



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

House of Commons Debates

VOLUME 146 | NUMBER 109 | 1st SESSION | 41st PARLIAMENT

OFFICIAL REPORT (HANSARD)

Tuesday, April 24, 2012

Speaker: The Honourable Andrew Scheer

The House met at 10 a.m.

Prayers

Privilege

National Defence

[Privilege]

Hon. John McKay (Scarborough—Guildwood, Lib.):

Mr. Speaker, I take this opportunity to rise with respect to the probable and plausible contempt motion put forward brilliantly and succinctly by the member for Toronto Centre on April 5, just prior to the House rising.

Representatives of the Green Party and Bloc immediately concurred and associated themselves with his remarks, and just today the NDP did as well.

However, in my judgment, the Conservatives have made some largely irrelevant comments.

The hon. member for Toronto Centre made a compelling case for truthfulness in this chamber.

He quoted Speaker Fraser from the *Debates* of May 5, 1987, when he said, “the protection of absolute privilege because of the overriding need to ensure that the truth can be told”, that is, we have our privileges because truth needs to be paramount in this chamber.

He went on to quote Speaker Milliken, who said:

—members have argued that the minister has made statements in committee that are different from those made in the House or provided to the House in written form. Indeed, these members have argued that the material available shows that contradictory information has been provided. As a result, they argue, this demonstrates that the minister has deliberately misled the House and that as such, a prima facie case of privilege exists.

He then went on to quote Speaker Jerome from March 21, 1978. This is the test for use. He stated:

—the Speaker should ask himself...could it reasonably be held to be a breach of privilege, or to put it shortly, has the Member an arguable point? If the Speaker feels any doubt on the question, he should, in my view, leave it to the House.

Mr. Speaker, there are two versions of the F-35 costs, and Parliament and, by extension, the people have been left confused by the various versions of these costs.

In 2011, the Parliamentary Budget Officer presented a report estimating full life cycle costs at \$29 billion. The definition of full life cycle costs is found in the GAO Cost Estimating and

Assessment Guide at page 32, chapter 3. Without going into a lot of detail, it states:

Life cycle can be thought of as a “cradle to grave” approach to managing a program

throughout its useful life. This entails identifying all cost elements that pertain to the program from initial concept all the way through operations, support, and disposal.

This is the definition that the Americans use, that the Parliamentary Budget Officer uses, that the Auditor General uses and that other nations use. Apparently, everyone uses this definition except the Minister of National Defence, the Prime Minister, the Associate Minister of National Defence and the Minister of Public Works and Government Services. The Parliamentary Budget Officer, using this definition, estimated the cost of the F-35 fighter at \$29 billion and the Auditor General at \$25 billion. The Department of National Defence, however, had two sets of books: the minister's version and the internal version. On the minister's version, which was for public consumption only, the cost was \$15 billion. For internal purposes, however, DND estimated the full life cycle cost to be \$25 billion. Hence, the \$10 billion deceit.

On June 14, 2011, in response to a question from his own colleague, the member for Kitchener—Waterloo, the Minister of National Defence stated:

While the \$9 billion sounds like a significant amount of money--and it is--keep in mind that it is amortized over a 25-plus-year period of time.

He was even misleading his own members.

In response to a question before the Standing Committee on National Defence on March 13, 2012, the Associate Minister of National Defence stated:

I think the only factual answer that can be given at this point in time is that the Canadian government has allocated \$9 billion to ensure that our men and women in the air force and in the military are afforded the best equipment possible to do their jobs.

In testimony before the Standing Committee on National Defence on September 15, 2010, at which the Minister of National Defence and the Minister of Public Works and Government Services appeared, the following statement was provided to the committee by the assistant deputy minister of the Department of National Defence, Materiel, who stated:

...it's important to recognize that the quoted \$9-billion program cost includes a lot more than the cost of 65 aircraft. The \$9 billion also includes almost \$2 billion in contingency and currency escalation, as well as elements such as the integrated logistics support, weapons, infrastructure simulation, etc., all of which would be intrinsic in any fighter that you chose to acquire.

This was presented as it appears, an all-inclusive cost, hardly representative of the findings of the Auditor General.

The contention of the Auditor General is that the facts concerning the procurement of the F-35s were not, to be charitable, accurately presented to Parliament. In his report, he clearly expressed concerns over the fact that parliamentarians were not given full and complete information. He said, on page 30, paragraph 2.76, "Some costs were not fully provided to parliamentarians". I submit that is the understatement of the year.

To reinforce this revelation by the Minister of National Defence that he knew the costing was at least \$10 billion higher than had been publicly reported by the government to Parliament, the Auditor General has confirmed that fact subsequent to his appearance before the public accounts committee, a fact that the Speaker must take into account as it

related directly to the question of privilege.

