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Thursday, May 18, 2006

Chair

Mr. David Tilson

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● (0900)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning, ladies and gentlemen.

This is the Legislative Committee on Bill C-2, meeting 10. The orders of the day are pursuant to the order of reference of Thursday, April 27, 2006: Bill C-2, an act providing for the conflict of interest rules, restrictions on election financing, and measures respecting administrative transparency, oversight, and accountability.

Our witnesses today are representatives of the Office of the Information Commissioner of Canada. We have with us the Information Commissioner, John M. Reid; the deputy information commissioner, J. Alan Leadbeater; the director general, investigations and reviews, J. G. D. Dupuis; and the director of legal services, Daniel Brunet.

Good morning, gentlemen.

Commissioner, we've seen you many times. You know what we do. If you could give us some preliminary comments, I know the members of the committee will have some questions for you.

Thank you for coming.

Hon. John Reid (Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chairman.

I want to thank the members of the committee for the opportunity to assist you in your deliberations on Bill C-2.

I'm going to talk about the provisions of the Federal Accountability Act that amend the Access to Information Act.

As some of you know, on April 28 I tabled a special report in Parliament containing my concerns about the government's access to information reform plan. One aspect is the provisions of Bill C-2; the other two elements of the government's access action plan are a discussion paper on reform of the Access to Information Act and the proposed open government act, which my office tabled with the Standing Committee on Access to Information, Privacy and Ethics.

A special report, which has been distributed to you, sets out my position. Hence, these remarks will be brief.

Since the tabling of Bill C-2, Minister Baird has heard my concerns. I am grateful to him and the government for accepting my criticism of Bill C-2 in the non-partisan spirit in which it was given. My concern is that Bill C-2 proposes to add ten new exemptions and two new exclusions to the Access to Information Act, almost doubling the number of secrecy provisions that are now in the act.

I am concerned that the reasons for including two new exclusions are to prevent independent review of secrecy decisions made by CBC and AECL. Whatever the legitimate needs for secrecy that these institutions have—and I certainly agree there are legitimate secrecy requirements—there is no justification for impeding independent oversight of them by the Information Commission and the Federal Court.

I am concerned that none of the ten new exemptions to the right of access require a showing on a clause-by-clause basis that disclosure could reasonably be expected to give rise to some injury, harm, or prejudice. The very purpose of the Access to Information Act is to impose a burden of justification on those who wish to assert secrecy. Only one of the ten new exemptions for internal audit reports is time-limited; secrecy may be asserted for 15 years. And only two of the new exemptions are discretionary in nature. All the others make secrecy mandatory regardless of circumstances, regardless of how old the information is, and regardless of whether there may be a compelling public interest in disclosure.

The approach to amending the Access to Information Act and to adding new institutions to its coverage is contrary to the stated purposes of the act and in my judgment will not serve the overall goal of improved accountability through transparency. In this latter regard, the blanket of secrecy that Bill C-2 throws over draft audit reports and records about wrongdoing in government is particularly regressive.

In my letter to this committee dated May 9, 2006, I offered my suggested amendments to fix the problems I have identified with Bill C-2. If you take a look at the package you received, you will find copies in English and French of the letters I sent to the chairman. If you want to look at them, I'll just run very quickly through the suggested amendments.

The first would be to remove the broad exemptions contained in sections 89, 147, 149, 150, 152, 172, 183, 189, and parts of 222 and 225. The relevant amendments are drawn from the open government act, and they suffice to protect the sensitive information to which these provisions are directed.

The second is to remove section 161, the exclusions for CBC and AECL. The provisions, drawn from the open government act, provide the necessary protection for the sensitive information to which this proposed exclusion is directed.

I note there are a great many needed reforms to the Access to Information Act that have not found a way into Bill C-2. We need to require the creation of records, make cabinet confidence an exemption rather than an exclusion, clarify that records held in ministers' offices are subject to the right of access, establish criteria for adding new institutions to the act's coverage, and provide a public interest override.

● (0905)

The government has chosen to have these and the other reforms proposed in the draft open government act dealt with by the Standing Committee on Access to Information, Privacy and Ethics. I look forward to working with this committee on the broader canvas of access reform.

Mr. Chairman, I and my colleagues are available to answer any questions that members of the committee may have.

The Chair: Thank you, Mr. Reid.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

Thank you, Mr. Reid. Thank you for your presentation, and thanks for the material that we received in advance of the hearing. It was very helpful.

I'm a little confused here. On page 4 of your presentation, your comments are very clear that you are "concerned that none of the 10 new exemptions from the right of access require a showing, on a case-by-case basis," that harm or prejudice could result, and that many of them are mandatory, or all of the others, except for the two you mention, regardless of the circumstance. Only one is time-limited. To me it seems very clear that you have concerns and that you are in fact suggesting—with some expertise, I might say, humbly, for you—that these are not good amendments.

I am confused, because I sat in the House numerous times when the president of the Treasury Board said that you said that this is the most radical or expansive act—I won't quote him—that you have ever seen. That you are very pleased with it would be the inference I drew on our side.

I can't reconcile those two comments.

But I might turn to pages 13, 14, and 15 of this little brief—

Hon. John Reid: Perhaps I could answer that, because it is interesting.

When I did see the President of the Treasury Board, at that point I took a copy of the open government act and said to him, "Minister, if you take this act and include it in your Federal Accountability Act, all your problems are solved on that, because that solves it all." When I made the statement about the radical reform, I was referring to the fact that the government, in its platform, had suggested giving the Information Commissioner order powers, something that I had not asked for and that, as the chairman understands, I have argued against very often in the committee. I thought that was the radical departure.

I assumed, based on what I had heard, that the Access to Information Act provisions that I had given the minister were going to show up in the Federal Accountability Act. They did not.

Mr. Brian Murphy: Thank you for that intervention, but again I'm confused. On page 16 of this little missive, it sounds to me like you're giving testimony here that you met with the government, Mr. Baird or others, before the act was tabled in the House. And yet—the language is very clear to me—on page 16 you say, "It is regrettable that the new government did not consult with the Information Commissioner with respect to the need for, or the wording of, the 12 new exemptions...."

Before the bill was tabled, did you have a general consultation or a specific one, or somewhere in between?

● (0910)

Hon. John Reid: I had had a meeting with the parliamentary secretary earlier to discuss the questions of the whistle-blowing legislation. I had an outstanding invitation from the President of the Treasury Board to go and see him on a get-to-know-you basis. It was at that meeting, which was far in advance of...in early March, that I took with me a copy of the open government act report and said, "Look, this solves all your problems, just put it in the act and you'll satisfy my requirements and everybody else's requirements." From that point on....

I should say that at the same time, my deputy commissioner, Mr. Leadbeater, met with the Deputy Minister of Justice and gave him the same message: "Here's a copy of the open government act, and we are prepared to meet with you at any time to discuss any of those matters."

Neither he nor I received a call at all from the government. We received no briefing before the bill was brought down. We received no briefing after the bill was brought down.

Mr. Brian Murphy: That seems unusual, to me.

