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July 25, 2024

Mr. Michel Bédard
Law Clerk and Parliamentary Counsel
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Bédard:

I am writing to you regarding an Opposition Motion that was passed in the House on June 10, 2024, which requires the production of documents from the government, the Auditor General, and Sustainable Development Technology Canada (SDTC) to the Law Clerk and Parliamentary Counsel with the intention of providing these documents to the Royal Canadian Mounted Police (RCMP).

Subsequent to the Motion, the RCMP undertook a review and examination of the Office of the Auditor General of Canada (OAG) tabled report on SDTC, along with additional administrative reports by Innovation, Science and Economic Development Canada and publicly available information. The RCMP has concluded that the available reports do not identify any criminal offences or evidence of criminal wrongdoing at this time, whether in relation to any specific individual or organization.

The OAG and the RCMP are governed by well-established processes that consider their respective mandates. These processes ensure compliance with applicable legal standards in order to preserve the viability of any potential criminal investigation and prosecution. The OAG has broad powers to compel information in a manner that is not possible in a criminal investigation. There are therefore safeguards in place to ensure information obtained by the OAG is not used to circumvent the legal obligations required for criminal investigations. If the OAG finds evidence of criminality during an audit, they have the authority to advise the RCMP. To date, the RCMP has not received any referral from the Auditor General or her office in relation to the SDTC matter.

The RCMP has also reviewed the implications of the Motion in a potential criminal investigation. Before taking any investigative steps to access documents that may give rise to a reasonable expectation of privacy, the RCMP must comply with applicable legal standards to preserve the viability of any potential criminal investigation or prosecution. The Parliamentary production order does not set aside these legal requirements. For the reasons set out above, the RCMP's ability to receive and use information obtained through this production order and under the compulsory powers afforded by the *Auditor General Act* in the course of a criminal investigation could give rise to concerns under the *Canadian Charter of Rights and Freedoms*. It is therefore highly unlikely that any information obtained by the RCMP under the Motion where privacy interests exists could be used to support a criminal prosecution or further a criminal investigation.

Given the risks associated with receiving information under the Motion or other compulsory authorities, practices need to be put in place to identify the nature and the source of the information, with a view to determining whether it contains Charter-protected information. Any information obtained through the Motion or other compulsory authorities would need to be segregated from an RCMP investigation. There is significant risk that the Motion could be interpreted as a circumvention of normal investigative processes and Charter protections.

The RCMP will continue its review of available information that does not give rise to concerns under the Charter to determine if sufficient evidence exists to launch a criminal investigation. I would like to emphasize as well that the RCMP is operationally independent and strictly adheres to the principle of police independence. In a free and democratic society, this ensures that the government cannot direct or influence the actions of law enforcement and that law enforcement decisions remain based on the information and evidence available to police.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Mike Duheme". The signature is stylized with a large initial "M" and "D".

Mike Duheme
Commissioner