It was reported that, according to the Auditor General, senior members of the Conservative government would have known that the cost of the aircraft had shot up to \$25 billion by the time the 2011 election was to take place, but publicly stuck to a lower estimate of \$15 billion.

The *Toronto Star* on April 6, 2012, the Auditor General stated:

I can't speak to individuals who knew it, but it was information that was prepared within National Defence, and it's certainly my understanding that that would have been information that, yes, that the government would have had.

Furthermore, the Minister of National Defence appeared on CBC's *Question Period* on April 8 stating that he had been well aware that the costs associated with the F-35 were in fact \$10 billion beyond the figures made available by the government prior to the Auditor General's report. What should be noted is that the minister did not make the statement either in the House or apparently before the standing committees of Parliament any time prior to April 5, 2012.

The government has, in part, responded to this by claiming that the discrepancy in numbers is simply a difference in accounting. It claims that the costs it provided to the House of Commons was a lower number merely because it had chosen not to include the full life cycle cost.

However, in the fall 2010 Auditor General's report on the acquisition of military helicopters on page 41, paragraph 6.74, in a response to the recommendation the Department of National Defence pledged to make it a policy to include, in the future, life cycle cost estimates when procuring military equipment. DND pledged to make full life cycle cost part of its presentation on any future procurement.

Therefore, this is not a rounding error. This is not a mere difference in accounting. The policy of including life cycle costs was clearly understood by all parties, the department and the minister. This was a clear and deliberate attempt to mislead the members of the House.

If the ring around from ministers has not made our heads spin yet, just wait. On page 3 of the Auditor General's spring 2012 report, which examined the bungled F-35 procurement, under "The departments have responded" section, we get the following:

National Defence, Industry Canada, and Public Works and Government Services Canada have accepted the facts presented in the chapter. Both National Defence and Public Works and Government Services Canada disagree with the conclusions set out in paragraphs 2.80 and 2.81.

The department agrees with the facts but disagrees with the conclusions. I have no idea what that means. Mr. Speaker, if you are not as confused as I am yet, just wait until we get to the ministers' responses.

The Associate Minister of Defence, the Minister of Defence and the Minister of Public Works all said:

We do in fact accept the conclusions of the Auditor General, and we will in fact implement his recommendations.

The Minister of Defence said, "We have said that we accept his conclusions".

The Associate Minister of National Defence said, "We accept the conclusions of the Auditor General".

The Minister of Public Works and Government Services said:

I say to the member that our government believes very strongly that the Auditor General's recommendations and conclusions were accurate, and we agree with them.

The Leader of the Government in the House of Commons said:

This government has clearly expressed, through the ministers here, the views we have that we accept the findings of the Auditor General and the recommendations.

The Government House Leader attempted to explain this inconsistency yesterday by disassociating himself with his previous remarks. He stated:

I invite the Chair to take a comprehensive and complete reading of chapter 2 of the Auditor General's report. From that, one will see that it contemplates a distinction between the departments and their officials on the one hand, being National Defence and Public Works and Government Services, and the government or ministers on the other.

That statement should send a chill through the spine of every parliamentarian and, indeed, all Canadians and government agencies and departments. On the surface, the government House leader, speaking for the Prime Minister and the government, has clearly decided that ministerial responsibility has its limits and that the limit occurs when the Conservative government is caught misleading Canadians and this Parliament.

The government House leader would be well advised to read O'Brien and Bosc's *House of Commons Procedure and Practice*, second edition, 2009, or at least have someone read it for him, as there is a very clear definition of what constitutes ministerial responsibility contained in that volume.

At page 32 it reads:

The principle of individual ministerial responsibility holds that Ministers are accountable not only for their own actions as department heads, but also for the actions of their subordinates; individual ministerial responsibility provides the basis for accountability throughout the system. Virtually all departmental activity is carried out in the name of a Minister who, in turn, is responsible to Parliament for those acts. Ministers exercise power and are constitutionally responsible for the provision and conduct of government; Parliament holds them personally responsible for it.

In a ruling by Speaker Milliken on April 27, 2010, at page 2041 of *Debates*, reference was made to a letter from an assistant deputy minister from the Department of Justice to the law clerk and parliamentary counsel dated December 9, 2009, concerning the obligation to submit documents to parliamentary committees, which stated in part that "government officials...are agents of the executive". Clearly, government officials are not free agents. They act on behalf of their respective ministers.

One could cite numerous authorities to support this statement but I do not believe that is necessary. What is interesting is that this avoidance of ministerial responsibility was not

always articulated by the government.

The following is a series of statements from the current Minister of Foreign Affairs made before the access to information and ethics committee on June 10, 2010, at page 4, concerning the committee's efforts to have ministerial staff appear before the committee to testify to illegal interference with access to information release. It reads:

...ministers are accountable and answerable to Parliament for government policies, decisions, and operations, and ministerial staff are accountable to their ministers. If anything, there is an attempt, I think, to strengthen accountability by having ministers take full responsibility for the actions of the members of their political staff in their office.

