat, ou plus tôt si aucun autre député ne se lève pour débattre.

Time limit on speeches. Non-votable item.

(2) When an item of Private Members' Business that is not votable is proposed, the Member moving the motion shall speak for not more than fifteen minutes. Thereafter, no Member shall speak for more than ten minutes for a period not exceeding forty minutes. After forty minutes, or earlier if no other Member rises in debate, the Member moving the motion shall, if he or she chooses, speak again for not more than five minutes and thereby conclude the debate.

Durée des discours. Affaire qui ne fait pas l'objet d'un vote.

(2) Quand une affaire émanant des députés qui ne fait pas l'objet d'un vote est proposée, le député qui propose la motion peut parler pendant au plus quinze minutes. Par la suite, aucun député ne peut parler pendant plus de dix minutes durant une période n'excédant pas quarante minutes. À la fin des quarante minutes, ou plus tôt si aucun autre député ne se lève pour prendre la parole, le député qui propose ladite motion peut, s'il le désire, parler à nouveau pendant au plus cinq minutes mettant ainsi fin au débat.

No dilatory motions.

(3) No dilatory motion shall be allowed during Private Members' Business.

Aucune motion dilatoire.

(3) Aucune motion dilatoire n'est recevable durant les Affaires émanant des députés.

Dropped orders.

96. (1) The proceedings on any item of Private Members' Business which has been designated non-votable pursuant to Standing Orders 87(1)(*d*) or 92 shall expire when debate thereon has been concluded or at the end of the time provided for the consideration of such business on that day and that item shall be dropped from the *Order Paper*.

Affaires radiées.

96. (1) Les délibérations relatives aux affaires émanant des députés qui sont désignées non votables aux termes des articles 87(1)*d*) ou 92 du Règlement prennent fin soit quand le débat y relatif se termine, soit à la fin de la période prévue pour leur prise en considération ce jour-là, et ces affaires sont radiées du *Feuilleton*.

Not to be considered as a decision of the House.

(2) The dropping of an item pursuant to section (1) of this Standing Order shall not be considered a decision of the House.

N'est pas une décision de la Chambre.

(2) La radiation d'une affaire conformément au paragraphe (1) du présent article n'est pas considérée comme une décision de la Chambre.

Production of papers. Debate.

97. (1) Notices of motions for the production of papers shall be placed on the *Order Paper* under the heading "Notices of Motions for the Production of Papers." All such notices, when called, shall be forthwith disposed of; but if on any such motion a debate be desired by the Member proposing it or by a Minister of the Crown, the motion will be transferred by the Clerk to the order of "Notices of Motions (Papers)."

Production de documents. Débat.

97. (1) Les avis relatifs aux motions portant production de documents s'inscrivent au *Feuilleton* sous la rubrique « Avis de motions portant production de documents ». Lorsque l'Ordre du jour appelle des avis de cette nature, la Chambre en décide sur-le-champ. Si le député qui la présente ou un ministre de la Couronne désire un débat sur une motion de ce genre, le Greffier la reporte aux « Avis de motions (documents) ».

Time limits on speeches and debate.

(2) When debate on a motion for the production of papers, under the order "Notices of Motions (Papers)", has taken place for a total time of one hour and fifty minutes, the Speaker shall at that point interrupt the debate, whereupon a Minister of the Crown or a Parliamentary Secretary speaking on behalf of the Minister, whether or not such Minister or Parliamentary Secretary has already spoken, may speak for not more than five minutes, following which the mover of the motion may close the debate by speaking for not more than five minutes, after which, the Speaker shall forthwith put the question.

(2) Lorsque le débat sur une motion portant production de documents, sous la rubrique « Avis de motions (documents) », a duré une heure et cinquante minutes, le Président l'interrompt et un ministre de la Couronne ou un secrétaire parlementaire parlant au nom d'un ministre, ayant ou non déjà pris la parole peut parler pendant au plus cinq minutes, après quoi l'auteur de la motion peut clore le débat après avoir parlé pendant au plus cinq minutes. Ensuite, le Président met immédiatement la question aux voix.

Durée des discours et du débat.

Committee Report.

97.1 (1) A standing, special or legislative committee to which a Private Member's public bill has been referred shall in every case, within sixty sitting days from the date of the bill's reference to the committee, either report the bill to the House with or without amendment or present to the House a report containing a recommendation not to proceed further with the bill and giving the reasons therefor or requesting a single extension of thirty sitting days to consider the bill, and giving the reasons therefor. If no bill or report is presented by the end of the sixty sitting days where no extension has been approved by the House, or by the end of the thirty sitting day extension if approved by the House, the bill shall be deemed to have been reported without amendment.