With respect to pages 13 to 15, this document outlines the ten new exemptions. Presuming, from my point of view, that it's a bit of a hit-and-miss situation, are there, of the ten, any that you clearly think should be exempt from exemption, if you like, or exempt from exclusion? Are there ones not there that you think should be included?

Hon. John Reid: In the amendments that we have filed with the chair, I have provided the necessary exemptions for the information that has to be kept secret. We have set it up in such a way that each exemption fits under the 13 exemptions that are there. You'll find that there are amendments to those sections to provide clarity to ensure that the information that has to be kept secret is kept secret. For example, you'll find a specific amendment that deals with CBC journalism and programs.

The other thing to remember is that in terms of the crown corporations that are coming in under the act, all of them are not unique in terms of what has to be protected. There are analogies throughout the systems. For example, if you were worried about marketing plans or anything like that, you would look at the fact that the Bank of Canada is there, you'd look to see that the finance department is there, and you would look to see that the Mint is there.

All the exemptions these people have for the top-secret information that they have is well protected under the act. But when there is a conflict, the act allows for a proper investigation to take place under the aegis of the Information Commissioner. These amendments provide an absolutely closed door that is very difficult for us to go through because in many cases there's no way for the information to come out.

We want to see a system that brings in these crown corporations in the same way that all of the other crown corporations and government departments are in.

Mr. Brian Murphy: It makes sense.

I have a little more time.

Generally speaking, we've received submissions on the audit working papers. You made a comment about it being a time-limited exemption. Do you know why two years would be chosen and, by default, 15 years? What do you think a reasonable time would be for the protection of investigation or audit papers?

Hon. John Reid: Mr. Chairman, draft audits, audit papers, and what not have been protected under the act for the last 23 years. They've never come out unless there has been a reason for them to come out, so there's nothing new in this.

We also have no problem in saying that the documentation and material on any investigation should be kept secret at least until the investigation is over. That makes eminent good sense, and we agree.

There are occasions, however, when it is necessary to be able to go back and trace what actually happened. There should therefore be a requirement for an injury test to demonstrate that great harm would happen if this information in fact came out beforehand. This has been the pattern that is followed in all of these other cases. For example, it is followed in the RCMP and CSIS. All the national security agencies of Canada come under the act.

In this act, we're actually going to try to give audit reports greater protection than we do for secrets all over the government. We simply think they should be treated in the same way. There should be an injury test and, if it's necessary, we should be able to move the material out when it's required.

I'm not alone on this. The integrity commissioner has also come to the same conclusion. It makes eminent good sense to be able to have this information available when required. An injury test provides protection to everybody concerned.

● (0915)

The Chair: Thank you, Mr. Murphy.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Mr. Reid, good morning and welcome. Thank you for your presentation.

I read with interest your opening statement as well as the special report you supplied to us. I would like to read a few excepts of the special report you tabled at the end of April. If afterwards, you wish to intervene to explain how Bill C-2 might be improved in order to correct this perception, then please interrupt me.

On page 10 of your special report, you state the following, and I quote:

> What the government now proposes—if accepted—will reduce the amount of information available to the public, weaken the oversight role of the Information Commissioner and increase government's ability to cover-up wrongdoing, shield itself from embarrassment and control the flow of information to Canadians.

For a bill that aims at ensuring transparency, this to my mind is quite a damning comment. Would you like to add anything, or is it clear enough?

[*English*]

Hon. John Reid: I agree that you have made my point quite clear. That's what it does.

[*Translation*]

Mr. Benoît Sauvageau: Fine. Thank you.

You state further on:

> No previous government, since the Access to Information Act came into force in 1983, has put forward a more retrograde and dangerous set of proposals to change the Access to Information Act.

Are you still of the same opinion? You have nothing to add?

Hon. John Reid: I am in agreement with that, Sir.

Mr. Benoît Sauvageau: I am in agreement with you.

Further on in your report, you state:

> The current government's proposals are every bit as much "a bureaucrat's dream" as were those of the Chrétien government.

You then add:

> There is no more eloquent testimonial to the power of the forces of secrecy in government that the radical change they have wrought, in a few short weeks, to the Prime Minister's election promises for access reform. In his role of Leader of the Opposition, Steven Harper ridiculed the Martin government's decision to release a discussion paper, rather than to introduce a bill to reform the Access to Information Act.

In conclusion, you state:

> Also, the government proposes to keep secret forever all records relating to investigations of wrongdoing in government.

In your opinion, Bill C-2, which purports to be a bill on transparency and accountability, will deliver the completely opposite result if it is passed as it is presently drafted.

[*English*]

Hon. John Reid: Mr. Chairman, the heart of any kind of system of accountability is openness and transparency, and that is gained through the Access to Information Act. Where the materials are not available, it means there is confusion, there is no transparency, and there is little openness.

So I am concerned about the way in which this legislation is presented. It means that those people coming into the act, the crown corporations and some other changes, what they do is prevent information from coming out. If we are not to get more information from these organizations than we can now get by looking at their websites and their financial statements and what not, why then bring them into the act? It makes no sense to force them into the Access to Information Act if in fact the result will be that no flow of information comes out that's not already available.

I also am concerned about the sections dealing with parliamentary officers, particularly my office. When I became Information Commissioner, I discovered to my surprise that we were not subject to our own act. Furthermore, I've discovered to my surprise that we are not subject to the Privacy Act either. What was done in the office before my coming was that previous commissioners had automatically set up a system where we obeyed the strictures of the Access to Information Act as well as the Privacy Act.

I feel that parliamentary officers, your agents, should be the most open and transparent organizations in the Government of Canada. I think we should lead the way in providing that kind of openness and transparency, not only to members of Parliament, but also to the general public.

These provisions, as they are drafted, do not allow that to happen.

● (0920)

[*Translation*]

Mr. Benoît Sauvageau: In conclusion, the bill that has been presented to us as a revolution in transparency within the government apparatus is, according to your special report and to what you have stated, a blanket of secrecy that will allow the government to "keep secret forever all records relating to investigations of wrongdoing in government".

[*English*]

Hon. John Reid: Insofar as the amendments apply to the Access to Information Act, I agree with that.

[*Translation*]

Mr. Benoît Sauvageau: We must remember, in closing, that you have not been consulted, that the majority of the members of this Committee are not interested in consulting either nor in hearing witnesses: everything is being done to boycott them. It is as if Bill C-2 were the equivalent of the ten commandments from Mount Sinai. This is why there is such a yearning for perfection.

I thank you very much for your presentation. It goes to show that even though we want to see this bill passed, we must take the time to improve it and to ensure that the philosophy underlying Bill C-2 aimed at increasing transparency and accountability is expressed within the bill and that its enforcement will not bring about the opposite.

[*English*]

The Chair: Thank you, Monsieur Sauvageau.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair.

Welcome, Mr. Reid.

Mr. Reid, I think you said in one of your articles that it's hard to overstate what a central place freedom of information plays in our democracy, that the public has a right to know what the government is doing with their money, and that this idea is central to everything we stand for.

