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NOUVEAU PARTI DÉMOCRATIQUE DU CANADA



LEADER OF THE OFFICIAL OPPOSITION
NEW DEMOCRATIC PARTY OF CANADA

*Hon. Thomas Mulcair, Député/M.P.
Outremont*

September 18, 2013

Jean-Denis Fréchette
Parliamentary Budget Officer
Library of Parliament
Ottawa, ON K1A 0A6

Ref: IR0113

Dear Mr. Fréchette,

Thank you for your letter of September 16, 2013.

I have reviewed your letter and the court decision of Page vs. Mulcair. First, I would like to note that in the section of the ruling you cite concerning your ability to seek a remedy from the "two speakers and the Joint Committee", and Parliament as a whole, the Justice also writes: "What I am saying is that in addition to such remedies, ultimately he [The PBO] would have had recourse to this court".

The point is that the PBO, acting on behalf of individual Members like myself, would have recourse to the courts regardless of whether a parliamentary process was also being followed. Yet it appears you have concluded that, despite the fact Justice Harrington laid out a clear route for taking action to defend the PBO's mandate through the courts, and despite the fact you have told me you have "exhausted the apparent avenues available", you are now only pursuing the singular course of action of talking to the Speakers.

Among the reasons you give for this decision is that you are doubtful about the outcome of such a court action. But Justice Harrington specifically addressed the issue of taking the government's failure to cooperate back to parliament, especially in the context of a majority government (emphasis added).

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[44] It seems to me that this case is different in that the Parliamentary Budget Officer would not be acting on Parliament's behalf but on behalf of an individual member of the House of Commons. Parliament did not expressly legislate his recourses in the event that a deputy minister, or delegate, refused to provide information, and this is not a case where a political remedy is adequate, as Parliament cannot be taken to unmake its own law, except by legislation.

...

[46] It seems to me that by establishing the position of a Parliamentary Budget Officer and enshrining his or her mandate in legislation, Parliament intended that independent, i.e. independent from Government, financial analysis should be available to any member of Parliament, given the possibility that the Government of the day may be a majority government with strong party discipline.

[47] That was the mischief Parliament addressed and dealt with. If the legislation infringed upon parliamentary privilege, and I say it did not, then such privilege was legislatively waived.

One of your legally mandated roles, as Parliamentary Budget Officer, is to provide independent analysis to help Members of Parliament. In requesting this analysis, I exercised my right under statute as an MP to this financial information. I believe you are misinterpreting my request as something that can be dealt with, and potentially quashed, by the speakers or by parliament as a whole. This is the "mischief" cited above, and Justice Harrington makes it clear that parliament cannot take away my right to this information after it was passed into law, except through passing a new law.

My request was submitted in November of last year and yet, after acknowledging that you have "exhausted the apparent avenues available," you are now urging me to wait longer or abandon my request.

The *Parliament of Canada Act* states that the PBO is entitled to "free and timely access to any financial or economic data". Your predecessor Kevin Page worked diligently to make sure he lived up to his mandate to serve parliamentarians and, through them, provide Canadians with the kind of fiscal oversight that was intended when the PBO was created.

You now seem to believe it is acceptable to allow the *Act* to be ignored without doing anything to protect the rights of MPs, as laid out by Justice Harrington. I believe it is inappropriate for you to decide that this section of the *Act* is no longer to be in force or be observed.

I am formally requesting you take this matter back to the Federal Court to defend both your right to this information, and my right to this analysis. This request – an analysis of how Conservative budget cuts will affect Canadians – is too important for us to abandon it.

Sincerely,



Hon. Thomas Mulcair, P.C., M.P. (Outremont)
Leader of the Official Opposition
New Democratic Party of Canada