97.1 (1) Le comité permanent, spécial ou législatif saisi d'un projet de loi d'intérêt public émanant d'un député est tenu, dans un délai de soixante jours de séance à partir de la date du renvoi en comité, soit de faire rapport à la Chambre du projet de loi avec ou sans amendement, soit de présenter à la Chambre un rapport dans lequel il recommande de ne pas poursuivre l'étude du projet de loi en y déclarant ses raisons ou demande une seule prolongation de trente jours de séance pour l'examiner, et ce, en y déclarant ses raisons. Si aucun projet de loi ni rapport n'est présenté au plus tard à la fin des soixante jours de séance, dans le cas où la Chambre n'a approuvé aucune prolongation, ou de la prolongation de trente jours de séance, pourvu que cette dernière ait été approuvée par la Chambre, le projet de loi est réputé avoir fait l'objet d'un rapport sans amendement.

Rapport du comité.

Report recommending not to proceed further with a bill. Motion placed on *Notice Paper*.

(2)(*a*) Immediately after the presentation of a report containing a recommendation not to proceed further with a bill pursuant to section (1) of this Standing Order, the Clerk of the House shall cause to be placed on the *Notice Paper* a notice of motion for concurrence in the report, which shall stand in the name of the Member presenting the report. No other notice of motion for concurrence in the report shall be placed on the *Notice Paper*.

(*b*) When a notice given pursuant to paragraph (*a*) of this Standing Order is transferred to the *Order Paper* under "Motions", it shall be set down for consideration only pursuant to paragraph (*c*) of this Standing Order.

(2)*a*) Immédiatement après le dépôt d'un rapport recommandant à la Chambre de ne pas poursuivre l'étude d'un projet de loi conformément au paragraphe (1) du présent article, le Greffier de la Chambre fait inscrire au *Feuilleton des avis* un avis de motion portant adoption du rapport au nom du député qui présente ledit rapport. Aucun autre avis de motion portant adoption du rapport ne peut être inscrit au *Feuilleton des avis*.

b) Lorsqu'un avis donné conformément à l'alinéa *a*) du présent article est transféré au *Feuilleton* sous la rubrique « Motions », l'avis doit être pris en considération conformément à l'alinéa *c*) du présent article.

Rapport recommandant de ne pas poursuivre l'étude d'un projet de loi. Motion inscrite au *Feuilleton des avis*.

Debate on the motion.

(*c*) Debate on the motion to concur in a report containing a recommendation not to proceed further with a bill shall be taken up at the end of the time provided for the consideration of Private Members' Business on a day fixed, after consultation, by the Speaker. The motion shall be deemed to be proposed and shall be considered for not more than one hour, provided that:

c) Le débat sur la motion portant adoption du rapport recommandant à la Chambre de ne pas poursuivre l'étude d'un projet de loi a lieu à la fin de la période prévue pour l'étude des affaires émanant des députés à une date déterminée par le Président après consultation. La motion est réputée proposée et doit être prise en considération durant au plus une heure. Toutefois,

Débat sur la motion.

Time limit on speeches.

(i) during consideration of any such motion, no Member shall speak more than once or for more than ten minutes;

(i) durant la prise en considération de toute motion de ce genre, nul député ne prend la parole plus d'une fois ou durant plus de dix minutes;

Durée des discours.

Voting.

(ii) unless previously disposed of, not later than the end of the said hour of consideration, the Speaker shall interrupt the proceedings and put forthwith and successively, without further debate or amendment, every question necessary to dispose of the motion; and

(ii) sauf si l'on en a disposé auparavant, au plus tard à la fin de l'heure prévue pour la prise en considération de la motion, le Président interrompt les travaux dont la Chambre est alors saisie et met aux voix sur-le-champ et successivement, sans autre débat ni amendement, toute question nécessaire pour disposer de la motion;

Vote.

Deferral of recorded divisions.

(iii) any recorded division demanded pursuant to Standing Order 45(1) shall be deemed deferred to the next Wednesday, immediately before the time provided for Private Members' Business.

(iii) si un vote par appel nominal est demandé conformément au paragraphe 45(1) du Règlement, il sera réputé différé au mercredi suivant juste avant la période prévue pour les affaires émanant des députés.

Report des votes par appel nominal.

Motion adopted and proceedings on bill come to an end.

(*d*) When a motion to concur in a report containing a recommendation not to proceed further with a bill is adopted, all proceedings on the bill shall come to an end.

d) Lorsque la motion portant adoption du rapport recommandant à la Chambre de ne pas poursuivre l'étude d'un projet de loi est adoptée, les délibérations sur le projet de loi prennent fin.

Motion adoptée et délibérations sur le projet de loi prennent fin.

Motion negatived and bill deemed reported.

(*e*) When a motion to concur in a report containing a recommendation not to proceed further with a bill is negatived, the bill shall be deemed to have been reported without amendment.

e) Lorsque la motion portant adoption du rapport recommandant à la Chambre de ne pas poursuivre l'étude d'un projet de loi est rejetée, le projet de loi est réputé avoir fait l'objet d'un rapport sans amendement.

Motion rejetée et projet de loi réputé avoir fait l'objet d'un rapport.

Proceedings on a motion not concluded by 60th sitting day.

