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Chair

Mr. David Tilson

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● (1530)

[*English*]

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

This is the Legislative Committee on Bill C-2, meeting number 14. Orders of the day, pursuant to the order of reference of Thursday, April 27, 2006, are Bill C-2, an act providing for conflict-of-interest rules, restrictions on election financing, and measures respecting administrative transparency, oversight, and accountability.

Our first witnesses today are the Canadian Newspaper Association and the B.C. Freedom of Information and Privacy Association.

I hope my voice will stay long enough to introduce you; we'll do our best.

Anne Kothawala is president and chief executive officer; David Gollob is vice-president of public affairs. It's good to see you both again. Of the second group, the president is Richard Rosenberg; Stanley Tromp is research director. Good afternoon to all of you.

As you know, our witnesses normally say a few words at the outset, followed by questions by members of the committee. I don't know who is going to go first.

Ms. Kothawala...ladies first.

[*Translation*]

Mrs. Anne Kothawala (President and Chief Executive Officer, Canadian Newspaper Association): Thank you, Mr. Chairman, for having given us this opportunity to share our ideas with the committee. I am here today with David Gollob, our Vice-President, Public Affairs. I will limit my remarks to those sections of the Accountability Act that concern the public's right to know.

[*English*]

The CNA speaks for Canada's daily newspapers on matters affecting the industry. We share the interest of this committee in greater transparency and accountability in government. The public looks to newspapers for insight and context, not just the facts but the story behind the facts. When access to that story is blocked, we cannot do our job. If we cannot to our job, our system of democracy is in trouble. It really is that simple.

Freedom of information has been recognized by the Supreme Court of Canada as a quasi-constitutional right. From the tainted blood scandal where records were shredded, to the Somalia affair where records were hidden, to sponsorship where records were deliberately not created, Canadians have learned that we need better access law, not more exceptions to it.

[*Translation*]

Evidence provided at the Gomery Commission showed just how easily the right to know can be thwarted. Although many revelations concerning the sponsorship scandal were made following access to information requests filed by journalists working for the major dailies, witnesses also criticized the fact that there was political pressure on them to hide the truth.

[*English*]

We should all be concerned about that. Those efforts to hide the truth failed. Next time we may not be so lucky.

During the election campaign, we applauded the Conservative Party's promise to prevent next-times by introducing a federal accountability act. A core component was the commitment to enact Commissioner Reid's open government act, a reform package that would bring Canada's Access to Information Act into the 21st century, on a par with other modern democracies. But when Bill C-2 was introduced, the open government act was missing in action.

We believe the new government had been persuaded to defer the one promise that had power to expose and thus pre-emptively deter wrongdoing. It was also the one promise that inspired loathing among a powerful group within the federal bureaucracy. We were disappointed with that decision, as we were with the broad sweep of changes to access to information under Bill C-2. Thus my theme today: first, do no harm.

As in medicine, public policy must avoid remedies that unintentionally make the patient sicker. Prescriptions that pretend to cure, but don't, are just as bad. The patient gets worse and the false belief that a cure has been found puts an end to the quest. The patient today is the public interest, and the patient is feeling very poorly indeed.

Broadening access to information to include more crown corporations, officers of Parliament, and federal government agencies is a remedy whose promise is defeated by the mandatory exemptions that apply. We are talking about mandatory exemptions with no time period, no injury test, in excess of protections already in the act that government departments and even our security services have learned to live with.

For example, Health Canada receives proprietary information from pharmaceutical companies, which is protected under section 20 of the existing act. There is no reason why the Export Development Corporation or the AECL could not live with this type of protection. Health Canada and the companies it deals with find these conditions livable, despite the fact that the exemption is subject to a public interest override and reviewed by the Information Commissioner.

Another example: The Auditor General's office will come under the act, but the mandatory exemption renders its exclusion meaningless. A draft internal audit report, like the one that sounded the first alarm bells of the sponsorship scandal, would be sealed forever without a public interest override. Information about the Auditor General's office would be limited to travel and expense claims, which are already posted on the Internet.

The CBC requires a journalistic carve-out and we support that. But don't make it an exclusion immune to independent review. Commissioner Reid's open government act has language that will protect CBC journalism without endangering the principles of freedom of information.

Fixing this should be easy; you have the tools. If the open government act is not on a legislative track for now, let's at least ensure that Bill C-2 is consonant with it and with the spirit of the original Access to Information Act.

You have before you a series of eight amendments proposed by Commissioner Reid that will enable Bill C-2 to proceed without violating the central tenet of Canada's Access to Information Act: that government information should be available to the public, that necessary exemptions should be limited and specific, and that decisions on disclosure should be reviewed independently of government. We support these amendments and ask you to adopt them.

You could go even further. We urge you to enhance Bill C-2 with as much of the open government act as you can with regard to establishing a duty to create and maintain records; adopting the definition of the purpose of the Access to Information Act as defined in the open government act; bringing cabinet confidences under the act; providing a mandatory public interest override.

Finally, we ask that provisions of Bill C-2 with respect to Access to Information be submitted to parliamentary review after a period of three years.

● (1535)

I thank you very much.

The Chair: Thank you.

We now have Mr. Rosenberg and Mr. Tromp.

Mr. Richard Rosenberg (President, B.C. Freedom of Information and Privacy Association (FIPA)): Thank you. I'll speak.

The Chair: Okay, you're on the air.

Mr. Richard Rosenberg: Thank you.

My name is Richard Rosenberg and I'm the president of FIPA, the B.C. Freedom of Information and Privacy Association. It's a non-profit society that was established in 1991 for the purpose of advancing freedom of information, open and accountable government, and privacy rights in Canada. We serve a wide variety of individuals and organizations through programs of public education, legal aid, research, public interest advocacy, and law reform.

FIPA's an enthusiastic supporter of the reforms to the Access to Information Act proposed by Justice John Gomery, Information Commissioner John Reid, and the federal Conservative Party during the recent federal election. Genuine opportunities for reform of this vital act are rare, and we're concerned, because we perceive, along with many other interested parties, that this opportunity may be slipping away. Significant reforms of the ATI Act have been deferred, and the minor measures included in the Accountability Act afford us little comfort.

Many Access to Information Act reforms were urged by Justice John Gomery in his final report on the advertising sponsorship problems as one key way of restoring public faith in the federal government. We continue to hope that the new administration and all the opposition parties endorse that goal. Our group, along with a large segment of the Canadian public, is anxiously awaiting the fulfillment of promises of a new era of transparency and access to information.

FIPA urges the federal government to fulfill all seven promises of ATI reform made in the Conservative election platform of 2005, and we urge that the Accountability Act be amended to include these reforms.

In its platform to strengthen access to information legislation, the Conservative Party pledged to implement the Information Commissioner's recommendations for reform of the ATI Act, and FIPA is disappointed that the government has chosen to defer most of these reforms and have them dealt with by the Standing Committee on Access to Information, Privacy and Ethics. The tone of the government's discussion paper on ATI reform is regressive, and there's no firm timeline set for achieving these reforms. We disagree, in fact, with comments made by the Information Commissioner that more study of ATI reform may be needed.