The Conservatives, during the election, promised to lift this curtain of secrecy in Ottawa. We all welcomed that and looked forward to that opportunity, so I, for one, share the frustration that came through in the language you used in the report you gave recently. We were all crestfallen. Any parliamentary veteran knows that shipping draft proposals to a parliamentary committee is not a way to speedily move forward an issue or get something passed into law. In fact, it's the polar opposite. It's death by committee.

Even though we're crestfallen and disappointed that Bill C-2 won't have meaningful access-to-information amendments, you've put forward a road map for us to at least make sure that Bill C-2 does no harm, and that while we're busy at the ethics committee trying to craft new access-to-information legislation, at least we won't be going backwards; there'll be nothing retrograde about Bill C-2.

First of all, I can say these are very modest ideas. There's certainly nothing radical that I see in the eight recommendations you've made. I am surprised, though, that you didn't advance at least one new idea into Bill C-2 in relation to your frequent comments on the lack of documentation and on the obligation to record what goes on so that the information will be available to subsequent researchers.

Can you say why you chose not to add that into your list of eight recommendations, and speak to how we may add it and still be in order for Bill C-2?

● (0925)

Hon. John Reid: Mr. Chairman, what I did was provide amendments to Bill C-2 as it is written, to bring it into harmony with the draft of the open government act. We focused exclusively on what was in Bill C-2.

As you know, once the House of Commons gives a bill second reading, it does limit what you can bring into the bill from outside. I determined that I would deal only with what was in Bill C-2, and provide necessary amendments, so that should the committee decide to change Bill C-2 to bring it into accord with the draft open government act and with standard procedures in openness and transparency, members would have the amendments before them.

Mr. J. Leadbeater (Deputy Information Commissioner, Office of the Information Commissioner of Canada): Could I just add one thing, Mr. Chairman?

To the extent the committee wishes to consider any provisions like that, the wording of the provisions is already available in the open government act. With respect to records, the proposal is a provision worded:

> Every officer and employee of a government institution shall create such records as are reasonably necessary to document their decisions, actions, advice, recommendations, and deliberations.

To the extent this committee might want to pick out from the open government act, the language is already there.

Mr. Pat Martin: Thank you.

I do find this very useful. I do want to compliment you, Mr. Reid, and your office, for putting together the open government act at the request of the ethics committee in the last Parliament. This is the road map to move forward. I don't mind saying publicly that I wish we had this at this committee, to be able to implement into Bill C-2.

I do understand the limitations, although as a legislative committee we haven't tested how far we can go with amendments and still be in order. I'll be interested to see if they will allow that kind of substance.

As well, Mr. Reid, you are aware that the ethics committee in the last Parliament issued a seventh report just at the end of the Parliament. It called upon government to craft legislation based on the open government act. It seems that every time we get close to meaningful access-to-information reform—just when it's within our grasp—it slips away again for another decade or so. The enemies of true freedom of information seem ever-vigilant and on guard, and as we get close to breaking down these barriers, they rally once again. It seems that they got to this government in the same way that they got to the last government, just as we're about to make a significant breakthrough.

Do you have any comments on that?

Hon. John Reid: Mr. Chairman, I always understood that amendments to the Access to Information Act to make the Government of Canada more open and transparent would not be an easy chore. Since I became commissioner, I have been campaigning for improvements to the act to make the necessary changes. When we did the open government act, the committee asked me to bring forward a piece of legislation, but it also told me, "Nothing radical". So every piece in there has been tested in some other jurisdiction. There's nothing radical that hasn't been done in some other jurisdiction, either in Canada or abroad. All we're dealing with in the open government act is the ability to bring our act up to date because it's 23 years old, and we're providing nothing that is groundbreaking from that point of view.

The government, having made its decision to split Bill C-2—to take the Accountability Act out of Bill C-2—that having been done, I think we have to accept it and proceed as best we can. My concern right now is to make sure those sections in Bill C-2 that impact on the Access to Information Act do so in keeping with the open government draft, and in keeping with the way in which the Access to Information Act currently exists. It would be unfortunate if we made great departures in the structure, because we've had 23 years of experience with the existing structures, and everybody who is in the system understands how it works. There are certainly disagreements, but reasonable people can have disagreements. We all understand how it works. What we want to do is build on that understanding.

The Chair: Thank you, Commissioner.

Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Thank you for being here.

I want to discuss some of these so-called "new exemptions" you say are created by the Accountability Act. You said ten new exemptions or exclusions concern you. It's wrong. I'd like to go through the ones you've listed.

Let's start with section 183, Privacy Act, relating to the Privacy Commissioner.

Right now, none of the information exempted in the Accountability Act is accessible under the status quo—none of it. You would not be able to access this information if you filed an ATI today, prior to the passage of Bill C-2. There is no new exemption. There is an expansion with respect to the Privacy Commissioner. We have an exemption here; you speak out in section 222, the Public Service Integrity Commission. That is not a new exemption. The Public Service Integrity Commissioner is not required, under the status quo, to respond to any ATI. We have here another exemption, section 225. That relates also to the Privacy Commissioner. Right now, the Privacy Commissioner is not subject to the act, so it's not a new exemption. We're expanding access to information for that officer of Parliament.

We go down to section 147. This is an exemption relating to the Canada Elections Act. Again, those are exemptions created as a result of an expansion of access to information. An exemption for the National Arts Centre is not a new exemption, because the NAC is not covered under the existing act. There is no current access. A number of them—I've just listed six—are not new exemptions. They're the result of the fact we've actually expanded ATI. Prior to this government's introduction of the Accountability Act, these organizations had no responsibility to reply to access to information requests. Now they have some. You're saying we have not gone far enough, but it's not fair to say we've gone backwards, because the existing exemptions are merely exemptions from new access provisions we've created.

It is wrong to say we are moving backwards away from ATI. You might argue we've not gone far enough, and you probably have some persuasive arguments to convince us we should go further, but to argue we are going backwards on those particular organizations is incorrect.

I'd invite your comments.

● (0930)

Hon. John Reid: Mr. Chairman, I want to say that I agree with the parliamentary secretary to the extent that he's right, these are new organizations that are being brought into the system. My problem has been that they all have new exemptions—to make sure that if you look at what is going to come out of the new system, not much more is going to come out than what you can get on the websites and what not.

For example, you mention the National Arts Centre. The National Arts Centre has specific exemptions in this act. But there's a whole range of federal arts councils around, the National Gallery and what not, who have exactly the same situation that the National Arts Centre has. So the question that I find difficult to understand is why have we given these people specific exemptions that are not discretionary and not time-limited? Why didn't we just put them into the act in the same way as you have done with the foundations so they were subject to the general ones? And if there were things that were not covered, why not add, as I suggested in the open government act, specific exclusions that meet the requirements like the CBC? But that's not the way in which the government has decided to treat the issue.

Mr. Pierre Poilievre: I understand that Commissioner Reid might have some very intelligent arguments as to why those exemptions should not be there. What I'm merely pointing out here is that we are not restricting access that was previously available. If we're giving 70% access to information to CBC, that's 70% more than we had under the status quo. There was no access to information for CBC whatsoever prior to Bill C-2. There was no access to information available for the National Arts Centre under the status quo, period. There was no access to information available for the Privacy Commissioner or the officers of Parliament. You might say there should be no exemptions for those organizations, but in fact prior to Bill C-2 there was no ATI ability whatsoever.