(*f*) If proceedings on a motion to concur in a report of a committee containing a recommendation not to proceed further with a bill have not been concluded by the sixtieth sitting day following the date of the referral of the bill to the committee, or by the end of the thirty day extension, if one has been granted pursuant to sections (1) and (3) of this Standing Order, the said bill shall remain before the committee until proceedings on the motion to concur in the report have been concluded.

f) Si les délibérations sur une motion portant adoption d'un rapport recommandant à la Chambre de ne pas poursuivre l'étude d'un projet de loi ne sont pas terminées dans les soixante jours de séance suivant le renvoi du projet de loi en comité, ou à la fin d'une prolongation de trente jours, pourvu que cette dernière ait été approuvée conformément aux paragraphes (1) et (3) du présent article, ledit projet de loi demeure entre les mains du comité jusqu'à ce que les délibérations sur la motion portant adoption du rapport soient terminées.

Délibérations sur une motion non terminées dans les 60 jours de séance.

Request for an extension.

(3)(*a*) Upon presentation of a report requesting an extension of thirty sitting days to consider a bill referred to in section (1) of this Standing Order, a motion to concur in the report shall be deemed moved, the question deemed put, and a recorded division deemed demanded and deferred to the next Wednesday, immediately before the time provided for Private Members' Business.

(3)*a*) Dès la présentation d'un rapport demandant une prolongation de trente jours de séance pour l'examen d'un projet de loi visé au paragraphe (1) du présent article, une motion portant adoption dudit rapport est réputée proposée, la question est réputée mise aux voix et un vote par appel nominal est réputé demandé et différé au mercredi suivant juste avant la période prévue pour les affaires émanant des députés.

Demande d'une prolongation.

Proceedings on report requesting an extension not concluded by 60th sitting day.

(*b*) If proceedings on any motion to concur in a report of a committee requesting an extension of thirty sitting days to consider a bill have not been concluded by the sixtieth sitting day following the date of the referral of the bill to the committee, the said bill shall remain before the committee until proceedings on the motion to concur in the report have been concluded, provided that:

b) Si les délibérations sur une motion portant adoption d'un rapport de comité demandant une prolongation de trente jours de séance pour l'examen d'un projet de loi ne sont pas terminées dans les soixante jours de séance suivant le renvoi du projet de loi en comité, ledit projet de loi demeure entre les mains du comité jusqu'à ce que les délibérations sur la motion portant adoption du rapport soient terminées. Toutefois,

Délibérations sur un rapport demandant une prolongation non terminées dans les 60 jours de séance.

(i) should the motion to concur in the report be adopted, the committee shall have an extension until the ninetieth sitting day following the date of the referral of the bill to the committee; or

(i) si la motion portant adoption du rapport est adoptée, le comité se voit accorder une prolongation jusqu'au quatre-vingt-dixième jour de séance à partir de la date du renvoi en comité;

(ii) should the motion to concur in the report be negatived, the bill shall be deemed to have been reported without amendment.

(ii) si la motion portant adoption du rapport est rejetée, le projet de loi est réputé avoir fait l'objet d'un rapport sans amendement.

Bill to be placed at bottom of the order of precedence after committee stage.

98. (1) When a Private Member's bill is reported from a standing, special or legislative committee or a Committee of the Whole House, or is deemed to have been reported pursuant to Standing Orders 86.1 or 97.1, the order for consideration of the bill at report stage shall be placed at the bottom of the order of precedence notwithstanding Standing Order 87.

98. (1) Lorsqu'un comité permanent, spécial ou législatif, ou un comité plénier de la Chambre, fait rapport d'un projet de loi émanant d'un député, ou si ce projet de loi est réputé avoir fait l'objet d'un rapport conformément aux articles 86.1 ou 97.1 du Règlement, l'ordre portant prise en considération du projet de loi à l'étape du rapport est inscrit au bas de l'ordre de priorité, nonobstant l'article 87 du Règlement.

Projet de loi inscrit au bas de l'ordre de priorité après l'étape de l'étude en comité.

Two-day debate at certain stages of a bill.

(2) The report and third reading stages of a Private Member's bill shall be taken up on two sitting days, unless previously disposed of, provided that once consideration has been interrupted on the first such day the order for the remaining stage or stages shall be placed at the bottom of the order of precedence and shall be again considered when the said bill reaches the top of the said order.

(2) À moins qu'on en ait disposé auparavant, les étapes du rapport et de la troisième lecture d'un projet de loi émanant d'un député sont abordées lors de deux jours de séance. Toutefois, lorsque l'étude en a été interrompue le premier jour en question, l'ordre concernant les étapes restantes est inscrit au bas de l'ordre de priorité. Il est abordé de nouveau lorsque ledit projet de loi parvient au sommet de l'ordre de priorité.

Débat de deux jours à certaines étapes.

Extension of sitting hours. Limited to five hours.

