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Chair: Mr. John Brassard



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• (1535)

[English]

The Chair (Mr. John Brassard (Barrie—Innisfil, CPC)):
Good afternoon, everyone.

I'm calling this meeting to order.

[Translation]

Welcome to meeting No. 60 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[English]

Today's meeting is taking place in hybrid format pursuant to the House order of June 23, 2022. Therefore, members can attend in person in the room and remotely using the Zoom application. Should any technical challenges arise, please advise me. I don't think we have anybody on Zoom today. Please note that we may need to suspend for a few minutes to ensure that all members are able to fully participate.

Pursuant to Standing Order 108(3)(h) and the motion adopted by the committee on Monday, May 16, 2022, the committee is resuming its study of access to information and the privacy system.

[Translation]

I would now like to welcome our guest for today.

[English]

I want to welcome Caroline Maynard, the Information Commissioner.

Caroline, welcome to the committee. I know there's a lot of interest in this particular issue among committee members, and we're really looking forward to having a discussion with you today.

You have five minutes. Please start.

[Translation]

Ms. Caroline Maynard (Information Commissioner, Office of the Information Commissioner of Canada): First of all, thank you for inviting me to appear before this committee once again in the context of your ongoing study of the access to information and privacy system.

[English]

During my last appearance before this committee, I noted that I was looking forward to the conclusion of the government's review of the access to information regime, which was launched in the

summer of 2020. Last December, the government finally released a final report of its review.

After such a long wait, what I read was honestly disappointing. On my office's website I posted a statement expressing my dissatisfaction with the government's report. In my view, this report is deficient across the board, but in the interest of time I will limit my focus to a couple of key points.

[Translation]

I am pleased that the government took note of the concerns I have raised regarding lengthy consultations between institutions, as well as the lack of a declassification framework and the resulting negative impacts these have on the access regime.

However, I find it unfortunate that there are no proposals for concrete actions to go with the government's analysis.

[English]

Indeed, I find few, if any, tangible commitments within the report's pages that will begin to effect change now in areas that require immediate attention. More importantly, it appears that the government has decided that no further modifications to the law are to be made, at least not in the near term.

When the 2019 amendments were introduced, I noted that these represented a step in the right direction but that more changes would be required. Many legislative changes that have been proposed by experts in their submissions for the review merit your committee's careful consideration. These include recommendations to broaden the scope of the Access to Information Act to cover ministers' offices as well as the Prime Minister's Office, to make cabinet confidences subject to the act and to reduce the scope of some exemptions, including section 21, on advice and recommendations.

[Translation]

I also have no confidence that bolstering Canadians' right of access to information will figure prominently in the government's financial priorities. The fact that access to information has disappeared from ministerial mandate letters, and that I have heard nothing from the government regarding my request for additional funding speaks volumes.

[English]

On the topic of funding, I strongly believe that a model that gives the Minister of Finance and the Prime Minister the power to limit the required funding of agents of Parliament is contrary to our oversight role. As agents of Parliament, we report directly to Parliament, rather than to the cabinet or a particular minister. Frankly, the manner in which we are funded should reflect this independence.

My priority has always been to tackle our inventory, and I have been able to significantly increase my office's efficiency since I became commissioner, as shown in the reference document that I submitted to this committee. However, we have reached the limit of what we can do with the budget provided.

The government may have turned the page on access to information, but I have not, which is why I look forward to the results of this committee's study.

In closing, this coming summer, July 2023, marks the 40th anniversary of the Access to Information Act. On the eve of this milestone, I unfortunately see little to celebrate.

[Translation]

Much remains to be done for Canada to catch up with international standards on access and transparency and tackle the enormous challenges faced by the system.

This concludes my opening remarks.

I will be happy to answer your questions.

The Chair: Thank you, Ms. Maynard.

[English]

We're going to start with the questioning. We are going until roughly five o'clock with this. The first round of questioning is with Mr. Kurek.

You have six minutes, Mr. Kurek.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): Thank you very much, Mr. Chair.

Thank you, Commissioner, for coming before the committee.

I would just note the stark difference in your remarks today versus the last time, when you were anticipating this report being released. To hear words like “regrettable” and “disappointing”, and some of the very strong language that you used to describe the lack of where the government is coming from....

I'll note, before I get into my specific questions, that rarely on an issue does there seem to be universal agreement, as was the case with every witness who came before this committee. They said two things. One was that a good access to information system is vital for a strong democracy. The other was that Canada did not match up with where it needed to be.

You noted in your opening remarks some of the areas that were lacking. Specifically, you said you have no confidence that the government is going to give the fiscal arrangements required for this to be addressed. I'm going to give you an opportunity to expand on

that a bit more, especially as we're coming up to what we anticipate is the federal budget.

Can you expand on why you have no confidence in that? In light of a close to 50-page report, you noted that you have no confidence that the government will address these stark concerns.

• (1540)

Ms. Caroline Maynard: The report speaks for itself. It's a good summary of all the issues that we're facing in the access system. They're issues that we've known about for years, issues that you've heard about from experts and issues that I've mentioned in my submissions. We knew about them before 2019, when Bill C-58 was tabled, so it's disappointing that there's no action plan. There's a lot of “should”. There are a lot of “opportunities”. I think the opportunity has been missed.

You heard submissions for two years when public consultations were held. Where are the recommendations? Usually, in a legislative review, you will have conclusions, recommendations and a plan of action. This is why I am disappointed today to speak in front of you. It's because of this report.

Secondly, there's no mention of access to information in any of the ministers' mandate letters, so I don't think transparency and access are key at this point. I have asked for additional funding for my office, which I think all of the access units should also get. The resources are lacking, and we're not seeing much going toward that either.

This is why I think this is not something to celebrate.

Mr. Damien Kurek: Commissioner, I'd like to get some of your feelings about what possible concrete actions could be, but in the two and a half minutes that I have here, I'd first like to ask this, specifically. The government seems to continue to defend Bill C-58, yet we often hear how that has not improved the system.

In about 30 seconds or so, could you expand on why Bill C-58 seems to be a continuing challenge to improving Canada's access to information system?

Ms. Caroline Maynard: I'll say that Bill C-58 gave me the power to order institutions to issue disclosure and to meet some deadlines. Unfortunately, my orders are sometimes being ignored. I don't have a certification process to go to the Federal Court to make sure that these orders are seen as having the power of an order from a court. It is still better than recommendations; I can tell you that.

What we need are better training and more retention of the people who are doing this. We need to have better analysts, and we need to have an act that is modernized. The act was tabled four years ago, and it has not been changed much. Apart from my ordering power, the exemptions and exclusions have not been reviewed. There's also a lot to be done within the system. The report talks about information management and declassification programs. Those are huge issues within our government, but there doesn't seem to be concrete action on how to tackle these issues.

Mr. Damien Kurek: I want to jump on something you just said.

We're used to the government ignoring what opposition parties say and things like that, but to hear from you that your orders are being ignored.... That's something.

In the 30 seconds I have left in this round, can you expand a little bit on what that "being ignored" is in regard to? Can you provide any examples or anything else that you'd like to share with this committee and Canadians?

Ms. Caroline Maynard: You have two choices when an order is issued by my office. You accept it and comply with it, or you can go to court to challenge it.