I just don't understand your comments that we've gone away from ATI, when in fact we've made major steps forward to expanding and broadening access.

On the other areas that are in fact new exemptions, because some of them are, let's review them.

First of all, on clause 152, discretionary exemptions for internal audit working papers, you made some intelligent arguments as to why you don't believe they should be in there. But, respectfully, these are exemptions that the Auditor General asked for. These aren't efforts by the government to undermine the transparency of government. It's merely a response to another agent of Parliament.

Clauses 172 to 179 are exemptions for Export Development Canada on information related to customers. How could an organization like that operate if you're going to tell customers that deal with the organization their information could become public under ATI?

● (0935)

Hon. John Reid: I'd like Mr. Leadbeater to respond to those questions.

The Chair: No, we have a problem. Unless the committee consents, we're out of time and you'll have to continue on in the next round. You can't talk for seven minutes and then expect an answer.

There's unanimous consent. Thank you.

Mr. J. Leadbeater: I'd like to speak first to the issue of audit reports. For 23 years internal audit reports have been subject to the right of access and to an injury test. Internal audit reports are not released unless and until final audits are completed so they can be put in context. They are also subject to all the other exemptions to protect personal information, commercial secrets, national security, and so forth.

The Auditor General and others went before Justice Gomery, who, remember, had the longest public inquiry in Canadian history into part of its mandate, the Access to Information Act. They said that they needed more secrecy with respect to audit reports. Justice Gomery, looking at what happened in sponsorship, said what you need is the way the government has decided to approach this, which is more external members on audit committees, more involvement of the Comptroller General, and so forth. There was no recommendation by Justice Gomery for increased secrecy for draft audit reports or working papers.

There has never been—and I don't think the Auditor General has ever brought forward—one case where audit working papers or draft audit reports have been released before the final audit was out. Once the final audit is out, they can be put in context and the public can ask, why was that changed from the initial draft; who asked for that to be changed—the precise questions that Justice Gomery was asking about why those early audit reports got changed in the sponsorship inquiry.

The theory behind this act is that secrecy should be hard. You should have a burden of justification. Every one of the new exemptions that have been included in this bill say secrecy should be easy—blankets forever, with no injury test.

The Chair: I know you're busting over there, but you'll have to wait until the next round.

Mr. Owen.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you.

Welcome, Mr. Reid, Mr. Leadbeater, and colleagues.

As Mr. Martin alluded to earlier, we seem to have been banging at this door for a long time in this country, and I thought all of us had come to the conclusion that it was really time to move forward. We've had over 25 years of experience with this legislation, with this concept; we've learned some things, and it's time to move on.

If I can just state where I think we were—and Mr. Leadbeater and I were discussing this twenty years ago, it seems—public information should be public. That's the principle.

There are going to be some exceptions, but they should be limited, focused, related to injury, and subject even then to a public interest override, and the decisions of the bureaucracy, the administration, should be reviewable by an independent office. That's the principle.

And the last one, I think, is that a parliamentary officer should not have order powers, because a parliamentary officer is an agent of the members of Parliament. It's Parliament that can make its own decisions. It has full powers. It can even put people in jail if it likes. But that's the general principle.

The practical experience we've had is that the original notion that this would simply, initially, have the public bureaucracy make everything open, without having to go through our commissioner, except for a few trigger points that would give pause to consider, has been frustrated by—without putting fault on any individual or even any conspiracy of individuals—bureaucracy being large and slow, and there are political issues and fears. So it just slows it down and it hasn't worked the way it was meant to.

So over the years, and as recently as just over a year ago, your office was asked to make some specific recommendations, based on the history of the office, as to how to improve this, how to break the logjams, how to open things up, how to reach Mr. Leadbeater's transparency. You did that. You created the open government act. You brought it forward as an example to the ethics and information and privacy committee. It endorsed it. The Conservative Party put it in black and white in its election platform, as it spoke about it being a key part of the Accountability Act, which would be the first legislation the government brought forward if it was elected. It was elected, it brought forward an accountability act, and it didn't have the open government act in it. That's what I think we're going to have some real discussion on when we talk about amendments and how to improve the Accountability Act, which we think has many positive things to it.

But I must take just slight issue, respectfully, with Mr. Poilievre, with respect to this actually giving more powers. The issue isn't that more authorities are brought into the ambit of the act. It's the type of exemption that's created that causes the problem, rather than the number of further authorities, and it's this principle of forever, without an injury test, without potential for a public interest override and without a review by the independent—remember, independent of government, not independent of Parliament—parliamentary officer, on behalf of all members of Parliament, having a confidential look to ensure that there is injury and there isn't some overriding public interest.

That's the beauty and the magic of the act that should operate, as one of Commissioner Reid's predecessors said, “as a Maytag repairman”. Once everybody got into the swing of it, it would just happen naturally. And in fact, having greater access, getting into the habit of making information readily available, and organizing it in a record system so it could do that would make government decisions much better, because government would act with itself on full information because it would be in the practice and habit of organizing it in a proper way.

● (0940)

So, Commissioner Reid, I would just put to you that I think what you've done is given us recommendations that could de-fang or disarm the bill as it is now with respect to access to information, but if I take your comments—and certainly I look at the history of the last year—I take it that your main recommendation would be to incorporate the open government act into the Accountability Act.

Hon. John Reid: That's correct. That's what I anticipated was going to happen.

The Chair: There's a problem, Mr. Owen, and we're going to need unanimous consent again, because the bell has just gone.

Do we all agree that this answer can be given?

Mr. Reid, I'm only trying to follow the rules, and you have the floor.

Hon. John Reid: Thank you.

The answer is yes. I think you put your finger right on the point. What we want is that new organizations being brought into the Access to Information Act live by the same rules everybody else lives by. There should not be exemptions that are mandatory. There should not be exemptions where the Information Commissioner cannot examine the material to make sure that what is being released is proper. The Information Commissioner should have the ability to examine all the material that's required to ensure that what's going out should come out.

● (0945)

Hon. Stephen Owen: Thank you for that.

The Chair: We'll have Monsieur Petit and then Mr. Poilievre if there's time.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Reid, yesterday, we met with aboriginal witnesses who wanted to share with us their wishes regarding Bill C-2. They are asking to be completely excluded from the definitions contained in Bill C-2. Thus, even the Access to Information Act would short-circuit and remove federal authority with regard to verifying accountability with regard to monies granted to aboriginal groups. They are asking to be completely excluded.

According to the amendment to clause 146 of the bill, or proposed section 16.1, contained in your document, there is no obligation to make such a mention there, in other words that the aboriginal groups have placed themselves within the definition so as to ensure that they will not be listed under the exclusions.

Are you in agreement that all aboriginal tribes, be they in a territory or in a province, be excluded from Bill C-2?

[*English*]

Hon. John Reid: The existing law works in this way. Requests for documents that are under the control and in the hands of a government department are subject to the act. That includes an enormous amount of material, including a lot of material on aboriginals. If they are in the control of the government department, they are subject to the act.