The ATI Act has been studied to death, in our opinion, by many committees over two decades, without producing reform, and we're concerned that reference to the standing committee....

Excuse me.

● (1540)

The Chair: Mr. Rosenberg, as you know, we have two languages going here. I wonder if I could trouble you to just go a little slower. And then towards the end I'll tell you to pick up so you can finish.

Mr. Richard Rosenberg: Thank you. That sounds right.

We disagree with comments by the Information Commissioner that more study of ATI reform may be needed. The ATI Act has been studied to death by many committees over two decades without producing reform, and we're concerned that reference to the standing committee could once again prove to be a graveyard for positive action.

Second, on order-making power: give the Information Commissioner the power to order the release of information. Order-making power is essential to ensure the proper functioning of the ATI Act. The information commissioners in four provinces have this power, and those systems work far better than the current federal regime. In a report to the last federal government, Justice La Forest strongly recommended this reform be considered, and the Access to Information Review Task Force of 2002 concluded that order-making power is "...the model most conducive to achieving consistent compliance and a robust culture of access."

Third, expand the coverage of the act to all crown corporations, officers of Parliament, foundations, and organizations that spend taxpayers' money or perform public functions.

The need for this measure is obvious and has been restated for more than two decades. Some quasi-governmental bodies object to coverage with the argument that their financial and competitive interests may be put at risk, but such arguments are spurious, because the ATI Act already contains strong sections to prevent disclosures that could cause such harms.

On September 29, 1997, Conservative—then Reform—MP Myron Thompson introduced a private member's bill, Bill C-216, to include all crowns under the ATI, presumably with the approval of the then-Reform leader. It was defeated by the Liberal majority. If this action was right for the Reform Party then, and could have been made law, why not now?

Fourth, subject the exclusion of cabinet confidences to a review by the Information Commissioner. As Commissioner Reid noted of the government's proposal on this topic in the Treasury Board discussion paper, "This proposal is the status quo. That is what happens now. The government's proposal will not, in any sense, ensure that cabinet secrecy is not abused." We agree.

Fifth, oblige public officials to create the records necessary to document their actions and decisions. It is difficult to foresee how one cannot recognize the clear benefit to the public interest and government efficiency in this long-overdue proposal. True public access to information cannot exist without an accurate record of government action and decision-making.

Just in a slight aside, I take this to be crucial. What does open government mean if you can't access the variety of information that government produces, and their discussions? In fact, what we've noticed more recently is that there's less to get. Stuff is not being written down. Minutes are not available from meetings. This is a real concern after two decades of attempting to get good open government through access to information.

Sixth, provide a general public-interest override for all exemptions, so that the public interest is put before the secrecy of government. The cornerstone and ethical yardstick of effective access legislation is a workable public-interest-paramount override, such as those found in the freedom of information and privacy acts of Ontario, British Columbia, Alberta, and others. The purpose of such a provision is to ensure that regardless of other interests that may tend to influence the decision of a public body, the final decision regarding disclosure of records is taken in the public interest.

Seventh, ensure that all exemptions from the disclosure of government information are justified, not only on the basis of the harm or injury that would result from disclosure—not blanket exemption rules.

Eighth, ensure that the disclosure requirements of the Access to Information Act cannot be circumvented by secrecy provisions in other federal acts. Justice Gomery proposed deleting section 24 of the ATI Act—which allows such circumvention—and we agree.

Finally, on whistle-blower protection: Justice Gomery proposed six ways of improving Bill C-11, the whistle-blower protection act, and FIPA endorses these amendments.

Finally, we wish the committee to know FIPA disagrees strongly with the addition of a blanket of secrecy over draft internal reports and working papers for 15 years, the proposal to keep secret predominantly all records related to investigations of wrongdoing in government, and the government's opposition to extending the reach of the ATI Act into the Prime Minister's Office and other ministers' offices.

We thank you for your attention. I and my colleague Stanley Tromp, research director of FIPA, would be pleased to answer all your questions.

● (1545)

The Chair: Thank you, sir.

Fast and slow, they were both good presentations. Thank you very much.

Mr. Owen has a question.

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

Welcome all, and thank you for cooperating with us, with some very useful advice from your various expertises.

As a partisan British Columbian, I would like to, if I may, just throw a rose to FIPA, which has done for almost 15 years now extraordinary work in British Columbia to ensure that we have in that province one of the finest information and privacy regimes in the country.

Gentlemen, perhaps first to FIPA, we do have a combined office in British Columbia, and we don't federally, although administration has been shared at some points in time. We've heard from both John Reid and Commissioner Stoddart over the last few days, and we're facing a regime and a new set of independent offices. They can be seen, from one perspective, as a proliferation that, while they're set up to assist members of Parliament to better keep a check on the executive, become so numerous that it becomes very difficult for them sometimes not to be drawing power away from legislators, rather than as an adjunct to it. So some of the concern is that there is just too much confusion in Parliament, in the public, in the media, and certainly in the public administration, as to who they're dealing with and who they're accountable to.

I'm wondering whether you have formed an opinion, given your experience in British Columbia, on whether it would be wise to start consolidating some of these offices, in particular with respect to information and privacy offices.

Mr. Richard Rosenberg: This is my opinion, of course. I think they should be combined. The issues overlap, and they are issues they have to consult with each other about. There are obviously occasions on which there's a conflict between freedom of information and privacy rights, and it seems to me that a single office, under jurisdiction providing for a single office, allows those decisions to be made more easily and for the benefit of the general public.

Hon. Stephen Owen: Thank you.

Maybe I'd just ask another question, then, and that—

The Chair: I wonder if you two want to have anything to say.

Mrs. Anne Kothawala: Sure. We actually, respectfully, disagree, and I think that the former government did actually ask Justice La Forest to look into this issue. I think that precisely because the issues of privacy and access to information need to be so delicately balanced that having them under the same office can create more problems. We've seen that in other jurisdictions, where, for example, due to privacy provisions, police forces across the country are now not routinely giving the media access to certain pieces of information that they used to routinely have access to, and the reason they're using is that they're basically misapplying the Privacy Act. So it does create problems, we think, to house them under the same office.

● (1550)

Hon. Stephen Owen: Okay. Thank you.

Perhaps just one further—

Mr. Richard Rosenberg: That's not necessarily the case. It may be the case now, but it shouldn't be the case. The Privacy Commissioner should be much more active in saying "You can't use that for this reason". But if they're not doing it, they're not doing it—

The Chair: We're up here.

Mr. Richard Rosenberg: I'm sorry.

The Chair: Mr. Owen.

Hon. Stephen Owen: One further point is the recommendation, as you've mentioned, that Justice La Forest made, but also Commissioner Reid has made, that there be powers to order disclosure in the Information Commissioner's office. One of the underlying principles of ombudsmanship has always been that this is a moral suasion with the powers to investigate, to be independent from those you're investigating, and with the power of speaking directly to the public through the legislative branch with your reports.

Do you see any difficulty? Is this something that's clear-cut to you, that this power is necessary because of past abuse or just ineffective application, or is this something that has some strong things in favour of it—obviously some eloquent people, important people—but are there dangers, as well, that might be foreseen?