What I've asked is to have a mechanism to make sure that people will not just ignore the orders. It doesn't happen that often, but we're seeing now a trend of institutions that are not saying they're going to challenge it, but they're just taking more time to actually comply with my orders. There's nothing I can do about it.

The Chair: Thank you, Mr. Kurek and Madam Maynard.

Mr. Bains, you have six minutes. You're first up.

• (1545)

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair.

Thank you, Madam Commissioner, for joining us today.

Several witnesses indicated the need to declassify documents. I think you just mentioned it. What declassification standards do Canada's peers use that this committee should examine further?

Ms. Caroline Maynard: We issued a report a couple of years ago on declassification. I can send you a copy. It actually gives you a great summary of what the U.K. and the United States are doing.

They both have a program where, within 20 to 30 years of a document being produced, there's a declassification program where they review those documents. If they declassify it, that means it's a lot easier for people to access it. They don't have to wait until somebody's asking through an access to information request.

This would give historians, library and archives, and people who are looking into the history of Canada—especially for the national security documents—access to documents way faster and easier than having to wait for my office to do an investigation.

Mr. Parm Bains: The review concluded that an enhanced whole-of-government ATI workforce strategy could assist with resourcing challenges faced by ATIP offices.

What would effective skills training and staff retention in the ATI community look like to you?

Ms. Caroline Maynard: When we're talking about ATI, it is people actually responding to requests. People have to have great people skills because they're dealing with requesters who want the information "now", and with the institutions that have people who don't want to provide the information right away or have issues with information management.

We need people who can negotiate, discuss, read the act and apply the act to the documents. There's definitely training that needs to be done. That's the government's responsibility. That's administering the act.

I can tell you that it's a difficult job. We need to create almost a profession of analysts for that type of position.

Mr. Parm Bains: Is the new ATI community development making any headway?

Ms. Caroline Maynard: You would have to ask Minister Fortier because that's one of the activities done through the Treasury Board.

Mr. Parm Bains: The government recently updated its ATIP online request service, which was launched in 2018, to allow Canadians to have an easier way to make requests through the Access to Information Act and the Privacy Act.

Are these types of technological improvements to the ATI system a benefit to Canadians?

Ms. Caroline Maynard: Yes, for sure. An online request form is always easier than having to deal with each institution. Now there's one portal that people can go to and ask for the information.

Mr. Parm Bains: I think you gave us some data last time on how much improvement—

Ms. Caroline Maynard: The problem is with respect to access requests. I'm dealing with complaints at my office. Again, Minister Fortier would be the preferred person to ask that question.

Mr. Parm Bains: Okay.

One of our previous witnesses, Mr. Drapeau, suggested changes to the Information Commissioner to help speed up the process of ATI and, specifically, to introduce a one-year period before complaints can be brought before a federal court.

What are your thoughts on that analysis?

Ms. Caroline Maynard: I would love to be able to develop my investigation within a year. I provided you with my inventory. You'll see that some of those files are complex. They deal with secret information or very complex information.

I'm worried that if somebody has to go to court, they won't be able to represent themselves. We see the documents, so we can challenge an institution on what we see in our files. A requester has a file that has been redacted. Going to court, you would have these complainants representing themselves, without being subject to the review of an independent commissioner or without the opinion of an independent commissioner helping them deal with their file.

Mr. Parm Bains: In a letter you sent to the Speaker you wrote that "some misconceptions regarding the functioning of the access to information system and the operations of my office...have arisen during these hearings."

What are those misconceptions?

Ms. Caroline Maynard: One of them is the timelines that it takes in my office. Again, I have given you the inventory. We receive every year more files than we can absorb. Unfortunately, at some point we have to decide what we're going to tackle. We're tackling the old files at the same time as we're trying to reduce the inventory of new files, but when we are funded for 4,000 cases a year, that's the issue.

At this point we're getting much more efficient with what we're doing—the templates and the training we're giving to our analysts, the development program—but the files are coming in faster than we can conclude them, so we need more resources.

• (1550)

Mr. Parm Bains: My last question is on fees. My home province of British Columbia has introduced a \$10 fee to discourage vexatious requests and to fund the system.

Do you agree or disagree with that implementation?

Ms. Caroline Maynard: Commissioner McEvoy just tabled a report on that, and you will see that 80% of the requests have been reduced because of that fee. It's only five dollars more than at the federal level, but it had a huge impact on access requests. The government has to decide whether that's the proper way, but I can tell you that usually access should be free. This is how Canadians are getting the information, and it's a part of our democracy. I think it speaks for itself.

Mr. Parm Bains: Some valid complaints could just go missing basically and not come through. Is that right?

Ms. Caroline Maynard: Yes.

The Chair: Thank you, Mr. Bains and Ms. Maynard.

[*Translation*]

Mr. Villemure, you have the floor for six minutes.

Mr. René Villemure (Trois-Rivières, BQ): Thank you very much, Mr. Chair.

Thank you for coming to see us again, Commissioner.

I listened to your opening remarks, and I believe you are disappointed with the situation.

Would you say that this government has a culture of access to information or, on the contrary, that it does not?

Ms. Caroline Maynard: It's always been very difficult to change the culture of government. When it comes to access to in-

formation, we can undeniably see that it's easier to hide or withhold information than to simply disclose it. Some departments are doing better than others, but we can see that there is still this culture of trying to apply exemptions and exclusions rather than asking what information should be given to Canadians.

Mr. René Villemure: So the culture of access to information hasn't improved in the past few years.

Ms. Caroline Maynard: No.

Mr. René Villemure: Are you hopeful that it will improve? Have you seen that the government is willing to improve?

Ms. Caroline Maynard: Again, it really depends on the minister, deputy ministers and directors. We see a difference in some institutions, where managers are very involved, ask a lot of questions about access to information and make it a priority. The problem is that it's specific to each institution and each division. So I couldn't say that it's consistent across the federal government.

Mr. René Villemure: About a year ago, I read a study in Foreign Affairs magazine about secrecy in the United States. It said that the way they trained government officials made them more likely to keep secrets than respond positively to a request for access. So when they were faced with uncertainty, they preferred to say it was secret information.

Are we seeing the same thing here?

Ms. Caroline Maynard: Yes.

Mr. René Villemure: All right.

You mentioned that it was hard to operate within your current budget, given that you've received a higher number of requests.

Do you believe that your budget should be determined by a separate entity, such as the Office of the Auditor General, or at least by a different entity than the one currently limiting your budget?

Ms. Caroline Maynard: I certainly do. I am not the only one whose budget is determined by the government right now. It also sets the budget of the Auditor General, who is an officer of Parliament too.

I believe that the budgets of the officers of Parliament should be debated before a parliamentary committee or brought before a special committee, which could make recommendations based on what it hears from the officers of Parliament. This would preserve the independence of our offices.

Mr. René Villemure: I believe that is how it's done in some countries, such as Australia, if memory serves.

Ms. Caroline Maynard: I can't confirm that, but I can tell you that Canada has an independence mechanism for certain officers of Parliament, like the Public Sector Integrity Commissioner and the Chief Electoral Officer. The mechanism already exists in Canada, but it doesn't apply to all officers of Parliament.

Mr. René Villemure: So it wouldn't be unheard of to apply this mechanism to your office, for example.

Ms. Caroline Maynard: No.

Mr. René Villemure: For many of the mandates we are studying here, the national security exception often comes up. It's strange, but I sometimes feel like it's a catch-all they use to say nothing.