(3) When the report or third reading stages of the said bill are before the House on the first of the sitting days provided pursuant to section (2) of this Standing Order, and if the said bill has not been disposed of prior to the end of the first thirty minutes of consideration, during any time then remaining, any one Member may propose a motion to extend the time for the consideration of any remaining stages on the second of the said sitting days during a period not exceeding five consecutive hours, which shall begin at the end of the time provided for Private Members' Business, except on a Monday when the period shall begin at the ordinary hour of daily adjournment, on the second sitting day, provided that:

(3) Lorsque la Chambre est saisie des étapes du rapport ou de la troisième lecture le premier des jours de séance prévus conformément au paragraphe (2) du présent article, et si l'on n'a pas disposé dudit projet de loi avant la fin de la première période de trente minutes de prise en considération de la mesure en question, n'importe quel député peut proposer, n'importe quand durant le temps qui reste, une motion tendant à prolonger, durant au plus cinq heures consécutives, le temps prévu pour la prise en considération de toute étape restante lors du deuxième desdits jours de séance. La période de prolongation commence à la fin de la période réservée aux Affaires émanant des députés ledit jour de séance sauf le lundi quand elle commence à l'heure ordinaire de l'ajournement quotidien. Toutefois,

Prolongation des heures de séance. Limite de cinq heures.

Support of twenty Members.

(*a*) the motion shall be put forthwith without debate or amendment and shall be deemed withdrawn if fewer than twenty Members rise in support thereof; and

a) la motion est mise aux voix sur-le-champ, sans débat ni amendement, et elle est réputée avoir été retirée si elle reçoit l'appui de moins de vingt députés;

Appui de vingt députés.

No subsequent motion unless intervening proceeding.

(*b*) a subsequent such motion shall not be put unless there has been an intervening proceeding.

b) une autre motion du même genre n'est mise aux voix que s'il y a eu d'autres travaux entre-temps.

Aucune autre motion du genre s'il n'y a pas d'autres travaux entre-temps.

When question put.

(4)(*a*) On the second sitting day provided pursuant to section (2) of this Standing Order, unless previously disposed of, at the end of the time provided for the consideration thereof, any proceedings then before the House shall be interrupted and every question necessary to dispose of the then remaining stage or stages of the said bill shall be put forthwith and successively without further debate or amendment.

(4)*a*) Le deuxième jour de séance prévu conformément au paragraphe (2) du présent article, à la fin de la période prévue pour la prise en considération de l'étape en cause, à moins qu'on en ait disposé auparavant, les travaux dont la Chambre est saisie sont interrompus et toutes les questions nécessaires pour disposer des étapes restantes de l'étude dudit projet de loi sont mises aux voix sur-le-champ et successivement, sans autre débat ni amendement.

Mise aux voix.

Recorded division.

(*b*) Any recorded division on an item of Private Members' Business demanded pursuant to Standing Order 45(1) shall be deemed deferred to the next Wednesday, immediately before the time provided for Private Members' Business.

b) Tout vote par appel nominal sur une affaire émanant d'un député demandé en vertu de l'article 45(1) du Règlement est différé au mercredi suivant juste avant la période prévue pour les affaires émanant des députés.

Vote par appel nominal.

Suspension of adjournment hour in certain cases.

(5) If consideration has been extended pursuant to section (3) of this Standing Order, the Standing Orders relating to the ordinary hour of daily adjournment shall be suspended until all questions necessary to dispose of the said bill have been put.

Heure de l'ajournement quotidien suspendue dans certains cas.

(5) Si l'étude de la mesure en cause a été prolongée conformément au paragraphe (3) du présent article, les articles du Règlement qui ont trait à l'heure ordinaire de l'ajournement quotidien sont suspendus jusqu'à ce qu'aient été mises aux voix toutes les questions nécessaires pour disposer dudit projet de loi.

Suspension

Suspension

Suspension of Private Members' Business in provided cases.

99. (1) The proceedings on Private Members' Business shall not be suspended except as provided for in Standing Orders 2(3), 30(4), 30(7), 52(14), 83(2), 91, 92(1)(*b*) and 94(1)(*b*) or as otherwise specified by Special Order of this House. No Private Members' Business shall be taken up on days appointed for the consideration of business pursuant to Standing Order 53 nor on days, other than Mondays, appointed for the consideration of business pursuant to Standing Order 81(18).

Suspension des Affaires émanant des députés dans les cas prévus.

99. (1) Les délibérations relatives aux Affaires émanant des députés ne sont pas suspendues sauf dans les cas prévus aux articles 2(3), 30(4), 30(7), 52(14), 83(2), 91, 92(1)*b*) et 94(1)*b*) du Règlement ou autrement spécifiés dans un ordre spécial de la Chambre. Les Affaires émanant des députés ne sont pas abordées les jours désignés pour l'étude des travaux prévus conformément à l'article 53 du Règlement ni les jours, autres que les lundis, désignés pour l'étude des travaux prévus conformément à l'article 81(18) du Règlement.

Suspension on a Monday.

(2) Whenever Private Members' Business is suspended or not taken up on a Monday, the House shall meet from 11:00 a.m. to 12:00 noon for the consideration of Government Orders.

Suspension le lundi.

(2) Lorsque les délibérations relatives aux Affaires émanant des députés sont suspendues ou que lesdites affaires ne sont pas abordées les lundis, la Chambre se réunit de 11 heures à 12 heures pour l'étude des Ordres émanant du gouvernement.