The Chair: Mr. Gollob.

Mr. David Gollob (Vice-President, Public Affairs, Canadian Newspaper Association): Perhaps I could attempt an answer.

I think it's an interesting question, and Commissioner Reid, if I understood his position correctly, in fact does not believe that the power to compel is a requirement. If I have understood this, he feels satisfied that he's able to appeal to the Federal Court in order to move the matter forward, where required.

With all respect, we believe that in fact there are much more fundamental reforms that are at issue here that are required, and if we could see some of the really good things that were in the open government act adopted, in the context of Bill C-2, now that this matter is before you, we would be so encouraged by that and we would look at that as being very, very progressive. Without having to go beyond that, I think it will be taken up by the access to information, ethics, and privacy committee—

Hon. Stephen Owen: And the injury test, the public interest override, the requirement to keep records are right at the front of your concerns.

The Chair: Mr. Rosenberg, did you have a comment?

Mr. Richard Rosenberg: A quick one.

I think that order-making power is quite appropriate. I think one of the problems with PIPEDA and the administration of it by the Privacy Commissioner's office is that we don't know who the decisions are being made about. One of the powers of the office is the persuasion that comes about by the public knowing that certain companies are behaving inappropriately, or certain operations are not being done right. I think it's important that those be made public, and that would be done. And when you're considering the reforms in PIPEDA this year, I hope that would be something you would consider.

Did you want to say something, Stanley?

Mr. Stanley Tromp (Research Director, B.C. Freedom of Information and Privacy Association (FIPA)): Yes, briefly, Mr. Owen, about order-making power.

We are aware that Mr. Reid advises against order-making power, but we respectfully disagree. The model works well in B.C. and in the four provinces where it helps to avoid litigation. For example, the Prime Minister's Office has mounted more than twenty lawsuits against the Information Commissioner on various issues. We believe that litigation could have dealt with that much more quickly and we had hoped that the incoming government could have cancelled those lawsuits on the issue of whether the Prime Minister's and cabinet ministers' records are covered under the act. So that would help it be dealt with much more quickly.

The Chair: Thank you, Mr. Tromp.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Good afternoon and welcome to the committee.

My first questions are for the Canadian Newspaper Association, although I also have some questions for Mr. Rosenberg.

I would like you to answer my question by providing me with a concrete example. Bill C-2 has not yet been adopted. How does this affect your ability to do your work? Is Bill C-2 a step in the right direction in terms of the Access to Information Act?

You suggested eight amendments, but I did not fully understand which were the two or three that you consider the most important. I did not have enough time to note them down. In your opinion, what would be the repercussions of adopting Bill C-2 as it stands, and how would these repercussions vary were your suggested amendments adopted?

Was my question clear?

● (1555)

Mrs. Anne Kothawala: Yes, it was.

[*English*]

I'll answer in English, if that's okay. My English is a little bit better than my French.

I think it can really be blocked into sort of three major themes, and I think the overriding theme of every amendment we are suggesting has at the heart of it that public information belongs to the public and that the burden of proof must be carried by those who would deem to keep information secret. That should really be the overriding theme as we look through this. Cabinet confidences fall into that theme; public interest override falls into that theme. Then there are things that are more administrative in nature but are still critical to ensuring that the Access to Information Act works smoothly.

I think at the core, again, is that the right to know is so critical to a democracy that when we have a system that is clearly outdated and has not seen any substantive reform in over twenty years, there are clearly some problems. The duty to keep records is one that is a huge problem, particularly in this information age in which record-keeping is not what it used to be. BlackBerry devices and what not are taking over, and if we don't have any records of those decisions and of that information, there's going to be a real gap in terms of understanding how policy gets made in this country.

The Chair: Mr. Rosenberg, Mr.Tromp.

Mr. Richard Rosenberg: I'm sorry, I missed the question.

The Chair: Okay.

Back to you, Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Firstly, thank you for your suggested amendments. Your work is very helpful and we will bear it in mind when we are amending the bill.

I have another question for the Canadian Newspaper Association, but do not worry, I will get to the others next.

I am sure that you have studied Bill C-2 in its entirety. Do you think that if it were adopted as it stands, as there is pressure for us to do, a repetition of the sponsorship scandal could be avoided? Do you think that the investigative capacities of journalists, which played such an important role in unmasking the sponsorship scandal, would be sufficiently facilitated so as to prevent a recurrence of this type of scandal? Is Bill C-2 strong enough to prevent such scandals happening again?

Mr. David Gollob: One of the positive features of Bill C-2 is that it now covers crown corporations and officers of Parliament, who were previously not subject to the act. That is a very positive measure, it is a good decision.

However, the mandatory exception...

[*English*]

The Chair: Excuse me.

Could I put a pause on this for a minute?

Mr. David Gollob: I could continue in English.

The Chair: I don't know what is appropriate any more.

Mr. David Gollob: Our position is that we believe that this was done with the best possible intentions to include the crown corporations, to include the officers of Parliament, but they must be included in such a way that there is really an advantage to their inclusion and so that we don't end up with a sum-zero game. And that is our concern.

This is why we propose that the amendments tabled by Commissioner Reid be adopted by the committee, because these would in fact neutralize the ill effects of the conditions that were applied to the inclusion of the officers of Parliament and crown corporations.

[*Translation*]

Mr. Benoît Sauvageau: Thank you. I will address my last comment to our witnesses from British Columbia.

It is just a comment, but please feel free to respond, should you wish to do so. I liked the way in which you incorporated into your presentation the content of page 13 of a document called *Stand Up for Canada*, the Conservative Party of Canada's election platform. Given that the Conservatives wrote it, I would hope that they have read it! It speaks about strengthening the Access to Information Act.

This committee is being made to sit 29 hours a week on the pretext that there has been talk of a Federal Accountability Act for the past four years. You told us that there has been talk of reforming the Access to Information Act for the past 20 years. Surely this means that we should be moving ahead four times as quickly on reforming the Access to Information Act as we are on the Accountability Act. However, that does not appear to be the case.

You went through the Conservative Party's election campaign platform point by point. It is a very comprehensive document. If our committee had the time, we could surely benefit from going through the Conservative Party election platform point by point in order to improve the Access to Information Act. I would like to thank you for the clever approach that you took in making your presentation. We will endeavour to draw on it, in spite of the limited time available to us.

● (1600)

[*English*]

The Chair: Thank you.

Mr. Martin.

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

Mr. Benoît Sauvageau: Mr. Tromp didn't get a chance to respond.

The Chair: Monsieur Sauvageau, you talked for your time. You've got to leave them time to speak, and you haven't given them any time. So you're out of luck.

Mr. Martin.

Mr. Pat Martin: I guess I'm....

The Chair: You know what? I'm going to break the rules, because we keep cutting you off, Mr. Rosenberg, so you can—

Mr. Richard Rosenberg: I'm having an audio problem. Perhaps Mr. Tromp would like to say something.