Do you feel the criteria for national security are clear and justified, or could they be improved?

Ms. Caroline Maynard: I think that's a question for the experts.

It's true that people often use that exemption. On our end, the analysis criteria are clear to my analysts and me, because we run the test all the time. However, we find that in other institutions, there's often turnover among analysts, so they don't have all the experience required. As you said earlier, it's easy: as soon as people see a document classified as confidential, secret or top secret, they tend to think that the information should be hidden or shouldn't be disclosed. In reality, the test goes further than that. For example, we need to determine whether there will be consequences should the information be disclosed.

Over time, the need to maintain the confidentiality of records wanes. That's why we need a declassification program. That way, experts could go through the records and automatically restore access to those that are overclassified after several years, as is often the case.

• (1555)

Mr. René Villemure: We feel the same way. Sometimes too many records are classified under national security. Over time, no review is done and these records remain classified. It's a problem for historical records and a bunch of other things.

Would a registry of access to information requests help speed up processing? Would it help if people were more aware of what's going on or of your challenges and budget limitations?

Ms. Caroline Maynard: Right now, institutions are required to maintain and publish a list of all access to information requests they have received and processed over the past two years. We find that not all institutions comply with this requirement. However, it's certainly something that helps, because people can go through the list and perhaps see that the institution has already processed the information they want.

In addition, we should have better proactive disclosure practices. We can't just stick to what is required under the Access to Information Act, we need to consider any request that comes up frequently. It's a practice we encourage. For example, people often ask for access to briefing notes these days, or at least the headings in briefing notes. Every time I meet with a minister or deputy minister, I ask if it's possible to proactively post that information on the department's website.

Mr. René Villemure: Have you seen any progress on that?

Ms. Caroline Maynard: Again, we've seen it in some institutions, but not consistently everywhere.

Mr. René Villemure: Are institutions like the Royal Canadian Mounted Police or Immigration, Refugees and Citizenship Canada champions of access to information?

Ms. Caroline Maynard: We would need to look at the number of requests. Unfortunately, despite the systemic investigation into Immigration, Refugees and Citizenship Canada, the department doesn't receive fewer access to information requests, and the action plan announced three years ago still hasn't been implemented. Therefore, the department is still receiving a lot of access to information requests and, as a result, we're getting a lot of complaints.

I don't know how long it will take the department to make these changes, but if it does, it will certainly have a positive impact on access to information in Canada.

Mr. René Villemure: Thank you very much.

Ms. Caroline Maynard: It was a pleasure.

The Chair: Thank you, Mr. Villemure and Ms. Maynard.

[English]

Mr. Green, you have six minutes.

Mr. Matthew Green (Hamilton Centre, NDP): Thank you.

I'm going to begin by saying to Commissioner Maynard that you're in good company when the cabinet refuses to hand over information. I'll share with you that, as members of Parliament, constitutionally considered the grand inquest of the nation, even with our own parliamentary privileges and very well-established common law in that regard, they stonewall us too when it comes to basic information. We seem to be in a culture where all of a sudden everything is "cabinet confidence" and everything is "client-solicitor privilege" when they're both the client and solicitor.

As the Information Commissioner, you don't have the authority to access records that contain cabinet confidences that the head of an institution has refused to disclose. On jurisdiction over part 2 of the Access to Information Act and published decisions made in regard to the applications, I think you mentioned that they can decline the access requests. As a result, you've put forth recommendations addressing these and further limitations to your powers as commissioner.

Can you expand on how these limitations to your powers impact your ability to ensure the access regime is effective in delivering its mandate?

Ms. Caroline Maynard: Access to information is basic for Canadians' trust. If Canadians don't trust that they can obtain the information they're entitled to, it ultimately will result in a lack of trust in this government and our institutions.

If I don't have access to documents that nobody else can review—like cabinet confidences—how am I supposed to make sure that Canadians are trusting that these are actually cabinet confidences? Nobody currently has, in Canada, the authority to review cabinet confidences. I'm not saying that we need to disclose them. I believe in the secrecy of discussions and cabinet. That's something that government can discuss, but it's something that we need to.... Just look at Commissioner Rouleau's commission on the Emergencies Act. He was given access to a lot of documents that normally he would not have, to be able to tell Canadians the decision and to review that decision and to make a determination on that—

• (1600)

Mr. Matthew Green: I will interject on that point. I'm co-chairing the Emergencies Act review committee on the parliamentary side. The same requests for information.... The supreme law of the land, the House of Commons, the supremacy of our parliamentary privilege—that was completely ignored by this government. They refused to hand over documents to a committee when we have the supreme ability to send for documents and evidence.

It is a cultural issue. I would agree with my friend from the Bloc. In the report entitled "Observations and Recommendations from the Information Commissioner on the Government of Canada's Review of the Access to Information Regime", you stated that this is not just a need for a cultural shift towards more openness but that in fact this is a culture of complacency. The downplaying or tolerance of delays must end.

First of all, I want to say that your being before us here as an independent officer and commissioner of this House is an integral part of our democracy, and one that we should be supporting more fully. What would you recommend to bring about a cultural shift within the government to address that very serious issue?

Ms. Caroline Maynard: There are so many things that need to be done, it's hard to start with one. Yes, the submissions have provided good examples of where things need to be better. Our government needs to provide clear direction to all institutions that they must respect the act. Even if we don't change the act, if we were to respect the 30 days in there, if we were to make sure that public servants knew that was part of their function, that they have to be able to help their analysts when they receive access requests....

The time of 30 days has been ignored. Extensions are being asked for more and more. They don't have the resources to respond to access requests. Information management needs to change. There are so many places—

Mr. Matthew Green: Part of it, as I recall, is that you also stated that the access regime experiences difficulties due to the lack of qualified staff to deal with the requests and the institutions' use of these archaic methods for processing. I joked when I first got in here. We were talking about boxes and about not even having things digitized on PDF and so on and so forth.

Can you describe a little, when it comes to processing management and the sending of information, what these methods look like and how they create additional difficulties for the access regime? In my observation, this is a government that not too long ago had a minister for digital government, who just disappeared off the face

of the planet, unceremoniously, probably at the same point the mandate letter dropped.

Can you talk a bit about why having that type of whole-of-government approach, as they like to talk about all the time, might provide better supports for the work that you do?

Ms. Caroline Maynard: We definitely need more technology to help. We definitely need to look at information management. Nowadays, people work with emails. I said the last time I appeared before you that we have examples of requests that should result in two or three pages of information resulting in 500 to 1,000 pages of information, because people were not taking care of and properly managing their information.

Just recently, one of my own access units was consulting another institution on two pages. We were asked for a 90-day extension for them to respond. Consultations are a huge problem within institutions. We need to have a clear indication, clear guidance, that consultations are not mandatory. They are good to have, but when you don't have time, you don't consult. You make your own decisions on the document in front of you. That's what my unit's going to do.

Mr. Matthew Green: That's troubling.

The Chair: Thank you, Mr. Green and Madam Maynard.

Mr. Kurek, you have five minutes.

Mr. Damien Kurek: Thank you very much, Chair.

It's interesting. There was a statement made earlier today that I'll repeat here. It's that secrecy by burying it in process seems to be a common trend here.