This is Exhibit "17" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

Lori Brenning

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
Province of Ontario, for the Government of Canada,
Department of Justice.
Expires December 3, 2016.

HOUSE OF COMMONS
OTTAWA, CANADA
K1A 0A6

39th Parliament, 1st Session

The Standing Committee on Procedure and House Affairs has the honour to present its

FORTY-NINTH REPORT

Pursuant to Standing Order 91.1(1), the Committee is pleased to report as follows: The procedures governing Private Members' Business were revised in 2003. At that time, this Committee, in its Twenty-fourth Report, which was presented in the House on March 26, 2003, tabled the list of criteria for making items of Private Members' Business non-votable under Standing Order 91.1. These criteria have remained in effect since that time.

On November 7, 2006, the Speaker of Commons delivered a ruling in which he found that two items in the order of precedence were substantially the same. In the course of his ruling, the Speaker invited the Committee to consider the practices of the House in such situations.

On November 22, 2006, the Subcommittee on Private Members' Business met with Ms. Audrey O'Brien, the Clerk of the House of Commons, and Mr. Marc Bosc, the Deputy Clerk, to review this matter. The Subcommittee greatly appreciates their advice and assistance. Subsequently, the Subcommittee undertook a review of the current criteria, and considered various changes. After consideration, however, the Subcommittee is recommending minimal changes. The amendments that are being proposed would avoid the situation that led to the Speaker's ruling of November 2006. They also clarify that private Members' bills should be assessed against other private Members' bills, and motions against other motions.

To address the situation that the Member for Vancouver Island North found herself in, the Subcommittee is also proposing that an amendment be made to the *Standing Orders of the House of Commons* to provide the sponsor of the item that has been designated non-votable the option within five sitting days to substitute another item. If the Member has other items on the *Order Paper* or *Notice Paper*, one of these can be substituted in order for the Member to retain his or her position in the order of precedence. If the Member has no items on the *Order Paper* and *Notice Paper*, he or she will have a period of 20 sitting days to introduce a bill or give notice of a motion and to have this item substituted for the non-votable one. The substituted item will be votable, provided that it does not contravene the criteria.

1. **The Committee determines that the revised list of criteria for making items of Private Members' Business non-votable under the Standing Order 91.1(1) shall be as follows:**

   Bills and motions must not concern questions that are outside federal jurisdiction.

   Bills and motions must not clearly violate the *Constitution Acts, 1867 to 1982*, including the *Canadian Charter of Rights and Freedoms*.

Bills and motions must not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session of Parliament, or as ones preceding them in the order of precedence.

Bills and motions must not concern questions that are currently on the *Order Paper* or *Notice Paper* as items of government business.

NOTE: For the purposes of the application of these criteria, bills shall be assessed only against other bills and motions only against other motions.

1. The Committee recommends that the Standing Orders of the House of Commons be amended by the addition of Standing Order 92.1, as follows:

92.1(1) Where a report pursuant to Standing Order 92(3)(*a*) has been presented to the House, the sponsor of the item that has been designated non-votable may, within five sitting days of the presentation of the said report, give written notice of his or her intention to substitute another item of Private Members' Business for the item designated non-votable.

(2) When notice has been given pursuant to section (1) of this Standing Order, the sponsor of the item who has other notices of motion on the *Order Paper* or *Notice Paper* or bills on the *Order Paper* set down for consideration at the second reading stage shall, when forwarding that notice, inform the Clerk which of his or her items is to replace the non-votable item in the order of precedence and, notwithstanding any other Standing Order, that item shall retain its place in the order of precedence and shall remain subject to the application of Standing Orders 86 to 99.

(3) When notice has been given pursuant to section (1) of this Standing Order, the sponsor of the item who does not have a notice of motion on the *Order Paper* or *Notice Paper* or a bill on the *Order Paper* set down for consideration at the second reading stage shall, within 20 days of the deposit of the report pursuant to Standing Order 92(3)(*a*), have another notice of motion on the *Order Paper* or *Notice Paper* or a bill on the *Order Paper* set down for consideration at the second reading stage and, notwithstanding any other Standing Order, that item shall be placed at the bottom of the order of precedence and shall remain subject to the application of Standing Orders 86 to 99.

(4) If at the end of the time provided for in section (3) of this Standing Order, the Member whose name is in the order of precedence does not have a notice of motion on the *Order Paper* or *Notice Paper*, or a bill set down on the *Order Paper* for consideration at second reading stage, then the name of the Member shall be dropped from the *Order Paper*.

A copy of the relevant *Minutes of Proceedings* of the Standing Committee on Procedure and House Affairs (Meeting No. 49) is tabled.

Respectfully submitted,

GARY GOODYEAR, MP
Chair

This is Exhibit "**18**" referred to
in the affidavit of John Mark Keyes
sworn before me, this 28th day
of May, 2015

Lori Brenning

A Commissioner for Taking Affidavits

Lori Ann Brenning, a Commissioner, etc.,
Province of Ontario, for the Government of Canada,
Department of Justice.
Expires December 3, 2016.