Mr. Stanley Tromp: I'd like to very briefly note that I have a document from 1987 called *Open and Shut: Enhancing the Right to Know and the Right to Privacy*, which is almost two decades old, which recommends many of these same points that we and the others have recommended for so long. And if a backbencher, Reform-Tory MP, Myron Thompson, in 1997 proposed the crowns, they could be done quicker perhaps.

The Chair: Is everybody happy?

Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

Thank you both, FIPA and the Canadian Newspaper Association.

I've been waiting for this type of group of witnesses, because I firmly believe, and I think it's the same tone in your presentations, that the access to information section of the FAA is probably the most meaningful and the most powerful in terms of changing the culture and the way we do things here in Ottawa. So, like you, I was crestfallen when the bill actually came forward and those key elements, what we believe to be the heart and soul of the Federal Accountability Act, had been ripped out of it.

So I thank you for your recommendations.

It is helpful, actually, Mr. Tromp, that you raise that book, because we have been studying this very issue for 20 years. That was the first review of the Access to Information Act. The first mandatory review generated that report, which made the recommendations that John Reid has just restated again here 20 years later. So we know what needs to be done in terms of reform to the Access to Information Act. We don't need to be hearing witnesses into next spring, as some parties would have us believe. In fact, we would miss this window of opportunity.

Now to specifics. I take it that you agree with Mr. Reid that the eight points he raised wouldn't give voice to his open government act, but it would mitigate any harm that perhaps Bill C-2 would have implemented. So you're recommending the eight amendments that Mr. Reid put forward?

Mrs. Anne Kothawala: Yes, we are.

I guess our theme was “first, do no harm”. Really what we're saying is let's make it a little less bad. Sadly, I think that is a good way to summarize it.

Mr. Pat Martin: If we were able to implement some amendments that would actually draw from the open government act, you're recommending the duty to create records. Is the order in which you listed them pretty much the order of priority? Are you recommending a preamble or a purpose clause within the act?

Mr. David Gollob: The open government act actually contains an expansion of the original expression of purpose in the original Access to Information Act, which says:

> The purpose of this Act is to make government institutions fully accountable to the public, and to make the records under the control of those institutions fully accessible to the public, by extending the present laws....

All we intend to emphasize with this request is that it be clarified that the onus is on disclosure. The onus should be on openness, not on secrecy, and the burden of proof, as Ms. Kothawala was saying, should be on those who would seek to keep things secret. This is in that spirit.

To answer your other question, we don't have a hierarchy of priorities. We feel they're all equally important, and they're all equally doable. Not to say the outcome would be something less bad; in fact, the outcome would be something quite good if you were able to adopt some, if not all, of these measures.

● (1605)

The Chair: Mr. Tromp.

Mr. Stanley Tromp: Our top two priorities would be, one, to give the commissioner order-making power, and second, to have all the crown corporations, foundations, quasi-governmental bodies covered under the act as soon as possible. If this amendment can be made to the Accountability Act, we would be happy.

The Chair: Mr. Martin.

Mr. Pat Martin: One of the most difficult clauses we will have to fight for, I think, is the cabinet confidences. If you could expand on this, is it your feeling that there should be a possible exemption for cabinet confidences, but not an automatic exclusion? Exemption rather than exclusion—would that satisfy your concerns? It would then be up to the Information Commissioner to rule whether this passes the injury test, etc.

Mrs. Anne Kothawala: Precisely. We would support that. We are not here to say that all the business of government ought to be done in full view of the public. We recognize there are some decisions that need to be made behind closed doors. We just think there ought to be somebody who can say whether there is a public interest override or not. It's not good enough for the government of the day to say, well, there are public interest reasons that we've kept that secret and it's just going to have to remain secret.

Mr. Richard Rosenberg: I would agree. Nothing should be automatic. It's not that they shouldn't get it, but it should be clear and public. It isn't automatic that you don't ask questions because it's not available.

Mr. Pat Martin: Yes. It would be the Information Commissioner who would obviously make that adjudication.

Mr. Stanley Tromp: I believe an "injuries to harms test" could be added as well.

Mr. Pat Martin: Yes, I note that is a mandatory public interest override and the injury test.

So to get us back to where we started, if we could manage to mitigate any possible damage that was identified by John Reid and then add those four or even five things, we'd have a pretty good bill. We'd have a dramatically improved access to information regime. Would you agree?

Mr. David Gollob: You'd have a bill that was actually moving the ball forward. We could argue about how far, but it would move the ball forward.

Mr. Pat Martin: Yes, and then we could mop up the other details, perhaps at the other committee, in the fullness of time. That would be great.

Thank you for your input.

The Chair: Mr. Rosenberg.

Mr. Richard Rosenberg: It should be clear that many of the things that government does should have records. There shouldn't be things done and then in a request for what happened and how the decision was made, it's oh, we don't have anything on that.

The Chair: Thank you very much.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): My question is for Mr. Rosenberg.

In your presentation, you stated that access to information is a matter of public interest and that public interest must always be put first. You seem pleased that all crown corporations are to be subject to Bill C-2. You also said that not only should they be subject to the legislation, but that there should be no exclusions. However, the intent of the exclusion contained in Bill C-2 is to protect journalists' sources.

Are you saying that journalists' sources and cabinet decisions should be accessible to the public? Are you saying that everything should be in the public domain, unless proven reasons for secrecy can be provided? That would mean that were one able to prove that something should be made public, it would be possible to obtain information on journalists' sources and cabinet decisions. Is that what you are hoping to achieve when you say that we must avoid a culture of secrecy and ensure that public interest is put first?

● (1610)

[*English*]

Mr. Richard Rosenberg: Making absolute statements is a problem. While I certainly am sympathetic to not putting the sources of newspapers in the public domain, that's not government; that's the operation of the free press. I have much more sympathy for the free press protecting its sources than for government claiming it can't tell for a variety of reasons.

Mr. Stanley Tromp: I could add the model in Australia, New Zealand, and Great Britain of the public broadcasters being under their FOI acts. It seems to work well, and if Mr. John Reid, the commissioner, would rule wisely on these issues to protect journalistic integrity....

Mr. David Gollob: Journalistic sources must be protected. There is no question that this must be achieved.

[*Translation*]

Mr. Daniel Petit: I agree with you.

M. David Gollob: Commissioner Reid suggested wording that would ensure such protection. He proposed the protection—

[*English*]

I could quote from his statement. He said that the head of the CBC would have the power not to disclose documents that are of a journalistic nature.

I think this is sufficient protection for most government departments. In fact, all government departments currently operate with this kind of protection. Why should the CBC be an exception? We are not for one second recommending that journalistic sources be subject to disclosure under this or any other act.

The Chair: Mr. Poilievre, three minutes.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): On the issue of cabinet confidences, I would argue that it's actually impossible to mandate the inclusion of cabinet discussions as part of ATI, because if any cabinet of any party believes it cannot have a free flow of discussion that will not end up on the front page of a newspaper, it will merely hold meetings that it doesn't call cabinet meetings. There's absolutely nothing anyone can do to define a cabinet meeting differently, because they can say, oh, it's a dinner party or it's a discussion, or we're having a drink over at the local pub. There's any number of things that a group of people can do to change the definition of their reunion in order to avoid ATI at the cabinet level. All forcing ATIs on cabinet confidences would do is force cabinet ministers to do their work, to have frank discussions, in fora that are not accessible. So I would argue that not only is it not desirable, it's not practically possible to do it.