On the same matter, on June 8, 2010, the Prime Minister stated, at page 3553 of the *Debates*, "...in our system, ministers are accountable to Parliament for their actions".

Later that day, the then parliamentary secretary to the minister stated, at page 3553 of the *Debates*, with respect to ministerial responsibility:

...for hundreds of years, the principle of ministerial accountability has been paramount here in the House and in its committees. We will continue to respect that principle in order to improve and build a Canada where politicians are accountable.

The reasons for this firm belief and declaration of the principle of ministerial responsibility by the same government were made in an overt attempt to shield members of ministerial staff from having to testify before committees of this House to answer for illegal acts for which those staff members were identified.

I would submit that the citation from O'Brien and Bosc and the statements made by the members of the government regarding ministerial responsibility run completely counter to the argument made by the government House leader in this place on April 4 in an attempt to place blame on departmental officials for failures associated with the accurate costing of the F-35 procurement and the presentation of inaccurate information before this Parliament.

Before we get too confused, I will do a review.

Point one, truthfulness is a cornerstone of parliamentary democracy.

Point two, the universal definition of life-cycle costing, cradle to grave, is set out in the GAO Cost Estimating and Assessment Guide.

Point three, the PBO used that definition when filing its report in 2011.

Point four, the finance committee demanded a full life-cycle costing based upon that definition, which led to a non-confidence motion and the government's defeat.

Point five, the Auditor General used that definition.

Point six, DND pledged to use that definition in 2010, which it did but only for its own internal use.

Point seven, DND, Public Works, etcetera, agree with the facts but not the conclusions.

Point eight, ministers agreed with the facts and the conclusions.

Point nine, the government House leader agrees with neither the facts nor the conclusion and blames it on the department.

Point 10, the Minister of Foreign Affairs accepts the premise of ministerial responsibility for his staff and his department.

What do we make of this confusion, the Keystone Kops' exercise in accountability? If this is not misleading, I do not know what it is.

When misleading, incorrect or incomplete information is provided to the members in the House of Commons, it then becomes difficult, if not impossible, to adequately hold the government to account. This is viewed as such a serious offence that the 34th edition of *Halsbury's Laws of England* states at page 558:

Ministers who knowingly mislead Parliament are expected to offer their resignation to the Prime Minister and such an offence might also be proceeded against as a contempt.

I would argue that the case before you today, Mr. Speaker, is one of the most serious, egregious and clear cases of contempt that this House has ever seen. Over the past two years we have not only seen minister after minister but also the Prime Minister knowingly and purposefully repeat misleading and false statements to the House of Commons and to the Canadian public.

Even with the release of the Auditor General's report, which confirmed what members of the House of Commons, the press, procurement experts and essentially anyone outside of the Conservative caucus already knew, that the numbers we were given were false, the government continued to try to confuse and mislead members by offering up contradictory responses to the report.

The significance of this cannot and should not be underestimated. Page 201 of *Erskine May* cites a British resolution that clearly outlines ministerial accountability.

...that, in the opinion of this House, the following principles should govern the conduct of Ministers of the Crown in relation to Parliament:

(1) Ministers have a duty to Parliament to account, and to be held to account, for the policies, decisions and actions of their Departments...;

(2) It is of paramount importance that Ministers...give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;

(3) Ministers should be as open as possible with Parliament...

It is this resolution that gets to the crux of the problem we are facing here today. Mr. Speaker, you rightly call us to account if we call any member in this House a liar. You do this to preserve the dignity and tone of the debate and to prevent ad hominem attacks. Instead, debate in the House of Commons is intended to be based on fact rather than personality and on evidence rather than speculation.

As the arbiter of this institution, Mr. Speaker, we are also required to speak through you. As we are expected to speak truth through you, it is a time-honoured tradition based on trust and honesty, one that is fundamental to our system.

Here we have an instance where a number of ministers have spoken absolute falsehoods through you, Mr. Speaker, no ifs, ands or buts. The question is then: What must be done? If we cannot hold members to speaking the truth, then the entire premise of this institution is eroded. As members, our duty to constituents is to hold the government to account, but if we are not given full and proper information and are misled by the government, how can we fulfill this role?

On page 510 of the *House of Commons Procedure and Practice* it states:

The Speaker ensures that replies adhere to the dictates of order, decorum and parliamentary language. The Speaker, however, is not responsible for the quality or content of replies to questions.

However, Speaker Milliken stated in his ruling on a similar question of privilege on February 10, 2011:

This is not to say, however, that there are not circumstances when the Chair could determine, given the proper evidence, that statements made to the House have indeed breached the privileges of the House.