February 23, 2015

An Open Letter to Members of Parliament on Bill C-51

Dear Members of Parliament,

Please accept this collective, open letter as an expression of the signatories' deep concern that Bill C-51 (which the government is calling the *Anti-terrorism Act, 2015*) is a dangerous piece of legislation in terms of its potential impacts on the rule of law, on constitutionally and internationally protected rights, and on the health of Canada's democracy.

Beyond that, we note with concern that knowledgeable analysts have made cogent arguments not only that Bill C-51 may turn out to be ineffective in countering terrorism by virtue of what is omitted from the bill, but also that Bill C-51 could actually be counter-productive in that it could easily get in the way of effective policing, intelligence-gathering and prosecutorial activity. In this respect, we wish it to be clear that we are neither "extremists" (as the Prime Minister has recently labelled the Official Opposition for its resistance to Bill C-51) nor dismissive of the real threats to Canadians' security that government and Parliament have a duty to protect. Rather, we believe that terrorism must be countered in ways that are fully consistent with core values (that include liberty, non-discrimination, and the rule of law), that are evidence-based, and that are likely to be effective.

The scope and implications of Bill C-51 are so extensive that it cannot be, and is not, the purpose of this letter to itemize every problem with the bill. Rather, the discussion below is an effort to reflect a basic consensus over some (and only some) of the leading concerns, all the while noting that any given signatory's degree of concern may vary item by item. Also, the absence of a given matter from this letter is not meant to suggest it is not also a concern.

We are grateful for the service to informed public debate and public education provided, since Bill C-51 was tabled, by two highly respected law professors – Craig Forcese of the University of Ottawa and Kent Roach of the University of Toronto – who, combined, have great expertise in national security law at the intersection of constitutional law, criminal law, international law and other sub-disciplines. What follows – and we limit ourselves to five points – owes much to the background papers they have penned, as well as to insights from editorials in the media and speeches in the House of Commons.

Accordingly, we urge all MPs to vote against Bill C-51 for the following reasons:

1. Bill C-51 enacts a new security-intelligence information-sharing statute of vast scope with no enhanced protections for privacy and from abuse. The law defines "activities that undermine the security of Canada" in such an exceptionally broad way that "terrorism" is simply one example of nine examples, and only "lawful advocacy, protest, dissent and artistic expression" is excluded. Apart from all the civil-disobedience activities and illegal protests or strikes that will be covered (e.g. in relation to "interference with critical infrastructure"), this deep and broad intrusion into privacy is made worse by the fact there are no corresponding oversight or review mechanisms adequate to this expansion of the state's new levels of information awareness. Concerns have already been expressed by the Privacy Commissioner, an Officer of Parliament, who has insufficient powers and resources to even begin to oversee, let alone correct abuses within, this expanded information-sharing system. And there is virtually nothing in the bill that recognizes any lessons learned from what can happen when information-sharing ends up in the wrong hands, as when the RCMP supplied poor information to US authorities that in turn led to the rendition of Maher Arar to Syria and his subsequent torture based on that – and further – information coming from Canada.

2. Bill C-51 enacts a new "terrorism" offence that makes it criminal to advocate or encourage "terrorism offences in general" where one does this being reckless as to whether the communication "may" contribute to someone else deciding to commit another terrorism offence. It is overbroad, unnecessary in view of current criminal law, and potentially counter-productive. Keep in mind how numerous and broad are the existing terrorism offences in the Criminal Code, some of which go beyond what the ordinary citizen imagines when they think of terrorism and all of which already include the general criminal-law prohibitions on counselling, aiding and abetting, conspiring, and so on: advocacy or encouragement of any of these "in general" could attract prosecution under the new C-51 offence. Note as well that gestures and physical symbols appear to be caught, and not just verbal or written exhortations. In media commentary and reports, there have been many examples of what could be caught, including in some contexts advocacy of armed revolution and rebellion in other countries (e.g. if C-51 had been the law when thousands of Canadians advocated support for Nelson Mandela's African National Congress in its efforts to overthrow apartheid by force of arms, when that was still part of the ANC's strategy). So, the chill for freedom of speech is real. In addition, in a context in which direct incitement to terrorist acts (versus of "terrorism offences in general") is already a crime in Canada, this vague and sweeping extension of the criminal law seems unjustified in terms of necessity – and indeed, the Prime Minister during Question Period has been unable or unwilling to give examples of what conduct he would want to see criminalized now that is not already prohibited by the Criminal Code. But, perhaps most worrying is how counter-productive this new crime could be. De-radicalization outreach programs could be negatively affected. Much anti-radicalization work depends on frank engagement of authorities like the RCMP, alongside communities and parents, with youth who hold extreme views, including some views that, if expressed (including in private), would contravene this new prohibition. Such outreach may require "extreme dialogue" in order to work through the misconceptions, anger, hatred and other emotions that lead to radicalization. If C-51 is enacted, these efforts could find themselves stymied as local communities and parents receive advice that, if youth participating in these efforts say what they think, they could be charged with a crime. As a result, the RCMP may cease to be invited in at all, or, if they are, engagement will be fettered by restraint that defeats the underlying methods of the programme. And the counter-productive impact could go further. The Prime Minister himself confirmed he would want the new law used against young people sitting in front of computers in their family basements, youth who can express extreme views on social-media platforms. Why is criminalization counter-productive here? As a National Post editorial pointed out, the result of Bill C-51 could easily be that one of the best sources of intelligence for possible future threats – public social-media platforms – could dry up; that is, extreme views will go silent because of fears of being charged. This undercuts the usefulness of these platforms for monitoring and intelligence that lead to knowing not only who warrants further investigative attention but also whether early intervention in the form of de-radicalization outreach efforts are called for.