Indian and Northern Affairs Canada is subject to the act, so all the documentation that it produces and generates is subject to the act. What is not subject to the act, however, are the documents that are generated by the first nations themselves, which are properly under their own control. They are subject to a mandatory exemption. So if a document comes up that is in the hands of a band council, it is not subject to the Access to Information Act. It is excluded, so we do not see it, and we cannot see it. However, if there are representations that the band council or an Indian group has made to the Government of Canada, and it is properly within the control of the Government of Canada in some way, then that does become subject to the act, just as all other information does.

From the point of view of the Access to Information Act, aboriginals already have the status of being outside the act.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: Once again, the members across the way talked about new exemptions that they believe are too categorical. I just want to go back to the simple fact here that prior to the Accountability Act's introduction, groups like officers of Parliament, crown corporations, which have been added, and groups like the National Arts Centre had a total, complete, one hundred percent, permanent, mandatory exclusion from ATI. That will be reversed under the new Accountability Act proposals. So they are not new exclusions. These are additions to the access to information components of this bill.

I want to ask, specifically, about the sources for CBC journalists. Do you believe that CBC journalists are comfortable with the notion of turning over their sources to you and then allowing you to decide whether they should be made public?

Hon. John Reid: Mr. Chairman, I don't think the CBC journalists would have any problems with the Information Commissioner examining it under the proposals I've made as to whether there's a harm test. After all, we do this with the most sensitive national security material. We deal with all of the CSIS and the RCMP material—all the sensitive national security material.

So I think it's clear from the proposal I've made that indeed the integrity and independence of the CBC news-gathering and programming activities should receive protection. I don't believe, however, that decisions by the CBC to refuse disclosure, as proposed in Bill C-2, should escape independent review or the rigours of an injury test. My position in this case was endorsed by Judge Gomery, and I think it's a very sensible approach.

I do not believe there should be any mandatory exemption from review by the Information Commissioner as set out in the opening part of the act. The Information Commissioner is given that duty to examine all the most sensitive information in the Government of Canada. I don't think this is a difficult duty for us.

● (0950)

Mr. J. Leadbeater: Mr. Chair, could I add a comment?

The Chair: I don't see why not.

Mr. J. Leadbeater: You know, we'd really like to urge the members of the committee, and especially the government members, to realize that new institutions that come under this act are scared, and they're worried. I can remember 23 years ago when the police and the security services wanted exemptions and exclusions. They wanted to be out of this because it was new. Three years later, Parliament conducted a review of this act and the police never showed up. The police agreed that they could meet injury tests. If the information is that sensitive, it's very easy to meet an injury test. If it's so sensitive that it needs an exclusion, surely to God it can meet an injury test.

The most sensitive information that the Government of Canada holds, which is the information of the military, national security, counter-subversion, and counter-terrorism, is all subject to section 15 of the act. This is a discretionary injury test exemption; it is not a mandatory class test exemption. We have had study after study after study, and it has never been recommended that section 15 be made into a mandatory class exemption.

This bill says that the Information Commissioner, for example, has a mandatory obligation to maintain the secrecy, forever, of his investigative records, and the same goes for all other officers of Parliament. No investigative body currently covered by the act has that right. I can tell you, if this passes, CSIS, the RCMP, the military, police, and the immigation investigators will all be in tomorrow, and they'll all be saying if the Information Commissioner needs that much secrecy, boy, we really need it too. So be careful.

Hon. John Reid: I should say, Mr. Speaker, in terms of the Information Commissioner, we operate as if we were under the act. We have had no problem dealing with the act as it is and dealing with our investigations.

The Chair: Okay, thank you.

Monsieur Sauvageau. No?

Then I have Mr. Rob Moore.

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

I have a couple of questions. We've had a number of people who have come to the committee and think they have the perfect solution for access and transparency and more accountability in government. Many of them have said they like everything we're doing. We've had many who have said they like everything we're doing, except that they'd like to be excluded from it.

We understand that you have some proposals; you put them forward. In my view, this Accountability Act is going to open up government and make government more accountable.

There are some things that are in your proposals, such as access to the sources of journalists at the CBC, and we've discussed this. But there is a concern that I have. Someone who has been cleared of all charges because the charges were proven to be malicious or without validity would be subject to access to information. Many people feel that goes too far, that someone who has been wrongfully accused and has been completely cleared should not possibly have their name put out in public. I'd like your comments on that.

● (0955)

Hon. John Reid: Mr. Chairman, when a request comes in under the Access to Information Act, all of the 13 exemptions are automatically applied to all of that information.

The first thing that is often automatically applied is the Privacy Act. The Privacy Act and the Access to Information Act are joined at the hip, and we have responsibilities under the Privacy Act and under our own act to deal with those kinds of questions. These acts go a long way to protect the private information of individuals.

Mr. Rob Moore: In your remarks that were submitted to us, on page three it says: Since the tabling of Bill C-2, Minister Baird has heard me out about my concerns. I am grateful to him and the government for accepting my criticisms of Bill C-2 in the non-partisan spirit in which it was given.

Can you explain to me why you felt it was necessary to say that it was given in a non-partisan spirt? As an officer of Parliament, I would think that would be what was expected. Why was it necessary to put "non-partisan spirit"?

Hon. John Reid: I said that because it was in a non-partisan spirit, and in some of the cases of answering in the House of Commons, I felt that some of it veered to the other side. I wanted to make it clear that I had done this more in sorrow than anything else, because I had been anticipating that the open government act would show up as a large part and an important part of Bill C-2.

Mr. Rob Moore: Many people would feel that the non-partisan spirit would go without saying.

Can you comment a little on your report and the fact that it was leaked to the media before it was tabled in Parliament?

Hon. John Reid: I beg your pardon?

Mr. Rob Moore: I'm asking about your report.

Hon. John Reid: Yes.

Mr. Rob Moore: There was a leak to the media.

Hon. John Reid: There was, I am told. The accusation was made. The information that I had, after doing an investigation, was that....

You should understand that we had been getting an enormous number of calls after the bill was tabled.

Mr. Rob Moore: But have you done a thorough examination?

The Chair: Mr. Moore, you have to let Mr. Reid answer your question.

Hon. John Reid: We were getting an enormous amount of pressure from members of Parliament who had phoned looking for private briefings, as well as people from the press. There were calls from a number of people.

I had sent out an advisory to the LISTSERV of the access to information community to which I belong, saying that I was going to be tabling the special report the next day and to alert them that this was going to happen. The reporters called and we were asked what we were going to say. They were told that if they took a look at the open government act and the Information Commissioner's last reports, they'd have a fairly good idea of what the Information Commissioner was going to say.

Mr. Rob Moore: Have you done a thorough investigation of your office?

Hon. John Reid: The leak that exists is my fault because I'm the one who put it on the LISTSERV.

The Chair: Excuse me, Commissioner.

Only one person can talk at the same time.

Mr. Rob Moore: It's my round of questioning; I can ask the questions.

The Chair: Mr. Moore, you asked the question to Commissioner Reid, and he was trying to answer it. You're going to have to let him finish. You opened the door, so let him finish, and then you can ask another question.