According to *Parliamentary Practice in New Zealand*, third edition, at pages 653 to 654, in order to establish a prima facie finding that a breach of privilege and contempt has occurred, the requirements are clear: first, it must be proven that the statements were misleading; second, it must be established that the member at the time knew the statement was incorrect; and third, in the making of the statement, the minister intended to mislead the House.

The government knew as early as June 2010 that the cost of the F-35s would be significantly higher than expected and yet chose to provide inaccurate and incomplete information to members of Parliament. When members of Parliament asked for clarification on these numbers, the government chose not to clarify the confusion. We know as a result of the Auditor General's report that the statements were misleading, but it is also very easy to conclude from this series of events that the government knew its statements would be misleading and that it intended to mislead.

Following the tabling of the Auditor General's report, the government again made false and misleading statements. It posited that it had accepted the recommendations of the Auditor General after statements were clearly made in the report that indicated that the departments did not agree with a number of the conclusions. One can only assume that, by providing such contradictory responses, the government intended to mislead members of Parliament and Canadians.

With the evidence I have laid out before you today, Mr. Speaker, I am adding my own voice to support the member for Toronto Centre's case for a prima facie finding of contempt.

When members are allowed to lie in the House, it degrades not just our reputation and the reputation of the party they represent, but also your reputation, Mr. Speaker, my reputation and the reputation of this institution as a whole. I am not willing to stand for that, Canadians are not willing to stand for that and I hope and trust you will not be willing to stand for that.

Hon. Wayne Easter (Malpeque, Lib.):

Mr. Speaker, I will be short. I felt moved to speak to this question of privilege after listening to the House leader yesterday try to refute the arguments of the question of privilege.

Yesterday, the government House leader told the House, at page 7025 of *Debates*:

...because ministers have taken a posture different from that originally taken by bureaucrats, in respect of chapter 2 of the...[Auditor General's report], Parliament is being misled.

Let me be clear. The government, as represented by the Minister of National Defence, in particular, and by the Prime Minister as well, misled the House as to the costs associated with the F-35s.

I would remind the Speaker of the statement made in the House by the Minister of National Defence, who was adamant about the existence of a contract and the costs associated with the procurement of F-35s. He stated:

Mr. Speaker, let us look at the actual contract. What the Canadian government has committed to is a \$9 billion contract for the acquisition of 65 fifth generation aircraft. This includes not just the [cost of the] aircraft, but also includes the onboard systems, supporting infrastructure, initial spares, training simulators, contingency funds. This is a terrific investment for the Canadian Forces.

That was from the December 13, 2010, *Debates* on page 7130.

The following statement from page 3 of the Auditor General's report, chapter 2, should be of concern to you, Mr. Speaker, with respect to the issue of question of privilege. It states:

National Defence likely underestimated the full life-cycle costs of the F-35. The budgets for the F-35 acquisition (CAN\$9 billion) and sustainment (CAN\$16 billion) were initially established in 2008 without the aid of complete cost and other information. Some of that information will not be available until years from now.

Note the date referred to by the Auditor General, 2008. What makes that statement by the Auditor General significant is that the current Minister of National Defence, who deliberately misinformed the House as to the total costs on December 13, 2010, has been the Minister of National Defence since 2007, which means throughout the period the Auditor General is concerned about. It was this minister who was the minister of the department responsible.

It is my belief, having been a member of cabinet, that it is this minister and the current government that, in a matter relating to costing, deliberately misled Parliament.

With respect to the Prime Minister, I would make the following submission.

On November 3, 2010, at page 5751 of *Debates*, the Prime Minister, while attempting to berate the opposition for questioning the manner in which the government was handling the contracts, stated the following:

We are going to need to replace the aircraft at the end of this decade, and the party opposite knows that....

It would be a mistake to rip up this contract for our men and women in uniform as well as the aerospace industry.

The Prime Minister was clear. It is reference to a contract to acquire the F-35s to replace the CF-18s. There was no reference to any other kind of contractual agreement with anyone for anything other than for the replacement of the CF-18s.

Yet on April 5, 2012, at page 6948 of *Debates*, after the Auditor General's report the Prime Minister had changed his tune, declaring that the government "has not signed a contract".

One of those statements is misleading and a falsehood. That constitutes a breach of the privileges of all members of this place.

I know a fair bit of time has been spent on this and I would love to talk about the House leader's rendition of ministerial responsibility in the House yesterday, but I will leave that.

The fact is the Minister of National Defence and the government generally were responsible for what has been stated in this place, not officials. The responsibility is that of the ministers. The fact is simple enough. What the House was told by members of the government does not accord with the findings of the Auditor General and that constitutes a deliberate misleading of the House, I believe, on both fronts, the contract and what my colleague, the member for Toronto Centre said in his first question of privilege.

The Speaker:

I thank both hon. members for their further submissions on this question.