Commissioner, you have expressed concern by saying that you "sincerely hope that this does not signal that the Government has reached the limits of its willingness to improve the legislative framework". Can you expand on what you mean by that statement?

• (1605)

Ms. Caroline Maynard: The report that was tabled contains a lot of comments and findings about exemptions and exclusions that are not consistently applied or understood properly. However, it doesn't seem to have any recommendations to change the wording of these exemptions or to review the extensions of these exemptions, but rather to provide more guidance through policies and manuals.

We already have those. I think it's time to look at each exemption, each exclusion, and make decisions. Do we want section 21 on advice and recommendations to be for 20 years? Do we want cabinet confidence to still be prohibited from my review? Do we want to put a timeline for consultations in the act so that we don't rely on an institution's policy about that?

The act is 40 years old. I think it's time to look at each section, the way a real legislative review would have done. I didn't see that in the report. That's what I expected.

Mr. Damien Kurek: Thank you for that.

Commissioner, I want to change gears and talk about outside or third party contractors. I've heard there's been a lot of anecdotal evidence. The government has suggested some of it isn't true. There are some questions about information on the estimates—about what that looks like.

Does the seemingly large expansion of third party or outside contractors used by ATIP divisions concern you? If so, can you expand on those concerns a little?

Ms. Caroline Maynard: The problem is that it's very difficult to recruit people who have the knowledge and who are, as I said earlier, willing to do that job. If an institution... I feel for them. I tell you, it's definitely one of those tough jobs. When they can't find people who want to do the job, they have to rely on consultants. I had to do that, too, at one point. What we're now doing is this: We have a rotation and we're bringing in people from outside of government. We're trying to train and keep them.

Again, it's a very difficult job. I'm not surprised consultants are being used more and more. I'm told, by some institutions, "We have the money. We just can't find the people."

Mr. Damien Kurek: I'm glad you brought that up, because I've heard some past and current individuals in ATIP divisions say it is a nightmare to work for those divisions. There is a whole host of challenges associated with that.

One of the comments made to me is one I will pose to you in the form of a question: Is there a lack of performance metrics for ATIP officers within departments? That seems to be a trend plaguing all aspects of this entire regime.

I'm wondering whether, in the minute I have left, you have any suggestions for how we could deal with this seemingly incredibly poor performance. Is there a metric or mechanism that could be used to start ensuring we actually get some results here?

Ms. Caroline Maynard: We need to provide people with performance indicators at the management level—the DG, ADM and DM levels. That's where you need them to be responsible. The minister is accountable for access. The obligation, under the act, is on the head of the institution. They need to be interested in what's going on in their unit. That's why I'm sending the orders directly to the ministers' offices now—so they know when they're late on 25 files and that their unit is struggling.

It's not the poor little analyst who needs to be given objectives. Yes, they have objectives. They have to close many files, but the director—the DG—has to have performance evaluations and bonuses

according to what they're responsible for in terms of access to information. Right now, I don't think it's taken that seriously.

Mr. Damien Kurek: This highlights some of the larger challenges that exist within government, currently. There doesn't seem to be top-down accountability. It goes right to the top.

Thank you very much, Commissioner.

The Chair: Thank you, Mr. Kurek.

Next, we're going to Ms. Hepfner for five minutes.

Ms. Lisa Hepfner (Hamilton Mountain, Lib.): Thank you, Mr. Chair.

Through you, I would like to thank Commissioner Maynard for being back before us, again, to answer our questions.

It's nice to see you here again. I would like to start with part one of your observations and your recommendations for the access to information review. You noted that systemic problems require just as much attention as the legislative review.

I'm hoping you can opine on whether increasing the scope of the act will take away from addressing some of the capacity issues your office faces.

• (1610)

Ms. Caroline Maynard: No, it's going to increase the number of requests. That's for sure.

The question is not what we're going to take away from Canadians. The act has to be reviewed as much as the system needs to be addressed. If you're going to give more information through access requests, you clearly need to have more people working in access units. If you're providing more information through portals like IR-CC's, you will take those 200 analysts they're now hiring to do access requests and they will be available for other units.

What we need to give Canadians is what they're looking for. Is the information we're giving them what they're looking for? There's a lot of information out there that Canadians are not entitled to get—information in the offices of ministers, third party institutions, providers or contractors. That's a lot of information, so I think the scope of the act has to be increased.

Ms. Lisa Hefpner: In the same vein then, can you comment on the maximum length of time for the government to conduct its internal consultations and respond to access requests and reviews? I think you were critical that the government doesn't make a firm commitment on timelines. Do you think that would exacerbate delays as well? The system is already under so much pressure.

Ms. Caroline Maynard: Right now the act says you have to respond to an access request within 30 days, or you can ask for an extension. There are different reasons. One of them is consultations.

Consultations are not mandatory. At this point, a lot of institutions think they are or they are treating it like they are, because it's information they are sharing with another institution so they want to make sure they're not providing that information without their consultation. What we see is that often, if you have 20 pages to be consulted, they don't pinpoint what they are looking for. They don't pinpoint the recommendation they want an answer on. The poor unit that is responding to the consultation request has another pile of requests they have to go through, so they don't treat these consultation requests as a priority as well.

The consultations either have to be in the legislation.... What I propose is to put specific timelines so that after 30 days, you're out. Right now we don't have that. We have, my office was told, 90 days for a consultation on two pages.

Ms. Lisa Hefpner: I remember you talking about this last time you were here, that one way to improve government documentation would be to have, for example, parliamentarians deleting the emails with no corporate value or just recording meeting minutes. You said that you don't have to keep all your emails about everything. Is that still your position? Can you explain to us how we can be better at managing information?

Ms. Caroline Maynard: Everybody in the government needs to be better at management, for sure. What we see is that people don't have maximum capacity for emails anymore. Most institutions have these big inboxes that nobody takes care of, so when you are being asked for emails, you can produce tens of thousands of them. What we are saying is that you need to have proper management of information within those inboxes, so that one person keeps the emails, whether it's the recipient.... Usually it would be the person receiving the signature on something and properly documenting it.

We don't have access if we don't have documents. That's clear. You don't want to erase business value documents, but you can definitely get rid of the transitory ones, the personal emails, which we still see in inboxes. There is definitely some learning to be done there.

Ms. Lisa Hefpner: I only have 20 seconds left, so I'll leave it there for now.

Thank you.

The Chair: Thank you, Ms. Hefpner.

[*Translation*]

Mr. Villemure, you have the floor for two and a half minutes.

Mr. René Villemure: Thank you very much, Mr. Chair.

Ms. Maynard, I'm going to pick up where I left off.

Do you feel there's a need for training in the various agencies and departments so people understand the very essence of access to information?

Ms. Caroline Maynard: It's definitely needed. I've even offered my services in that regard, although the legislation that governs my role doesn't give me an educational mandate like the Privacy Commissioner's, for example. However, I feel that's part of a commissioner's job. We have a duty to inform people of their responsibilities. We also have to give them information on how they can help us and how we can help them.

That's the kind of briefing we do from my office. However, I'm not invited as often as I'd like to the institutions that need information.

Recently, I spoke to 5,000 Canada Revenue Agency employees. I believe it was very well received, especially among new public servants. Public servants who don't work in an access to information department and who have never dealt with access to information requests don't understand their role with respect to information. They don't always know what information is important to keep and how to manage it properly. At the same time, people need to understand why certain information is important to Canadians.