A voice: If he's running out the clock, you can interrupt.

The Chair: Well, if I don't interrupt, we'll have a big brouhaha here. Let Commissioner Reid continue.

Hon. John Reid: I've completed that.

The Chair: Okay.

Mr. Moore.

Mr. Rob Moore: I guess I'm not clear on this. Was there a thorough investigation within your office to determine where the leak came from? Have you discovered where the leak came from? Has there been any disciplinary action?

Hon. John Reid: There was no leak because no information was given out directly on what the contents of the report would be; therefore, no information was given as to what the contents would be, and there cannot be a leak. But I did say that I had put on the LISTSERV that I would be tabling a report, and I did so.

Mr. Rob Moore: On the issue that I raised earlier on non-partisan spirit, many of your comments in this report directly refer to our Prime Minister and refer to Conservative versus Liberal policy. In the appendix to your report, appendix B, I believe, there's the Conservative Party of Canada election platform. Why did you feel it was necessary to have the Conservative election platform in your report?

● (1000)

The Chair: Do we have unanimous consent for the answer here? We do, thank you.

Commissioner Reid, go ahead, please.

Hon. John Reid: Mr. Chairman, I put that in because I wished to put in all of the evidence showing that the questions raised in the open government act had been vetted by a large number of organizations. They had been vetted by the parliamentary committee, they had been vetted by the Conservative Party, and they had been vetted by Judge Gomery, and that was to be the policy of the government. I wanted to make sure that everybody understood that these proposals really were not for debate any more, but that there had been a consensus reached on them, and that we anticipated that would be the way in which the government would proceed. So to make sure that everybody had the facts in hand, I did use the material.

You should know that in previous reports, the honourable member there has criticized me for having referred to a former prime minister who had made comments about doing things in access to information, and I had reported that as well.

The Chair: Thank you, Commissioner.

Mr. Martin, go ahead, please.

Mr. Pat Martin: Thank you, Chair.

Mr. Reid, you're on record as saying the following: “in one way or another, all the checks and balances designed to limit abuses of government power are dependent upon there being access by outsiders to governments’ insider information”, and you go on to say, “a government, and a public service, which holds tight to a culture of secrecy is a government and public service ripe for abuse”. I got that from a speech you gave somewhere, Mr. Reid. I couldn't agree with you more in the way you've stated that. I honestly think people don't realize what a powerful tool and a powerful gift they have in our “right to know” policies in this country. If they knew they would fight for them more aggressively, I honestly believe.

I heard one person say, imagine if we had 30 million auditors instead of just one overworked Auditor General. The amount of waste and corruption.... I'm not implying that there's that much corruption, but imagine how much better government would be. As Oliver Wendell Holmes said, you can't legislate morality, but I think this bill and the recommendations you've made are making the argument that by allowing public scrutiny and by shining the light of day on the operations of government, we can encourage certain types of behaviour and discourage the stuff that we're trying to avoid. In the few minutes I have, I have to say it's a shameful lost opportunity that we're not dealing with meaningful access to information reform in the context of Bill C-2.

Actually, in the House of Commons I told the President of the Treasury Board that I would gladly trade him all this other stuff in Bill C-2 if he would give us the access to information reform that was promised to us in the election campaign, and I would make that offer today too, even though I think the lobbyist stuff is important and the appointments process is important—although due to a snit, the Prime Minister seems to have chucked that portion. Everything else pales in comparison to meaningful access to information reform—the public's right to know. There are very few government insiders that are really fans of the public's right to know, and I think this government and the last government, notwithstanding what Mr. Owen had to say, underestimated the push back from powerful Ottawa mandarins, from the PCO, and from I don't know who. The enemies of the right to know are legion, and they're well armed and they're well connected, because every time we get close, they undermine, and they thwart what we're going to do. Even direct promises from prime ministers are undermined by somebody who seemingly.... Those people who have a vested interest in operating in secrecy seem to win every single time.

I probably don't have any time left, but perhaps you'd care to comment, Mr. Reid. I should give some time to our witnesses to speak.

● (1005)

Hon. John Reid: I just want to comment that when I started on this odyssey for reform, I knew it would be difficult. I was one of the originals who participated in the drafting of the original legislation back in the late seventies and early eighties, and I knew how difficult it was then to get the legislation through. So when I set out to try to get useful reform to it, I recognized that it would not be an easy proposition. It has not been. But I'm hopeful that the committee will look at the amendments that we have suggested to reform the access to information sections of this act. I think if you do that, you will strengthen the act; you'll provide more openness to those groups coming in for the first time; you'll be able to find an analogous situation for every one of those, that's already under the act, so that there's really no problem in terms of amending the act in an intelligent, sensible way.

I'm prepared to take my chances in the other committee because that's been a decision made by the government. I think we should proceed on that route. But I would like to see those amendments that I have suggested incorporated into Bill C-2.

Mr. Pat Martin: If I have one second left, Mr. Chairman, may I have a very quick yes or no?

With reference to the public interest override clause recommended in the open government act, what other jurisdictions enjoy...where did you draw from, for that particular issue, in other jurisdictions?

Hon. John Reid: I'll ask Mr. Leadbeater to respond.

Mr. J. Leadbeater: Some of the exemptions in the current act have it, and all jurisdictions in Canada have public interest override provisions. The American Freedom of Information Act has public interest override provisions. It is fairly common in modern access-to-information legislation.

Mr. Pat Martin: Thank you.

The Chair: Thank you, Mr. Martin.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Mr. Chair.

Just for a moment I'm going to go around the circle. I've got a couple of things woven into this one question, but I'll start by going back to what is considered by your office to be a non-leak of the information contained in your special report.

Let me make sure I understand completely, Mr. Reid: you're saying it was not a leak, that no one in your office leaked the information.

Hon. John Reid: That's correct.

Mr. Tom Lukiwski: That's correct?

Hon. John Reid: If anybody is to blame, I am, because I'm the one who put the material out that I would be releasing the material on the LISTSERV.

Mr. Tom Lukiwski: So neither you nor Mr. Leadbeater nor anybody actually leaked the information and gave the information to the *Ottawa Sun* about what was going to be contained in this report. Is that your contention?

Hon. John Reid: Yes.

Mr. J. Leadbeater: Mr. Chairman, the commissioner's answer is correct. Journalists were informed that a special report would be released. Journalists, of course, asked us what was in it. We said that if they wanted to know what was in it, they should take a look at what we'd said. If they took a look at what we said in the open government act, they'd have a very good idea of what we were going to say.

I think stories were written as a result, but no copy or portion of the special report was released by anyone from our office prior to its tabling in Parliament.

Mr. Tom Lukiwski: And there were no direct quotes from whether or not—

Mr. J. Leadbeater: There were no direct quotes from the report.

Mr. Tom Lukiwski: The reason I'm starting with that...and I'm going to now weave back into the discussion we had just a few moments ago about journalists revealing sources. You suggested that with respect to the CBC, as an example, it would be entirely appropriate for your office to be able to examine the source of a story to determine whether there would be any injury based on releasing the source, and that you feel the CBC would be willing to comply with that.