3. Bill C-51 would allow CSIS to move from its central current function – information-gathering and associated surveillance with respect to a broad area of "national security" matters – to being a totally different kind of agency that now may actively intervene to disrupt activities by a potentially infinite range of unspecified measures, as long as a given measure falls shy of causing bodily harm, infringements on sexual integrity or obstructions of justice. CSIS agents can do this activity both inside and outside Canada, and they can call on any entity or person to assist them. There are a number of reasons to be apprehensive about this change of role. One only has to recall that the CSIS Act defines "threats to the security of Canada" so broadly that CSIS already considers various environmental and Aboriginal movements to be subject to their scrutiny; that is to say, this new disruption power goes well beyond anything that has any connection at all to "terrorism" precisely because CSIS' mandate in the CSIS Act goes far beyond a concern only with terrorism. However, those general concerns expressed, we will now limit ourselves to the following serious problem: how Bill C-51 seems to display a complete misunderstanding of the role of judges in our legal system and constitutional order. Under C-51, judges may now be asked to give warrants to allow for disruption measures that contravene Canadian law or the Charter, a role that goes well beyond the current contexts in which judges now give warrants (e.g. surveillance warrants and search and seizure warrants) where a judge's role is to ensure that these investigative measures are "reasonable" so as not to infringe section 8 of the Canadian Charter of Rights. What C-51 now does is turn judges into agents of the executive branch (here, CSIS) to pre-authorize violations of Canadian law and, even, to pre-authorize infringements of almost any Charter right as long as C-51 limits – bodily harm, sexual integrity and obstruction of justice – are respected. This completely subverts the normal role of judges, which is to assess whether measures prescribed by law or taken in accordance with discretion granted by statute infringed rights – and, if they did, whether the Charter has been violated because the infringement cannot be justified under the Charter's section 1 limitation clause. Now, a judge can be asked (indeed, required) to say yes in advance to measures that could range from wiping a target's computer clear of all information to fabricating materials (or playing agent-provocateur roles) that discredit a target in ways that cause others no longer to trust him, her or it: and these examples are possibly at the mild end of what CSIS may well judge as useful "disruption" measures to employ. It is also crucial to note that CSIS is authorized to engage in any measures it chooses if it, CSIS, judges that the measure would not be "contrary" to any Canadian law or would not "contravene" the Charter. Thus, it is CSIS that judges whether to even go to a judge. There is reason to be worried about how unregulated (even by courts) this new CSIS disruption power would be, given the evidence that CSIS has in the past hidden information from its review body, SIRC, and given that a civil-servant whistleblower has revealed that, in a parallel context, Ministers of Justice in the Harper government have directed Department of Justice lawyers to conclude that the Minister can certify under the Department of Justice Act that a law is in compliance with the Charter if there is a mere 5% chance a court would uphold the law if it was challenged in court. Finally, it is crucial to add that these warrant proceedings will take place in secret, with only the government side represented, and no prospect of appeal. Warrants will not be disclosed to the target and, unlike police investigations, CSIS activities do not culminate in court proceedings where state conduct is then reviewed.

4. We now draw attention to effectiveness by noting a key omission from C-51. As the Official Opposition noted in its "reasoned amendment" when it moved that C-51 not be given Second Reading, Bill C-51 does not include "the type of concrete, effective measures that have been proven to work, such as working with communities on measures to counter radicalization of youth – may even undermine outreach." This speaks for itself, and we will not elaborate beyond saying that, within a common commitment to countering terrorism, effective measures of the sort referenced in the reasoned amendment not only are necessary but also must be vigorously pursued and well-funded. The government made no parallel announcements alongside Bill C-51 that would suggest that these sort of measures are anywhere near the priority they need to be.