● (1615)

Mr. René Villemure: Do you feel it's the Treasury Board's job to set up training like that or to force people to take it?

Ms. Caroline Maynard: I feel that in administering the law, it has a duty to do so. I know there are briefings, but I feel that only public servants who are interested in the subject sign up for them. My understanding is that it's not mandatory for new public servants.

Mr. René Villemure: I think you're onto something.

We spoke earlier about declassification, an issue on which we need to move forward.

In the little time we have left, would you have a concrete proposal to make about this?

Ms. Caroline Maynard: Actually, there are several methods and programs. As I said earlier, the United States and the United Kingdom already have programs in place. Canada could go and see exactly how it works in those two countries. Some experts in Canada have studied these programs and made recommendations. Much has already been written about this.

In my opinion, even declassifying records after 50 years would be a good start.

Mr. René Villemure: Training and declassification are both under the Treasury Board's purview.

Ms. Caroline Maynard: Both depend on the government.

Mr. René Villemure: Okay.

Thank you very much.

The Chair: Thank you, Mr. Villemure.

[English]

Mr. Green, you have two and a half minutes.

Mr. Matthew Green: I'm going to ask some questions in a rather rapid-fire way. I'm going to try to get you to answer them as quickly as you can, so I can get through and have on the record as many as possible.

You stated that the government has to invest in hiring qualified staff, develop ongoing training and acquire new technology. Have you received any explanation for why the government is hesitant to adequately fund the ATIP regime?

Ms. Caroline Maynard: No.

Mr. Matthew Green: Why do you think they're hesitant to do so?

Ms. Caroline Maynard: I think it's a financial situation. Everybody's struggling. We're all asking for more money. Clearly this is not a priority.

Mr. Matthew Green: Okay.

Can you describe why creating a statutory duty for public servants and senior staff to create a registry of key actions and decisions is necessary?

Ms. Caroline Maynard: It's necessary because we do not currently have it under the act. Access exists only if the record exists.

Mr. Matthew Green: In 2018 and 2019, extensions to consult accounted for 48% of all time extensions. Given that consultations with other institutions are not mandatory, do you believe that institutions may be using consultations as a method of delaying their responses to access requests?

Ms. Caroline Maynard: For some cases, I definitely do.

Mr. Matthew Green: In addition to imposing limits for responding to consultations, are there any other limitations to consultations that should be considered?

Ms. Caroline Maynard: I think there should be clearly set reasons as to why consultations should or should not be done.

Mr. Matthew Green: Can you describe why it's important that agencies to which the government has outsourced the delivery of government programs and services should be subject to part 1 of the act?

Ms. Caroline Maynard: These organizations are providing the public—Canadians—services on behalf of Canada. They're using public funds to provide those services. Canadians are asking for information about where the money's going and how the decisions are made. These institutions should be subject to the act.

Mr. Matthew Green: We just spent quite a lot of time studying McKinsey, so understanding that, can you describe why an increasing number of government programs and services are being transferred to private sector agencies? Is it a fair statement that Canadians' access to information will continue to decrease without an intervention that would include them in part 1 of the act?

Ms. Caroline Maynard: We need specific institutions to be in the act.

Mr. Matthew Green: Okay.

That was fantastic. Thank you very much.

The Chair: Thank you, Mr. Green. My favourite movie is *Uncle Buck*, especially the part where Macaulay Culkin is asking questions, and Buck says, "Why do you do that?" and the kids says, "I'm a kid. It's my job."

Thank you for that.

Mr. Barrett, you have five minutes.

• (1620)

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): Thanks, Chair.

Thank you, Commissioner, for being here today.

At the Standing Committee on Government Operations, there was an exchange between the chair and the comptroller general that was widely reported on, and it revealed that the comptroller general was caught directing colleagues to be careful what they wrote down so that it would not be captured in emails and then subject to ATIPs.

What do you think about that? First, ma'am, are you familiar with the scenario that I'm referring to?

Ms. Caroline Maynard: Yes.

Mr. Michael Barrett: Okay. What's your reaction to that?

Ms. Caroline Maynard: I issued a statement on what I heard. I cannot comment specifically, because, I will admit that I'm doing an investigation on that issue, but generally, what I can tell you is, as I said earlier, access does not exist if there are no documents. We need leaders to encourage the creation of documents so that Canadians are entitled to get that information when they request it.

Mr. Michael Barrett: Right. It would be fair that your guidance would be the opposite of something like that, of someone saying not to write things down. If there were an oral conversation taking place, your guidance would be that minutes should be taken on it and it should be retained. Is that the type of document creation you're referring to?

Ms. Caroline Maynard: My advice to the institutions is that they need to be clearer on taking minutes, making decisions and proper documentation. Commissioner Rouleau mentioned that as well in his report. That is, when decisions that are important are being taken fast, people sometimes forget to go back and write down what was discussed, and we need that. We need public servants who know that it's part of their job.

Mr. Michael Barrett: You've expressed in your words great disappointment that the Liberal government didn't put forward concrete solutions to the issues Canadians face with access to information.

Why do you think they didn't put those solutions forward?

Ms. Caroline Maynard: I don't know. I think you could ask the government.

I think what they've done is a really good summary of all the issues that we know exist in the system. What we don't know now is how they intend to tackle those issues.

Mr. Michael Barrett: In your opinion, what would it signal to Canadians if the government had exhausted its willingness to improve and build out the legislative framework around access to information? What is the message that this would send to Canadians, if that were the case?

Ms. Caroline Maynard: It means that our act is going to be considered one of the worst legislation on access to information when you look at other jurisdictions in terms of access. As I said earlier, our act is 40 years old. It was created when we were dealing with paper, and now we're in a digital world. We need to have an Access to Information Act that's modernized up to 2023.

Mr. Michael Barrett: In the absence of an act that's modernized up to 2023, in a situation where we see the delays of returns from requests for access to information, does that harm Canadians' confidence in their institutions? Does that have a harmful effect, or is it a neutral effect? Would you say that it's harmful?

Ms. Caroline Maynard: I think it is. We can see Canadians saying that they are lacking in trust, and it is our job to make sure that this trust increases in our institutions and in our government.

One solution is to provide them with information in a timely manner. Respecting the act that we have currently would be a great advantage, but we are having difficulty doing that.

• (1625)

Mr. Michael Barrett: Thank you very much, Ms. Maynard. I appreciate it.

The Chair: Thank you, Mr. Barrett.

We're going to go back to Ms. Hepfner.

Ms. Lisa Hepfner: Thank you, Mr. Chair.

Thank you, again, to the commissioner.

You've been talking about the lack of resources in your office. I would like to point out that the public accounts show that in 2015 your office got just under \$10.5 million, and that in 2022 it was just over \$16 million, about a 54% increase.

Can you talk about what those extra funds do for you, how much more you could use to be really effective and the difference in the amounts of money over time?

Ms. Caroline Maynard: I cannot talk about 2015, unfortunately. I was there in 2018. When I arrived we were asking for additional funding because of the number of complaints that were received by my office. Every year we get an increase, a 25% minimum. In the five years that I've been commissioner the complaints have increased by 180%.

Unfortunately we can't foresee the future, so every time we ask for additional funding we think we have enough, and then the next year we have more complaints.