Hon. John Reid: The RCMP complies with it. The national security establishment complies with it.

Mr. Tom Lukiwski: Would it then be your contention...? Would this only apply to governments, crown corporations, media outlets, or would it apply to private institutions as well?

Hon. John Reid: The Access to Information Act only applies to government. It would not apply to the private sector at all.

Mr. Tom Lukiwski: So the *Ottawa Sun* would not be obligated to release any information on whether there was a leak.

● (1010)

Hon. John Reid: That's correct. But if it had been the CBC, then it would be different, because the CBC is a crown corporation.

Mr. Tom Lukiwski: Then they would. Okay.

Let me ask you about another of the suggestions you have with respect to whistle-blowers. You are suggesting that all information with respect to whistle-blowers be subject to ATI.

I'd like to get your comments on why you disagree with one of the exemptions we have. If an investigation into a frivolous or spurious charge laid under the whistle-blowers portion of the act concluded there was absolutely no substance, no basis of truth, to the allegation, we are suggesting that the allegations and the name of the innocent individual involved in this.... In other words, if an allegation had been made against an individual that he or she had done something wrong, and an investigation concluded that there was absolutely no wrongdoing, we are contending—since it was a frivolous allegation to begin with, or at least a baseless allegation—that the the allegation and the name of the whistle-blower should not be made public.

You are contending that all those allegations—no matter how frivolous, no matter how baseless—should be released. Is that correct? Am I accurately reflecting your position?

Hon. John Reid: We've circulated to you a paper comparing the proposals over time in dealing with clause 55 of Bill C-11, and clause 222 on section 55. You have that sheet in front of you. From that point of view, you'll notice that in clause 55 in Bill C-11—the original one—it authorized secrecy for five years. It was discretionary, not mandatory. It used the word "may". It was focused on protecting the identities of whistle-blowers and those cooperating in investigations. That was the original proposal.

On the other hand, clause 222 of Bill C-2 authorizes secrecy forever. In other words, it never comes out and it's mandatory, not discretionary. It does not focus on identities. It authorizes secrecy for information created for the purpose of making a disclosure and information created in the course of an investigation into a disclosure.

I'm in agreement with the public service integrity officer, and he has suggested that secrecy only cover the period during which the investigation is under way. He has asked for discretion to disclose information in the public interest, such as the identities of wrongdoers.

To take your example one step further, Mr. Chairman, if I have been falsely accused, why should I not have the evidence to protect my reputation? Under this proposal it is mandatory that no information come out forever, so why should I, as a person who has been accused and cleared, not have access to the information? That affects me.

Mr. Tom Lukiwski: Would you then let me follow up on that? I'm not disagreeing with what you're saying.

The Chair: I don't know. They're going to let you continue.

[*Translation*]

Mr. Benoît Sauvageau: I have no objection as to your asking for unanimous consent.

[*English*]

The Chair: Right, it's no problem.

Mr. Tom Lukiwski: Just to follow up for clarification, I'm not disputing what you're saying. Would it be more reasonable, however, to suggest that the aggrieved party have the option of whether or not they wanted that information released? We all know that sometimes if a charge is laid, even though it's proven baseless, people say that if a person was charged he has to be guilty. I wouldn't want that information to be out there if I were the aggrieved party, because some people would still think there had to be something there. Why would that person make that accusation unless there were something there? But if it were my option and, as you suggest, it might help defend my reputation by having this information in the public, fine, let it be my option.

We took a more cautious approach by saying that if the information was out there, some people might believe there was substance, an element of truth in it, and that would harm the person's reputation. We just didn't want to see that chance taken.

Hon. John Reid: The advice I would give the committee is to take the suggestions made by the integrity commissioner.

Mr. J. Leadbeater: Can I just add to this?

You have to understand what happens now. Allegations and investigations of wrongdoing have been going on in government since time immemorial, and the Access to Information Act has been covering these reports. Here's how they're handled.

If someone asks for a record about an investigation into a wrongdoing against you, government institutions neither confirm nor deny whether they have any such record, because to do so would reveal personal information about you. They release nothing. That's the current way. We're not talking about having a situation where it all goes out. You have privacy exemptions in the act, but there are provisions that allow it to go out with consent if it's already in the public domain, or if there's an overriding public interest. What the provision that has been proposed in Bill C-2 does is take away all of those out-clauses, so there is no public interest override, no consent —you can't even consent to it being disclosed—and no disclosure, even if it's already in the public domain.

We're just saying that the current protections are strong, but they have out-clauses essential in a democracy. What's being proposed takes away those essential out-clauses in a democracy.

● (1015)

The Chair: Okay.

We have about 15 minutes. We have Mr. Tonks, Monsieur Petit, and Monsieur Sauvageau.

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you, Mr. Chairman, and thanks to you, Mr. Reid, and to your associates.

I'm taking this not from the legal or the conspiracy perspective. I'm trying to understand from a layperson's perspective what the unfettering of your ability means, as Information Commissioner within the context of a larger, hugely complex organization.

I sat on the public accounts committee, and Mr. Martin also sat on that committee, at the time the issue with respect to the sponsorship matter was investigated through an internal review or an internal audit. At that time there was no hierarchical or accountability loop that would trigger with respect to the information that came out of that internal audit. It just sat there, with no action taken—nothing. At that time—this is around 1995—the Office of the Comptroller General had been dismantled in terms of internal audit reports that would have some sort of repository and response regime.

With that experience, the blanket of secrecy Bill C-2 throws over draft audit reports and records about wrongdoing in government is particularly regressive. Given the experience in 1995, I can't underscore enough how emphatically I agree with that statement. Now that the Office of the Comptroller General has been re-established, and as I understand it, that internal audits are ensconced with the Comptroller General in the provisions of the proposed open government act, if a request were made for access to information that isn't in an internal audit, do you have the authorities, either under this bill or under the access to information draft, to bring forward whatever relevant information you feel would be in the public interest?

Hon. John Reid: Yes. We have the opportunity to investigate to make sure the material that is supposed to come out does come out. We basically get to see the material and to make sure that if it comes out it meets the requirements of the act, and if it doesn't, it meets the requirements of the act.

What I'm concerned about here is that sometimes when you see an audit—an audit is an investigation—I don't think you should see the working papers of the audit until the audit has been completed. It's just like what we do in almost every other thing: when documents are asked for, we use those documents to trace back the flow of a policy and the flow of a decision.

In the same way, when we're looking at audits, we have to be able to go back to look at the original documents and the investigation to be able to assure that things have gone the way they have. The act is a very complex one, as I have said before, because it means that every time there is a request for information coming in, the 13 exemptions come into play, and each one of those 13 exemptions in the act applies to every document that goes out under the Access to Information Act and/or through the government's releasing it on its own.

● (1020)

Mr. Alan Tonks: Are you satisfied that there isn't any truncating at the Comptroller General's level that...? I would think that if information were required of the Comptroller General, the Comptroller General would apply the same logic and release that information.

Hon. John Reid: I can't speak for the Comptroller General and the way in which they operate, but I can say that the internal audits are really going to be the area the Comptroller General pays attention to. We know from our discussions somewhat how it's going to work, but I can't answer the rest of your question.