On the issue of draft audit reports, it should be noted again for the public to hear that the reason the government did not include them under ATI is because the Auditor General asked the government not to. She believed it would strengthen the audit function not to include them.

Finally, on order powers, the Information Commissioner has not asked for them, nor is he suggesting they would be desirable. As a result, we are listening to him and those are his views.

I wanted to make those comments and allow you to respond.

Mrs. Anne Kothawala: My reaction to cabinet confidences would be that we had actually achieved the right balance in the name of the open government act, which all political parties supported. There is a recognition that it's a fine balance, but that fine balance had been achieved in the way the open government act was drafted. I'm not sure why the position has changed so dramatically today.

With respect, in terms of the audit powers, I don't think that we can make all the decisions based on what the Auditor General may or may not want. When the theme of this whole act is supposed to be greater accountability in government, we can't have that without more transparency. More specifically, there's not going to be more openness when the excessive secrecy provisions trump those supposed expanded crown corporations that are now covered.

● (1615)

The Chair: Mr. Tromp.

Mr. Stanley Tromp: Thank you.

Our group is not arguing that the substance of cabinet deliberations should be made public, but the Information Commissioner should be allowed to review these records to see if they've been properly classified or if they lie outside that. As in most Canadian provinces, cabinet documents are not excluded from the Information Commissioner's review, and that's what we're seeking.

The Chair: Ms. Kothawala, Mr. Gollob, Mr. Rosenberg, and Mr. Tromp, thank you very much for coming. Thank you.

We'll break for a few minutes.

● _____ (Pause) _____ ●

The Chair: We will continue.

We have two individuals. I guess everybody knows Mr. Ken Rubin, and we have David McKie, of the Canadian Broadcasting Corporation.

Welcome to both of you. You each have a few moments to make some introductory comments before questions from the committee. Welcome.

Mr. Rubin.

Mr. Ken Rubin (As an Individual): Thank you.

I have spent my adult life—40 years—as an independent watchdog monitoring Ottawa. It has meant uncovering many hundreds of secret activities engaged in by Ottawa. It has included everything from the politics behind Canada's Food Guide, which we put on our fridges, to the questionable practices and funding in the multi-billion-dollar technology partnerships program. I've had to go to court to try to get, among other things, airline safety and drug inspection reports.

I've also appeared before many parliamentary committees seeking a more accountable Ottawa since 1979. One such intervention helped in the passage of the only progressive amendment to the Access to Information Act, which created penalties for record tampering in Ottawa.

The Accountability Act, as I see it, promises much but delivers too little. I'll briefly outline three basic flaws in Bill C-2, and then offer some suggestions for improvement.

First, Bill C-2 extends, rather than curbs, the culture of entitlement in Ottawa. It caters to powerful interests. It expands, rather than curtails, the unaccountable central powers that the Prime Minister and cabinet hold. That includes maintaining the Prime Minister's grip on the appointment selection process and increasing the number of prime ministerial, PMO, and cabinet records excluded from public access. This act expands everything in the wrong direction.

Deputy ministers and deputy heads, as well, get more power and money. Huge empires are going to be created under this bill. They become accounting officers, managers of more audits, arbiters of departmental ethical conduct, and gatekeepers for departmental disclosures. The bill also adds a new, expensive, and powerful CEO crown corporation category to the growing management ranks, and I can assure you that they've already started.

Bill C-2 makes special secrecy deals for certain crown corporations like EDC, Canada Post, and AECL. This signals that Ottawa is open to having hundreds of other government agencies live by weaker accountability standards. Certainly the courts will look at it that way too—I've been in front of courts many times—as will hundreds of outside corporations doing business with Ottawa, which will also want to be less accountable.

In addition, lobbyists, who were the big winners in this act, get greater influence in Ottawa, not less, and a mandate to largely continue their activities in secret.

Some federal agencies are ignored by this bill, such as the military and security intelligence, which are badly in need of oversight and greater accountability.

The second flaw—I'm trying to analyze what's wrong with this bill, because I want to right it—is that it puts in place a weak and secretive system of review and auditing and places transparency on the endangered list. Various parliamentary officers are given ineffective oversight powers to check abuses. The scope of what parliamentary officers can review is limited, as some key government operations and records are placed well outside their mandates. They are also limited as to what they are allowed to report and say. With limited enforcement powers and no means provided for coordinated investigations, parliamentary officers end up being toothless.

Internal auditing reviews also become weaker and more secretive. Their terms of reference are firmly under management's control. Contracting practices are going to be made even more loosey-goosey because of looser rules and fast-tracking.

Drastically lowering the amount of public scrutiny that audits are subject to is not going to help. Much about the audit process is going to be made secret for up to 15 years. And yes, I was one of the people who got draft audits of the sponsorship reviews. Audits, remember, include matters vital to our safety, like airline and drug inspection reports. That's often overlooked.

The Auditor General's review powers are not really increased to follow the money. Sheila Fraser has told the committee that she doesn't want to do that, because in effect, to audit the corporate books, except in extreme cases, you need to get at the corporate books, and this act does not allow that. It's just for getting at government records.

● (1620)

I can go on about transparency, but I'll leave that until later.

The third and final flaw raises false expectations of better government performance and conduct because it sets limited goals. When it comes to spending, there are no spelled-out public service obligations set out in a purpose preamble section for the right to quality government programming and accountability.

Who is mandated under this act to audit and report on how well Ottawa is doing on alleviating income disparities, health and safety problems, and environmental degradation? These are management- and department-based conduct codes. They're not found in the statutes, and they are a mixed blessing because they're readily changeable, and therefore suspect.

Such managerial codes can handicap rather than help concerned employees in fully providing services to the public or coming forward when such efforts are being hampered.

The conduct service codes as well would do nothing to legally ensure that a proper record of decisions is kept. That's a real code; it's statutory. Nor would they advance the public's right to know immediately about health, safety, environmental, and consumer matters.

Besides its five-year internal reviews, the only probe of Bill C-2 is a one-time look at advertising and polling contracts. No provision is made for permanent, ongoing public parliamentary oversight, like that currently provided by this committee, of the bill's accountability standards and service performance promises.

It fails to set quality performance accountability objectives and standards, hasn't got that oversight, and doesn't link it to what we all think are very democratic rights and charter rights.

That's why, in a constructive fashion—and I have an earlier, longer submission—I've set out over a dozen areas for improving and amending these problem areas found not just in the access provisions but throughout the act. They include adding a purpose clause, which enshrines accountability standards and the public's right to know as part of the Canadian Charter of Rights; ensuring public access to the records of the Prime Minister and ministers, as well as Parliament; making the Public Appointments Commission an independent agency accountable to Parliament rather than an arm of the Prime Minister's Office; treating crown corporations no differently from any other agencies, and reducing rather than adding special exemptions and exclusions; broadening what the public knows about lobbyists' activities, government finances and contracts; releasing immediately audits on health, safety, environment, and consumer reports; regularly posting the exact salary and benefit information of public officials—I'm sure everybody would agree to that; following through on a commitment for a tougher Information Commissioner's office with binding order powers.