We definitely use these funds to hire investigators. I have 75% of my funding going to investigations to support them and to complete them. Right now, like I said earlier, I'm funded for close to 4,000 cases, approximately. We were able to do 7,000. We have increased our efficiency. Working from home for us has been a great advantage, because our people are way more efficient when they don't have all the distraction and noise.

That aside, I think if we continue to receive more complaints we cannot attack the inventory. My inventory is always staying at around 3,500 or 4,000 cases. I'm closing 7,000 cases, but I'm receiving 7,000. I would like to have at least temporary funding to get additional investigators so that we can get rid of those files that are stuck in the inventory.

I also want to say that, even if I get more money for more investigators, the units, the institutions, as I said earlier, are not able to respond to my investigators. They don't have the resources either. They have to decide whether they are going to respond to me in my complaints investigation process or respond to the requests that are waiting on their desks as well.

More money to me is not sufficient. We need to invest in the entire system.

Ms. Lisa Hepfner: It seems to me one of the factors that would help alleviate some of that pressure is more proactive disclosure by the government.

One thing this government did through the open government portal was include a suggest-a-dataset function, so users can request information that they would like to see released. Is that a good addition? What other things would you do to improve the portal for users?

Ms. Caroline Maynard: Access requests should be the last resort to obtain the information. The information should be accessible through proactive disclosure. It should be accessible through the portal. I've given the example before that, with CRA, you have your own account. Imagine if you had to ask, through an access request, for information about your taxes. You don't have to, because you have a portal where you can go and see your information.

IRCC is a great example. If they provided their information through a portal, we would see 200,000 fewer requests a year in this government. I would see 3,000 fewer complaints in my office probably as well.

There is a lot to invest in providing the information that Canadians are asking for, not what the government wants to give. There's a difference between providing information that nobody wants to read about.... We need to find out what Canadians want. Institutions know that. They have the frequent requesters and requests that come back. Briefing notes are a good example. Now that we're providing titles, they are asking for the content.

I told the deputy ministers, when they write a briefing note, to make sure they know what they want to provide—what's public and what's not public—so that it's easier for their ATIP unit to process afterwards.

• (1630)

Ms. Lisa Hefner: I only have 10 seconds left.

Do you have any recommendations on how to improve statistical reporting?

Ms. Caroline Maynard: Yes. The Scotland government has in their act that the commissioner has access to the statistics every three months, so he can proactively go to the units that are struggling. Right now, I think the annual reports that are presented by the institutions are useless, because we see the results a year later.

It's not helpful for my office. It's not helpful for anybody. I think we need to reduce the reporting requirement, really, to what is useful to us, so we can actually help them. How many requests...? How often are you late? How many unit analysts do you have? What are your issues?

The Chair: Thank you, Ms. Hefner and Ms. Maynard.

We're going to Mr. Dalton. This is the final round of questioning.

Mr. Dalton, you have five minutes.

Mr. Marc Dalton (Pitt Meadows—Maple Ridge, CPC): Thank you very much for your comments. It's the first time I've seen and heard from you in person.

I can sense the frustration and exasperation you feel as you're reporting. There seems to be a trend I'm hearing and have heard on this side. I think of the Parliamentary Budget Officer. It just feels like they're being starved for funds and are not able to do their job and are not able to investigate. It feels like they're being stymied and blocked in every respect.

Again, we heard from the Ethics Commissioner, who has now resigned just basically, it seems like, out of frustration. He said that the Liberal government just does not seem to be taking ethics seriously, and it's like, what's the use? I'm getting that sense also from your comments. He said that public shaming is the foundation of a system as far as ethics, and that's not working when you have constant breaches by the Prime Minister and others. It's just ongoing and ongoing.

I'm just wondering. The Ethics Commissioner talked about public shaming. What hammer, if you want to call it a hammer...? What do you have to do to help enforce your policies as far as the free-

dom of information? Do you have any tools, or is it just basically bringing it up and complaining, and it's like you're being ignored?

Ms. Caroline Maynard: I have to say that, until 2019, my office could only make recommendations. That was, I think, the biggest issue with the system, because for years, complaints resulted in simply a recommendation. The institution could ignore it unless my office took them to court.

Now we are issuing orders, and if they don't agree with the orders, they have to take it to court. What I see, however, is that sometimes they don't say that they don't agree with it, but they don't do it. I don't have the authority to make sure that they comply with the order. Imagine.... They don't comply with the act, but they don't comply with the order as well.

This committee needs to look at providing a process by which the orders can be certified in court. Then you can go to the institutions with this order. It's something that is now in the bill for the Official Languages Act. They are changing the Commissioner of Official Languages' authority. They actually put a certification provision in there, and I think it's been done for the Privacy Commissioner as well.

It exists. It's something that is there. I asked for it for Bill C-58. It was not given to me. However, we do have the orders and we publish those, so that is something that is also very helpful.

Mr. Marc Dalton: Great.

You commented that transparency is just not a priority for this government. I guess that's in light of what's been coming out in the past number of days and weeks with the Beijing Communist government's undermining our democracy, and now we have a rapporteur being brought forward.

It seems to me to be just reinforcing what you're saying as far as transparency. That's our concern: that they're not interested in transparency and in the facts' being brought out. That's what's coming across with what we're seeing here in this very serious undermining of our democracy.

I have a question. You mentioned 4,000 files brought forward that you're able to deal with. Are those complaints? For example, I received an email today from a constituent who sent an ATIP in eight months ago, and there's been no response. Would that be one of the 4,000? How do you come up with the number?

• (1635)

Ms. Caroline Maynard: Your constituent would have to make a complaint to my office for me to investigate why, after eight months, he or she is not receiving a request. That would be one of the complaints I'm dealing with, yes.

Mr. Marc Dalton: Okay. Just going to Mr. Bains' point about the number of files and of requests.... I know, also being from British Columbia, that we found that, for example, one person—

The Chair: Mr. Dalton, we're past the time.

Mr. Marc Dalton: —did like one-third. That's hundreds of ATIPs. I'm just wondering if, perhaps, the first two or three are free, but afterwards there's maybe a little charge. I don't know.

The Chair: Thank you, Mr. Dalton.

We're going to go to Ms. Khalid for five minutes, please.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thanks very much, Mr. Chair.

Thank you, Ms. Maynard, for being here today. I appreciate it.

I just want to clarify that, as much as Mr. Dalton loves to be dramatic, the Ethics Commissioner, I believe, did resign or retire due to health issues and not out of frustration. I think that really gets to the crux of what we're doing here, and that's to make sure that we're....

An hon. member: [*Inaudible—Editor*]

Ms. Iqra Khalid: I'm sorry, Mr. Dalton. I did not interrupt you when you were speaking. Let's not go down that path.

The Chair: I've stopped your time. Let's stop the interaction across the way. Ms. Khalid has the floor.

Go ahead, Ms. Khalid.

Ms. Iqra Khalid: Thank you very much, Chair.

Ms. Maynard, I understand. You spoke a little bit about the difference.... In 2018, you came in, and you said that you were at a point where you could only make recommendations, and now you make orders. Can you help to define what the difference is there and how you got to that point?

Ms. Caroline Maynard: The change was made through Bill C-58 in 2019. The commissioner's authority was to issue recommendations to institutions. Now it has been changed. I can make recommendations, but I can also order disclosure or order that a certain time for disclosure be done.