Mr. Alan Tonks: But pursuant to what you said, you have the penultimate authority.

Hon. John Reid: I have no authority to release documents at all. I am an ombudsman, and therefore I can only recommend to departments that they release the information. I have no power to do that on my own. We have 1,400 cases a year. We take maybe two cases a year to court. Mind you, I'm sued by the government about ten or twelve times a year, but I only take about two cases a year to court. We are probably the leading proponent of alternative dispute resolution in the Government of Canada. We're very successful and very proud of that.

It goes back to the original question that was asked about the radical proposal. The radical proposal, in my mind, was to give me an ombudsman order-making power. I am very satisfied with the powers that I have under the Access to Information Act to do what I have to do, and I was grateful that the government dropped that proposal.

The Chair: Thank you.

Monsieur Petit, and then Mr. Poilievre.

Okay, you set the rules.

Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Thank you, Mr. Chairman.

Commissioner, I much appreciated the set of recommendations supplied. However, the Standing Committee on Access to Information, Privacy and Ethics is also studying the Access to Information Act.

During the election campaign, the Conservatives said that a review of the Access to Information Act and of the federal Accountability Act was of the utmost importance to them. It is thus that yesterday we saw a schedule of 23 hours of sittings per week imposed upon our committee.

I would like to know if you have been invited to appear before the Standing Committee on Access to Information, Privacy and Ethics, which has been tasked with reforming the Access to Information Act. Has the committee begun its work and how often does it sit?

[*English*]

Hon. John Reid: Yes, Mr. Chairman, I have been invited to attend on May 29. I am looking forward to meeting the committee for the first time.

The Chair: Unfortunately, if this committee is sitting then, he won't be coming.

[*Translation*]

Mr. Benoît Sauvageau: You therefore are to appear on May 29?

[*English*]

The Chair: A point of clarification is that he is scheduled to come on May 29. But as you know, this committee would take precedence over the standing committee, so he would not be coming on May 29.

On a point of order, Mr. Martin.

Mr. Pat Martin: For the record, if this committee is not dealing with access to information issues, does that also mean that he wouldn't be able to appear before the privacy and ethics committee?

● (1025)

The Chair: It's a good point to be pursued. My understanding is yes, but that should be clarified. I'm saying that should be clarified, but my belief is that the two committees can't sit at the same time.

Mr. Pat Martin: Regardless of subject matter.

The Chair: Okay. Please proceed.

[*Translation*]

Mr. Benoît Sauvageau: You are most probably aware of the work of the Standing Committee on Access to Information, Privacy and Ethics, since you are the Information Commissioner. Have you heard any talk of the committee's intention of sitting at irregular hours or of increasing its pace in order to speed up the review and passage of new Access to Information legislation?

[*English*]

Hon. John Reid: I am not aware of any of those details, Mr. Chairman.

[*Translation*]

Mr. Benoît Sauvageau: Therefore, the haste in having one committee study a given bill has not necessarily been reproduced in the case of another committee in charge of studying another bill the importance of which appeared to be just as great during the election campaign.

[*English*]

Hon. John Reid: Mr. Chairman, as an old member of Parliament, I understand that all committees are masters of their own fate and set their own work patterns as they see fit.

[*Translation*]

Mr. Benoît Sauvageau: Between you and me, Mr. Reid, the Standing Committee on National Defence will be dealing with the reasons why we should be sending off our men and our women on these missions and investing 4 billion dollars. The Conservatives view this study as so important that the committee will sit four hours a week whereas ours will be sitting 23 hours a week. Furthermore, the work of the Standing Committee on Access to Information will be delayed while we carry out our study of Bill C-2. That just goes to show where their priorities are.

I have no further questions. Thank you.

[*English*]

Mr. J. Leadbeater: I think it's important for the members of this committee to keep in mind clause 229 of Bill C-2, which allows the government, by order in council, to fix the date of coming into force of these provisions that bring new entities.

I have heard some talk, and maybe government members can clarify for you, that there really is no intention of bringing any of these new entities under this Access to Information Act until a complete review of the open government act, and so forth, is completed by the other committee, and we have no idea when that is. At least that has been part of the briefings that other public servants have received that I've heard of.

So the issue of the timing I think is important. That is, this adding of new institutions, however modestly they've been added, with these exemptions, when are they really going to be added? It's cabinet and not royal assent that will decide when those provisions come into force.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, may I ask another question?

[*English*]

The Chair: Sure. You have 15 seconds.

[*Translation*]

Mr. Benoît Sauvageau: Once we have finished our clause by clause study of the bill, we will unfortunately no longer have the time to invite you back before the committee.

Once we have finished hearing witnesses, would you please send us your comments in writing, in the form of a brief, in order to share with us your concerns and suggestions?

[*English*]

Hon. John Reid: Thank you very much.

The Chair: Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: Mr. Reid, I would like to ask you a very precise question.aFreedom of the press is what we call the fourth power that we can exercise in the name of democracy. Earlier, you were asked if you were in agreement with the existence of a free press and if you believe that journalists' sources should be protected.

As Information Commissioner, do you believe they should be? We are all well aware that this is sensitive information. Do you see what I am getting it with my question?

Once you have given your answer, I will have another question for you.

[*English*]

Hon. John Reid: Mr. Chairman, in the open government act I provided a clause that protected CBC journalists. That seemed to be demanded by the committee and by others, so that clause was there. It provided that protection in a discretionary way, with an injury test, to make sure that everything was done so that information could come out that should come out, subject to the injury test.

I believe that's the way to go to protect journalistic integrity. It is the way we deal with the RCMP, CSIS, and national security. I think that's an appropriate test for CBC journalists and for their programming.

● (1030)

[*Translation*]

Mr. Daniel Petit: Mr. Reid, when Pierre Elliott Trudeau's government enacted the War Measures Act, the Access to Information Act did not exist. You were a member of that government and, from 1978 to 1979, you were Minister of State responsible for federal-provincial relations. Today, you are saying that the law is not transparent enough. However, we have for 23 years now been trying to obtain information with regard to the enforcement in Quebec of the War Measures Act and we have yet to get an answer.

Do you believe that Bill C-2 could resolve this situation?

[*English*]

Hon. John Reid: No, Bill C-2 would not provide an answer to that question, but I'll ask Mr. Leadbeater to comment on that.

Mr. J. Leadbeater: It's interesting that the cabinet confidence exclusion currently in the legislation is only operable for 20 years. The 20 years is long past for the War Measures Act issue, so a lot of those records are currently in the process of review, and insofar as they are cabinet confidences, they will be disclosed. We have seen quite a few records relating to the invocation of the War Measures Act—the reasons and the discussions, who was present in cabinet, and so forth—that are now public.

But you raise an interesting point that there is no information, I think, that is worthy of secrecy forever.

The Chair: This meeting was scheduled to end a few minutes ago.

Thank you very much, gentlemen, for appearing. I know that the committee be looking at your proposed amendments very carefully.

Thank you again for coming.

This meeting is adjourned until Monday, May 29, at 3:30, in this room.

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