New ideas include open meetings. I'm not speaking about cabinet, but boards and commissions like the NCC should be required to hold public meetings. The Auditor General should hear and respond to complaints about government work and procedures. Make her office a little more democratic too.

There should be penalties for altering, withholding, and distorting government financial records; more coordination within accountability systems rather than empire-building; and joint investigations of such officers as the Auditor General and Information Commissioner.

And why not go international by setting up a centre for transparency, accountability, and anti-corruption here in Canada? And then, of course, you need the periodic review of the accountability standards by the designated parliamentary committee.

There are some modest reforms in this bill, I agree, but it doesn't go far enough to rein in Ottawa's mandarins and power structures. It doesn't hold them to account. It doesn't have conduct that is meant to be exceptional—and I've been waiting for this.

The answer doesn't lie, though, in rushing through another act. Sure, you guys should go ahead and do as much as you can, but if you're going to make officials more powerful, less reflective, and more able to retreat even further behind closed doors, why bother? Who needs yet more, rather than less, government waste and mistakes?

Consider my suggestions to reverse this, and make Ottawa accountable, transparent, compassionate, and credible, because that's what this government has to do.

Thank you.

● (1625)

The Chair: Thank you, Mr. Rubin.

Mr. McKie, go ahead, please.

Mr. David McKie (CBC Investigative Unit, Canadian Broadcasting Corporation): My name is David McKie. I'm a journalist with the award-winning investigative unit for CBC News. I'm here to speak for myself and by extension other journalists who use the federal Access to Information Act to help, I think, tell stories of public importance.

I'm also here as an educator, someone who teaches journalism students at Carleton University and elsewhere how to use the act, and as someone who has written about the act and ways to use it in a recently published book called *Digging Deeper*. I am not—I repeat, not—here as a representative of the CBC. That might disappoint some of you.

For the past several years I've been part of a team of journalists who have used this act to uncover important facts. To name a few, there's the fact that a clinical trial at the Children's Hospital of Eastern Ontario in which a little boy died was never sanctioned by Health Canada—Anne MacLellan was the health minister at the time—or the fact that Health Canada's own adverse drug reaction database showed that the number of children being harmed by prescription drugs had tripled since 1997, and without the department's knowledge; the fact that about a third of this country's seniors are on prescription drugs they are not supposed to be on, either because those drugs are dangerous or because there are safer alternatives, and many of those seniors become statistics in Health Canada's adverse drug reaction database, which is now online.

These stories and many more we've told would not be possible without the Access to Information Act. Even at that, we have to fight hard to get the material we did in the cases I've just mentioned. It took years to obtain Health Canada's adverse drug reaction database. In the case of the clinical trials, it took us two attempts to obtain the proper documentation.

If we step back to take a broader look at this act's application, we need look no further than stories such as the infamous “Shawinigate” affair and the trouble former Prime Minister Jean Chrétien found himself in. And of course, we all know about the ad scandal, one of the reasons for our present political configuration and one of the key reasons we're all sitting in this room talking about the need for more accountability.

I should also point out that it's not only journalists who have managed to use this act. Dare I say, politicians too have used it to great effect. All parties have managed to ferret out information to in some cases embarrass the government and more importantly to outline shortcomings in public policy.

My colleague Ken Rubin has already explained some of his concerns, and I share them; we talked about them before this presentation. What troubles me even more is that the flow of information to which we have the legal right is in some cases slowing to a trickle.

Just yesterday I filed two more complaints with the information commissioner's office, one against the Department of National Defence for fees ranging in the thousands of dollars, and a second against Foreign Affairs and International Trade for denying me a document—David Emerson's mandate letter—that I think should be a matter of public record; why not? We are also locked in another battle with Health Canada over its adverse drug reaction database, and that battle may end up in federal court, costing everyone involved far too much time and money.

Last month I edited a story in the Canadian journalists' association *Media Magazine* from a former master's student out at the journalism school at U.B.C, who recounted the frustrations and threats—yes, threats—she endured while trying to extract information from Transport Canada on the exemptions they were employing to deny journalists information after the September 11 attacks in New York, Washington, and Pennsylvania. I have a copy of that article, if anyone's interested in reading it, and I suggest you do, because it's disturbing.

So we face a lot of obstacles without having to endure new ones. My concern is that in many instances departments are not respecting the spirit of the act; instead, officials choose to take narrow interpretations and apply liberal exemptions, such as advice to the minister or security concerns, to keep information secret. This means that in many instances it's becoming increasingly difficult for us to do stories such as on safety at airports, problems certain segments of the population may be having with prescription drugs, or policies our correctional services are using to deal with dangerous offenders—an issue this government is concerned about. These stories are not being told, and they should be.

So I applaud the initiatives that would bring crown corporations and foundations into the act's sphere, including mine.

● (1630)

I think the spirit behind the legislation, one that promotes openness and accountability, is one that should also be applauded. I would just urge you to watch the loopholes, the vague language, the addition of exemptions, and other potential obstacles that could become roadblocks. Ken has talked about them.

I would also urge you to argue for more funding—and this is important—more funding, so departments can adequately staff their ATIP offices. Too frequently, I deal with harried bureaucrats crumbling under the weight of requests. This results in lengthy delays. You can implement all the reforms you want, but if ATIP offices are understaffed, the information that needs to get out becomes stuck in the proverbial bottleneck. Information delayed is information denied.

Finally, I would ask you to act with some haste. I don't know how many stories I've done about efforts to study the act. Study, study, study, talk, talk, talk, and yet all that study has led to too few meaningful reforms for an act due for a shake-up. So you have a chance to make a difference, to correct what one former prime minister called the democratic deficit. An increasing number of countries are adopting their own access laws; Canada can and should be a model for openness and accountability.

Thank you.

● (1635)

The Chair: Thank you.

Mr. McKie, Mr. Rubin, you're two acknowledged authorities. We have some questions for you.

Mr. Owen.

Hon. Stephen Owen: Thank you both for being here and for what you have done for open government in the past. I think you both quite succinctly set out the very basic principles of open government with liberal access and limited and injury-tested exemptions.

Thank you, Mr. Rubin, for your larger brief, which has a lot of suggestions and commentary. I'm a little curious about your suggestion that we enshrine the right to access to information in the charter. I'm only hesitant about it because I suspect the complexity of having that occur. Did you have a specific route and a specific place where you would see that enshrined?

Mr. Ken Rubin: Yes. It would be in the purpose section. And having argued in court—I'm not a lawyer—where the public right to know is considered a quasi-constitutional matter, it's much better to go beyond statutory interpretation and enshrine it right in an act, because it gives the act a lot more clout with individuals who see clearly it's a right, and with the courts who have to interpret the act. Besides, article 2 talks about freedom of expression, and clearly in the modern sense the right to information is part of that.

Hon. Stephen Owen: Thank you.

Brian.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Access to information is the thrust of your presentation, Mr. McKie. There is less about access to information reform, obviously, at this committee than there is about general accountability.