The change is tremendous, because when we only made recommendations our office felt that it had to negotiate. For a long time, there was a lot of negotiating with institutions, because we were worried that the requester would not get what he or she was asking. We realized that it created long delays. We didn't have the power to really work with the institution and make it happen.

Now, with the order, we don't negotiate anymore. We ask for representations and we ask why they are late or why an exemption has been applied. If we don't agree, we agree to disagree and the order is issued. Now the institution has to respond to the order. It's a lot quicker and it's a lot more efficient.

Ms. Iqra Khalid: Thank you. I appreciate that.

Given your experience, do you think your department and overall government have been going more towards transparency or away from transparency in these past seven years?

Ms. Caroline Maynard: It's difficult to tell, because we are seeing more access requests and more delays. There is definitely a lot of information being provided, but there are a lot more complaints to my office as well.

Canadians are asking for more information and, like I said earlier, until we do more disclosure proactively and change to portals with the information provided without having to go through the access, Canadians are not going to stop asking the questions. They want to know.

Ms. Iqra Khalid: That's a good thing, in my opinion, and I'm really glad that we are presenting an opportunity or at least a platform for Canadians to be able to ask those questions.

What is your wish position? I know that you've seen the report from the minister. You have provided submissions yourself. Ultimately, what is your wish position when it comes to statistics reporting, indigenous issues or HR issues in your office? Where do you think you want to be within your work?

Ms. Caroline Maynard: My submissions speak for themselves, but what I think is very important is for this committee's report to come up with recommendations. I know that the act provides for parliamentary review of the legislation. I think this is something that needs to be taken on. The act should be reviewed. There should be an actual report made on each of those sections in the act. "Public interest" needs to be added to the act. There are a lot of things in my report that I think need to be considered.

You've heard from experts in the field. They all have really good recommendations as well. I think this is your role now: to provide a report to this government with respect to changes that will affect the system.

• (1640)

Ms. Iqra Khalid: Speaking of the system, what are some steps or processes that you, within your capacity, take and have in order to address some of those systemic challenges you face on a regular basis?

Ms. Caroline Maynard: One of the things we have done and that we realize has a very positive impact is publishing our reports, because then we can refer Canadians or institutions to the way that we interpret the act. Sometimes it helps us resolve issues quicker. I'm hoping that our analysts out there and the institutions are actually reviewing our website, so that it can help them in making those decisions when they receive a request and not wait until the complaint is made.

Ms. Iqra Khalid: I appreciate that.

How often should ATIP officials be producing such reports, do you think? You're a big proponent of transparency and engagement with the Canadian public. Does your office have the resources to provide a quarterly report as opposed to, as I guess you were saying, a report that's published two years after the fact?

Ms. Caroline Maynard: The annual report on ATIP, I think, is the problem. It needs to be changed into something that's very easy to enter into a database, with no reporting necessary.

Ms. Iqra Khalid: Thank you very much.

The Chair: Thank you, Ms. Khalid.

[Translation]

Mr. Villemure, you have the floor for two and a half minutes.

Mr. René Villemure: Thank you, Mr. Chair.

Ms. Maynard, what recommendations or other items would you have liked to see in the report produced by the Treasury Board?

Ms. Caroline Maynard: As I said earlier, the report provides a very good description of all the issues, as well as some potential solutions, but it doesn't really make any recommendations on how to address the issues or say how the government plans to address them.

Mr. René Villemure: You have a pretty good idea of the situation, but you have no proposed actions or funding earmarked for that, I imagine.

Ms. Caroline Maynard: Absolutely, the costs will need to be verified, as they are with any action plan. That said, the report does provide a very good description of the current situation in the system.

Mr. René Villemure: In your opinion, if there were three things we had to do first, what would they be?

Ms. Caroline Maynard: In my view, our government really needs a declassification program, and that would be easy to implement.

The Access to Information Act needs to be considered clause by clause and recommendations need to be made. That's not my role. You, the parliamentarians, have the role of legislator. You're the ones who can do that.

Mr. René Villemure: You have the content, which is why we're asking for it.

Ms. Caroline Maynard: I have the expertise, I see what's not working and I put it in my report, along with recommendations, of course. You've also heard why it's not working from people who use the act. That's really the other step.

I would also say that we need a better system for managing information, training and staffing, to help analysts and access to information departments fully respond to requests.

Mr. René Villemure: So you're recommending a declassification program, a review of the act, and better ways to train and coach the teams.

Ms. Caroline Maynard: It will take the resources to make it all happen.

Mr. René Villemure: Thank you very much.

Ms. Caroline Maynard: It's been a pleasure.

The Chair: Thank you, Mr. Villemure.

[English]

Mr. Green, you have two and a half minutes.

Mr. Matthew Green: Thank you very much.

We're going to try this again.

You had spoken about comparing your department through the whole of government. Can you compare what staffing looks like

within an access regime currently and what it would ideally look like to complete requests within a reasonable amount of time?

Ms. Caroline Maynard: Like anything, the staffing in government is complex, long and bureaucratic. There are a lot of steps, which is fine. I think what we need are pools. We have to keep those pools filled with candidates who are qualified and interested, so that it's easy for all the institutions to go into that pool to access staffing.

Mr. Matthew Green: That seems very reasonable.

You described a situation where the author of an access request is told that there are no records regarding a specific action or decision made by an institution. I think this is pretty problematic.

Are there any particular institutions that report more than others that they don't have records regarding an action or decision?

• (1645)

Ms. Caroline Maynard: No, and we see that often in terms of what we call missing records. Usually the requesters will have evidence that there should be records or that the decision was made, or there's more to it. We do find often it's just because the unit was not tasked properly.

Mr. Matthew Green: There's no department that is more problematic in incidents than others.

Ms. Caroline Maynard: I can't tell you that I've seen it more in one than in another.

Mr. Matthew Green: That's fair.

I think this is an important question around public interest. Can you describe the impact of the Access to Information Act's not including a general public interest provision?

Ms. Caroline Maynard: It goes with the culture of secrecy. If it's out there in the introduction that public interest is important.... Right now it's only a factor in terms of discretionary decisions. It's proper and it's good to have it as a factor, but if it's there in the introduction, it means that it overrides. It adds to the value of access.

Mr. Matthew Green: Thank you.

Are you aware of any examples of the six provinces where institutions are required to disclose information about the risk of significant harm to the health and safety of the public or the environment, and where such information is disclosed?

Ms. Caroline Maynard: I know that Ontario has it. I'm sure there are more, as you said. I remember hearing about Ontario having that specific provision.

Mr. Matthew Green: Yes, I will just note that we had an opportunity to actually expand our whistle-blower protections and have some more of this available, but unfortunately it didn't have the full support of the House.

Thank you.

The Chair: Thank you, Mr. Green.

Mr. Kurek, you are up for five minutes.

Mr. Damien Kurek: Thank you very much.

It's been very enlightening. We've heard a host of...and I think a fair amount of agreement on the need for more action.

Commissioner, I'd ask for your observation. You're in a unique position to see where the problems are. Are there any observations that you could share with the committee about the most problematic departments? Are there any trends that you see within those departments?

Is there information that you could offer to the committee on that, and then possibly some solutions that we could bring forward in terms of recommendations to the government?

Ms. Caroline Maynard: In my document, I provided you with the institutions that we're receiving the most complaints about. It's not always because they received the most complaints that they're the worst. Often it's the percentage and the number of requests they're receiving.