5. Finally, the defects noted in points 1, 2 and 3 (information-sharing, criminalizing expression, and disruption) are magnified by the overarching lack of anything approaching adequate oversight and review functions, at the same time as existing accountability mechanisms have been weakened and in some cases eliminated in recent years. Quite simply, Bill C-51 continues the government's resolute refusal to respond to 10 years of calls for adequate and integrated review of intelligence and related security-state activities, which was first (and perhaps best) articulated by Justice O'Connor in a dedicated volume in his report on what had happened to Maher Arar. Only last week, former prime ministers and premiers wrote an open letter saying that a bill like C-51 cannot be enacted absent the kind of accountability processes and mechanisms that will catch and hopefully prevent abuses of the wide new powers CSIS and a large number of partner agencies will now have (note that CSIS can enlist other agencies and any person in its disruption activities and the information-sharing law concerns over a dozen other government agencies besides CSIS). Even if one judged all the new CSIS powers in C-51 to be justified, they must not be enacted without proper accountability. Here, we must note that the government's record has gone in the opposite direction from enhanced accountability. Taking CSIS alone, the present government weakened CSIS' accountability by getting rid of an oversight actor, the Inspector General, whose job was to keep the Minister of Public Security on top of CSIS activity in real time. It transferred this function to CSIS' review body, the Security Intelligence Review Committee (SIRC), which does not have anything close to the personnel or resources to carry this function out – given it does not have sufficient staff and resources to carry out its existing mandate to ensure CSIS acts within the law. Beyond staff, we note that SIRC is a body that has for some time not been at a full complement of members, even as the government continues to make no apology for having once appointed as SIRC's Chair someone with no qualifications (and it turns out, no character) to be on SIRC let alone to be its chair (Arthur Porter). And, as revealed in a recent CBC investigation, the government has simply not been straight with Canadians when it constantly says SIRC is a robust and well-resourced body: its budget is a mere $3 million, which has flat-lined since 2005 when the budget was $2.9 million, even as its staff has been cut from 20 in 2005 to 17 now. Without an integrated security-intelligence review mechanism, which should also include some form of Parliamentary oversight and/or review, and with especially SIRC (with jurisdiction only over CSIS) not a fully effective body, we are of the view that no MP should in good conscience be voting for Bill C-51.

Above, we have limited ourselves to five central concerns, but it is important to reiterate that some or all of the signatories have serious concerns about a good number of other aspects of C-51 – and/or about detailed aspects of some of the concerns that were generally expressed in the above five points.

The following are some (but only some) of those concerns, in point form. They are included by way of saying that signatories believe these all need to be looked at closely and rigorously during House of Commons committee study of C-51, now that it has passed Second Reading:

- C-51 radically lowers the threshold for preventive detention and imposition of recognizance with conditions on individuals. Only three years ago, Parliament enacted a law saying this detention/conditions regime can operate if there is a reasonable basis for believing a person "will" commit a terrorist offence. Now, that threshold has been lowered to "may." There has been a failure of the government to explain why exactly the existing power has not been adequate. In light of the huge potential for abuse of such a low threshold, including through wide-scale use (recalling the mass arrests at the time of the War Measures Act in Quebec), Canadians and parliamentarians need to know why extraordinary new powers are needed, especially when the current ones were enacted in the context of ongoing threats by al-Qaeda to carry out attacks in Canada that seem no less serious than the ones currently being threatened by entities like ISIS and al-Shabab.

- C-51 expands the no-fly list regime. It seems to have simply replicated the US no-fly list rules, the operation of which has been widely criticized in terms of its breadth and impacts on innocent people. Is this the right regime for Canada?

- C-51's new disruption warrants now allows CSIS to impinge on the RCMP's law enforcement role, bringing back turf wars that were eliminated when intelligence and law enforcement were separated in the wake of the RCMP's abusive disruption activities of the late 1960s and early 1970s. But, even more important than turf wars is the potential for CSIS behaviour in the form of disruptive measures to undermine both the investigation and the prosecution of criminal cases by interfering with evidentiary trail, contaminating evidence, and so on.

- C-51, in tandem with C-44, permits CSIS to engage not just in surveillance and information-gathering abroad, but also in disruption. There are many questions about how this will work. The danger of lawlessness seems to be significantly greater for CSIS activities abroad, in that CSIS only needs to seek approval for disruption under C-51 where Canadian, not foreign, law could be breached or where the Charter could be contravened (with Canadian law on the application of the Charter outside Canada being quite unclear at the moment). And there is no duty for CSIS to coordinate with or seek approval from the Department of Foreign Affairs, such that the chances of interference with the conduct of Canada's foreign affairs cannot be discounted. Nor can we ignore the likely tendency for disruption measures abroad to be more threatening to individuals' rights than in Canada: for example, Parliament needs to know whether CSIS agents abroad can engage in detention and rendition to agencies of other countries under the new C-51 regime.

We end by observing that this letter is dated February 23, 2015, which is also the day when the government has chosen to cut off Second Reading debate on Bill C-51 after having allocated a mere three days (in reality, only portions of each of those days) to debate. In light of the sweeping scope and great importance of this bill, we believe that circumventing the ability of MPs to dissect the bill, and their responsibility to convey their concerns to Canadians at large before a Second Reading vote, is a troubling undermining of our Parliamentary democracy's capacity to hold majority governments accountable. It is sadly ironic that democratic debate is being curtailed on a bill that vastly expands the scope of covert state activity when that activity will be subject to poor or even non-existent democratic oversight or review.

In conclusion, we urge all Parliamentarians to ensure that C-51 not be enacted in anything resembling its present form.

Yours sincerely,

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