Would you advise us—what I didn't get from your presentation—to proceed with some haste with respect to the omnibus bill in all other respects and end its minor implications for access to information? In the scheme of things, this bill is not about increased access to information only; it's about many other things.

Mr. David McKie: I realize that, but some of the things I have been talking about, such as greater funding for ATIP offices, can be done fairly quickly. No, I don't think everything has to move together. You can pull out things and send very clear signals. I remember when Ujjal Dosanjh was health minister. One of the first things he said to his officials was “I want you to release information as quickly as you can”, and that was a signal from the top. Those kinds of things are very easy to do—no problem, no bother.

Mr. Brian Murphy: Do you sense that's the direction of the new regime here? That officials from the top down, ministers down, are saying release the information quickly, to use your words?

Mr. David McKie: I would have expected that would be the case.

Mr. Brian Murphy: But what's your answer?

Mr. David McKie: I don't know.

Mr. Brian Murphy: Okay.

The Chair: Mr. Rubin.

Mr. Ken Rubin: I don't look upon the transparency section of this act as totally separate. Yes, it's clear it has gone toward greater secrecy and protection, but look at all the different sections, from part 1 to part 4, the whistle-blowing disclosure, contract disclosure.... I should put it the other way: it's usually exempting this stuff. Look at audits, look at any of the other areas of the act, and you'll run into subtle or not-so-subtle...like polls and when they can be released. You will run into a huge host of things that are definitely connected to transparency. You can't separate the two.

One of the easiest things would be—and you didn't need this complicated piece of legislation, which is cleverly crafted to give people more power, not more transparency—to put in schedule 1, for instance, under the Access to Information Act of crown corporations, which in part is in there, and if you didn't give them special access privileges in other clauses, you would have achieved their coverage. In that clause that says that for greater certainty, general administration would include travel and expenses, if you had said that for greater certainty, because it's before the courts now, the Prime Minister's and the ministers' records are covered, that's all you would have had to do. We would have had the interpretation cleared up.

I mean, there are things in this act that could be done properly. There are people behind the way this act was crafted who knew what they were doing, and there are people who don't deserve to be counted on in terms of making us a more compassionate and credible society with a government that acts on our behalf.

● (1640)

Hon. Stephen Owen: Thank you.

I'm interested in both your views on Commissioner Reid's eight recommendations to us to consider for amendment and also the fact that he didn't include in there the order power he is opposed to. I'm wondering if you support the amendments that he has suggested and what you think about the order power.

Mr. Ken Rubin: It's fairly publicly known that I do not support all of Mr. Reid's suggestions. I believe in a public right to know act rather than simply an open government act. I don't think a public interest override act, having used it in the provinces, will achieve much. That is why—and I know Dave McKie will agree with me—proactive disclosure of environmental safety and health and consumer reports is what's really needed, a real disclosure that gets prior consent from parties, that negotiates between federal and provincial people and says we all want disclosure internationally.

What we don't want are things that don't put it forward. So when Mr. Reid does put it forward and gives one concrete obligation, a duty to document, I agree with that. But you need to have many other duties, not weasel words that say "reasonably expected to service the public". No, no, no! We want right in the purpose clause a conduct code that says disclosure is a prime focus of the act and you have to honour that code, not that you have to reasonably, maybe, apply a secrecy code, which is what in essence it means if you take away the fine language.

Mr. David McKie: To pick up on that, to routinely disclose certain kinds of documents, inspection reports, detailed audits, or whatever the case may be, doesn't necessarily have to be tied up in this process. That can be done right away. It would go a long way to increasing transparency. And I think even more....

Pardon me.

Hon. Stephen Owen: And taking pressure off the ATIP departments.

Mr. David McKie: Absolutely, which are literally crumbling under the weight of expectations.

The Chair: Your time's up, Mr. Owen.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): : I was struck by what you said about access to information being primarily a matter of political will. I am sure you have heard of the Standing Committee on Access to Information, Privacy and Ethics. The Information Commissioner proposed an open government act in November, 2005. The committee recommended that it be adopted and referred back to the House of Commons.

When we resumed business, I, as a representative of the Bloc Québécois, was delighted to remind the committee of this proposal. I know that you are all familiar with the Open Government Act; however, Mr. Rubin, you do not seem to think that it goes far enough. What really surprised me though was that my colleagues from the Conservative Party and the NDP, who are here today, voted against the motion.

I just wanted to say that I believe this to be an example of the lack of political will to which you referred. Perhaps my colleagues will have the opportunity to explain their decision.

● (1645)

Mr. David McKie: You are perhaps right, but for the moment, it is very difficult to say.

Mrs. Carole Lavallée: The political will to which you referred is —

Mr. David McKie: The nature of the relationship between journalists and Mr. Harper's cabinet make it very difficult to answer your question. For example, how do we know what is going on behind closed doors?

Mrs. Carole Lavallée: I was not going to broach either the stormy relationship that Mr. Harper has with the press or his desire to control the questions that are asked at press conferences. However, I am only too happy for you to bring it up.

Mr. Benoît Sauvageau: Mr. Rubin, would you mind if I asked you a few questions?

[*English*]

Mr. Ken Rubin: I was just going to say, documents speak for themselves. So when you get a document from the Privy Council Office that's comparing the Gomery commission's final report to the Federal Accountability Act, and then you get PCO's assessment and the whole darn thing gets exempt, that's what we're up against. We're up against a problem and we've studied it to death. We have to move on. But everybody has this mindset in Ottawa that secrecy counts. No, it doesn't any more, if you want people to trust you, and that's what I think all of you want.

I remember that blue report.... Blaine Thacker was the chairman. I appeared in front of the statutory review committee. It was a non-partisan effort. Everybody agreed that there should be reforms. We should have had them back in 1987. So let's move on.

[*Translation*]

Mr. Benoît Sauvageau: Thank you for your brief and your recommendations, Mr. Rubin. In my opinion, the Conservative Party should accept three of them very quickly.

Your second recommendation talks about making documents of the Prime Minister and the ministers accessible to the public. On page 13 of the Conservative platform, we read that a Conservative government would prepare to amend Bill C-2 in order to comply with this principle.

In point 4, you talk about treating crown corporations like other organizations and about reducing rather than increasing, the number of exemptions and special exclusions. On the same page of this Conservative platform, we see that a Conservative government would apply the act to all crown corporations, officers of Parliament, foundations and organizations that depend on taxpayers' money or that carry out public responsibilities. So your recommendation should be of immediate interest to them.

In point 3, you talk about following up on the commitment to have a stricter Information Commissioner. As my colleague pointed it out to me, the Conservatives have stated in writing elsewhere that a Conservative government would enforce the recommendations made by the Information Commissioner about reforming the Information Act. Despite what they stated during the election campaign, the Conservatives voted against the motion.

You recommend that this be included in Bill C-2, and I don't think this will fall on deaf ears. You are reminding them of their lofty promises and the Conservatives will no doubt demonstrate their intention to act on them.