What we see across the board is that section 21 is being overused and abused. Section 21 allows you to redact advice and recommendations made by a department official. It's not well described. The exemptions are very broadly written. It's often used to redact information that is not advice and recommendations. That's definitely a problem across government.

In my submission, I made some specific recommendations to rewrite the exemptions. For example, in Ontario, they have a very good list of things that it should not include. That would be very helpful for this.

Mr. Damien Kurek: I will take somewhat of a different direction on that, which is about including the MOs and the PMO in the access to information regime. I just want to give you the opportunity, in 45 seconds or so, hopefully. Then I'd like to ask you a question in a different direction.

Could you provide a little bit more context as to how you could see that working to ensure that there's that accountability that Canadians expect?

Ms. Caroline Maynard: This government is making a lot of decisions that are being discussed in cabinet ministers' offices and in the Prime Minister's Office. When we see documents that have gone to these offices, they're all redacted.

You have to determine where the cut off is. When does it become the bureaucrats versus the government?

I think that having a transparent government means that everybody who's elected and everybody who makes decisions on behalf of the government, including ministers' offices, should be subjected to the act so that Canadians are confident they are getting all the information they're entitled to.

Mr. Damien Kurek: I appreciate that. Certainly in my experience with the ATIP system, it's been incredibly frustrating. Even when MPs have been promised information, they then have to go through the ATIP system as a last resort and then are not able to get the information that, in some cases, we saw during a briefing or

whatever was the case. I can tell you, there's an incredible amount of frustration.

I want to change gears in the last minute and a half or so that I have.

It's on technology. You mentioned that the act is 40 years old. There's been a massive amount of technological development in terms of both communications and the way decisions are made. In about a minute, perhaps you could summarize or make some recommendations about how this committee could create the path forward for addressing the challenges that technology has brought to the access to information regime. Perhaps you also have some recommendations as to how technology could be part of the solution to ensure that there is a greater level of accountability within government.

• (1650)

Ms. Caroline Maynard: There is definitely a need for investment in technology. We are in 2023 and this government is lacking in terms of using artificial intelligence. IRCC, actually, is using bots—robots—to identify some information. It's making great progress. It has actually had great results.

I think the other problem in government is that everybody is working in silos. When I want to increase my capacity in my office for infrastructure, I have to hire my own consultants and spend my own money. The next institution is doing the same thing. I think that a platform where everybody could use all this technology and share the information.... I think that Treasury Board has great projects and stuff, but we need to see it more. We need to see that exchange of information.

IRCC is definitely on the right path, but we haven't seen the results yet.

Mr. Damien Kurek: Thank you.

The Chair: Thank you, Mr. Kurek.

Ms. Khalid, you have the final round for five minutes.

Ms. Iqra Khalid: Thanks very much, Chair.

Ms. Maynard, in your previous testimony, you mentioned that a way to improve government documentation would be to delete emails with no corporate value and simply record meeting minutes on memos to eliminate the need to retain specific email chains. The report appears to agree with you on the need to improve that documentation. Do you believe that making this change would reduce that workload?

Ms. Caroline Maynard: Definitely. You have no idea how many requests we see that have hundreds of the same emails and pages. The analysts have no choice but to process and treat them. We are getting more and more access requests that result in thousands of pages. It used to not be very often. The elimination of fees has definitely had a big impact on that, but that's not the only thing. The lack of management information is definitely key.

We need to better manage it so that Canadian requesters are getting what they want and not the same thing 25 times.

Ms. Iqra Khalid: I hear that. I hate email chains, to be honest.

On a different note, the report concludes that implementing the United Nations Declaration on the Rights of Indigenous Peoples requires changing the definition of an aboriginal government.

Do you agree with that? What are your thoughts?

Ms. Caroline Maynard: I do. Right now I think that there are only 13 nations that are part of that definition. I've heard from them that it is definitely an issue.

I think it's great that they've been consulted through this round for the review. I hope that their concerns will be addressed.

Ms. Iqra Khalid: What are your thoughts on the recommendations identified in the report on advancing indigenous reconciliation?

I know we talk about the whole of government. In my opinion, this is literally what it looks like, department by department. What is your honest take on how that's addressed in the report?

Ms. Caroline Maynard: I will be honest with you. I think that this is a subject that is so important that I would let the experts deal with that.

I think that indigenous people should be talking to you about whether or not the report goes far enough in their view. They've been consulted, but whether or not the report has made recommendations that will respond to their concerns.... They have very specific concerns, and I think it's really worth listening to them.

Ms. Iqra Khalid: Have you met with them? Have you received their consultations yourself? Do you have anything to share in that respect?

Ms. Caroline Maynard: No, I'm not part of the consultation process. I have met with them in terms of how I can help them and how my office deals with complaints from their offices and groups.

• (1655)

Ms. Iqra Khalid: Do you have one issue to share that is their biggest concern?

Ms. Caroline Maynard: Their biggest concern is timelines, again. It's delays. Getting information for them is key. They have to have this information to pursue their requests. They need information to be provided to them informally. They shouldn't have to ask for information through an access request.

Ms. Iqra Khalid: Thank you very much, Ms. Maynard. I appreciate that.

Thank you, Mr. Chair.

The Chair: Thank you, Ms. Khalid.

I'm going to take a few minutes. I have a couple of questions and a comment.

You mentioned in earlier comments, Ms. Maynard, that Canada is lagging behind legislation by 40 years. Can you give the committee an example of the gold standard in relation to some other countries as it relates to access to information?

Ms. Caroline Maynard: There is a link I can send you on how the statutes in different countries are being evaluated. I think Afghanistan is first, interestingly enough, and Mexico—

The Chair: Say that again.

Ms. Caroline Maynard: It's the act. There's legislation that is great, but then we also need to properly apply the legislation and process access.

The norms are that it should be free. Everybody in government should be subject to the act. Like I said earlier, providers of services on behalf of government should be subject to the act. The scope of the act has to be reviewed. Public interest needs to be included.

Proactive disclosure should be increased, and there should be an authority to evaluate what's being provided on the proactive disclosure list. Right now, there's nobody looking at whether people are meeting their obligations. I don't have the authority. I definitely don't have the resources to do it now.

All of these things are definitely making our act fall behind with respect to the norms.

The Chair: If anything, the report that was submitted to Parliament by the Treasury Board president has put air under the wings of this committee to come up with some substantive recommendations.

One of the things you said was that it was a good summary of the problems, but there were no solutions to the problems. In my view, a lot of what was recommended was actually punted down the line. It's not going to solve anything, so that creates a level of importance for this committee to be able to provide recommendations to the government.

We can provide...and we can table the report. Whether they do anything about it or not is up to them, but we are planning on having the President of the Treasury Board come to explain the submissions that she made to Parliament. I think that would be helpful as well. Do you agree?

Ms. Caroline Maynard: Yes.

The Chair: Okay. Thank you.

That's it. I appreciate your coming in and providing us with the information today, Ms. Maynard. It was very helpful.

Thank you to the committee members, the analysts and the clerk.

On behalf of the committee and Canadians, I want to say thank you, again, Ms. Maynard.

We're going to suspend for a few minutes and then we're going to come back in camera to deal with some committee business.

Thank you.

[*Proceedings continue in camera*]

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