My question is to both of you. If Bill C-2 were to be passed tomorrow in its present form, without any amendments whatsoever, is there a guarantee that there could not be another sponsorship scandal?

Mr. David McKie: I would say no.

Mr. Benoît Sauvageau: What do you think, Mr. Rubin?

[*English*]

Mr. Ken Rubin: Well, as one of the people who used the access act conservatively during the sponsorship scandal and got the auditors' notes, got the lists of all the different sponsorship things, first of all I had a great deal of trouble convincing the media that there was a scandal there. But no, it's going to make matters a lot worse.

Listen, how can I put it to you this way, to appeal to all inclined? I can remember when Prime Minister Mulroney issued a memo, or his people in the Privy Council Office did, saying, "Check if you're going to release my foreign travel expenses under access to information; I have to know so it can be massaged." Yet the same gentleman, once he left government, asked me to get his records because he felt abused because of the Airbus situation with a different government. So what goes around comes around.

Let's have a level playing field. Everybody should keep their promises. I think we're seeing it's high time we live in a different kind of situation.

We have the Internet. We have a lot of credibility in a lot of other information channels. We have to catch up or we won't have the accountability, and this act does not speak to that.

● (1650)

The Chair: Thank you, Mr. Rubin.

Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, and thank you for both your presentations.

I think what you've done is underline the importance of the tools that are available to what in your case I'll call the fourth estate to do the job that I think is severely lacking in our society; that is, to give us a window into how decisions are being made and what those decisions are. All you have to do is pick up a newspaper and do a content analysis of the stories. Today you'll pick up the paper and see a tabloid story being thrown out as news. I think that's a sad state in many ways. You have to then do an analysis to ask what's lacking; why are we being offered this as news? I would suggest what you've presented is the fact, that we don't have access to the information; we don't have a window in.

I can't dispute or even counter some of the things that are in this bill, in terms of the goals. What I'm hearing from you is the same thing: these are laudable goals. The problem—and my colleague, Mr. Martin, has mentioned this before—is we don't have a window in to assess whether these goals are being met.

I appreciate, Mr. Rubin, what you've said about the extended powers of certain people. But on a couple of your recommendations, Mr. Rubin—and then I'd turn to you, Mr. McKie, and some of your comments about access to information—you talked about the importance of changing the proposed Public Appointments Commission. I couldn't agree with you more. We have some amendments that we will be putting forward.

The fact that you're going to try to change accountability through the PMO.... Good public policy shouldn't be dependent upon there being a benevolent person in office; it should be based on having good structures, and then functions that follow.

I'm curious about your concerns regarding lobbying and the statements you've made and the recommendations. Maybe I'll just start with that, Mr. Rubin, and your concerns with how this bill is structured. I'm someone who has been very concerned about lobbying and the effects lobbyists have on public policy and on access to decision-makers. Would you elaborate on that, please?

Mr. Ken Rubin: I guess I'm enough of a democrat to believe that dollar-a-year men with influence, or a small group of lobbyists, aren't the kind of interaction with the Canadian public that is healthy or the only type that's warranted. When you have an act like this act that endorses rather than really restricts their ability to have a priority say in government, I don't think it helps anybody.

When you don't record really any of the meaningful activities.... It's one thing to have a registrar who says vaguely, "You're lobbying for X person or company." It's another thing to ask: "What did you do with Industry Canada in the technology partnership program when it came to the Pratt & Whitney grants, and what were the conversations?" It's a whole huge, different area.

Mr. Paul Dewar: So, if I may interject, it's about full disclosure of the business between government officials and lobbyists, is that right, as opposed to when they met and where they ate and that kind of thing?

Mr. Ken Rubin: That's right, yes.

I wouldn't mind also very briefly commenting on the Public Appointments Commission, because it's a lightning rod for what's wrong with this bill, and what I guess your amendment is trying to do—and I hope there are a lot of other amendments—to make this constructive.

But I would go further. I would say that commission has to be independent, selected by Parliament, and also covered under the Access to Information Act. I have a briefing note from the Public Service Commission that says in the United Kingdom one of the commissioners is a public service commissioner, because they at least have some experience in what merit appointments should be, and also that the appointments commission should be more transparent.

In B.C., the information commissioner is selected. Three people are brought before a legislative committee, who look at the appointment and then decide. They don't just put forward a PM appointee and that's it. It's a real, transparent situation.

● (1655)

The Chair: Mr. McKie, did you have a comment? No.

Mr. Paul Dewar: I just wanted to ask one question to Mr. McKie regarding access to information—that was a primary focus for you—and other jurisdictions. You touched on it.

In your mind, if we were to have the best access-to-information system possible, would it be modelled on one you can look to presently, or one that is maybe nascent presently about which we can say it's the one we should be following, or do you have a model in your own mind?

Mr. David McKie: Well, before September 11 I would have said the United States, but now that's a bit of a mess. That's why I think we have a real opportunity to be a leader.

The Chair: Okay.

Mr. Lukiwski.

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

I have just one quick question, and I'm sure my colleagues have others. It's directed to Mr. McKie, but I'm sure Mr. Rubin will make a comment as well.

Do you believe the CBC should reveal its sources for news stories, as the Information Commissioner has suggested?

Mr. David McKie: No.

Mr. Tom Lukiwski: Why?

Mr. David McKie: Well, I think the courts have had some positive things to say about that. If we were forced to do that, it would be very difficult for people to talk to us.

So, no.

Mr. Tom Lukiwski: In other words, there are some exemptions or some limits on access to information, and this is one of them.

Mr. David McKie: Well, yes, sure. If I have to go to court I'll go to court, but I'm not going to give up my sources, and I would think that my colleagues would do the same.

Mr. Tom Lukiwski: Good for you, by the way, but that's my opinion.

Mr. Rubin.

Mr. Ken Rubin: Well, I'm witnessing from the Prime Minister down a situation where you're focusing on a particular situation, but there's a broader problem, and that's with the gagging of parliamentary officers. You're saying these officers, like the Information Commissioner, shouldn't have certain review powers and shouldn't disclose certain information. I'm saying that they need the order power. They need the right to inspect more records. They shouldn't be shut out because it's a cabinet confidence. They shouldn't be shut out just because it may be a journalist's source. I think those would be protected. I don't think anybody disagrees with that.

If you look at the way every other section in this act is crafted—and I didn't want to go there, but I will—if you look at the exclusion of the CBC both under the act.... And by the way, it's different under the Privacy Act. Isn't that interesting? It's very broad. It doesn't talk just about journalists' sources. It also talks about this terrible thing that's introduced in this bill, that everything that is not general administration should be excluded.

We've been talking about the coverage of crown corporations, whether or not they should be covered and how broadly, and whether the Prime Minister should be covered or not, but then we've forgotten about the base of what it's all about—records. We've put in an ill-conceived definition of "record" that is about documents and is a much more limited one. We're willing to limit machine-readable records. We're willing to exclude whole categories of records unless they're general administration, including the CBC.

Somebody here has it backwards, and that's wrong. That is reversing 25 years of experience that has accumulated. You don't change the definition of "record". You don't say in this electronic age that certain machine records aren't released. You don't just say general administration is the easy way out and the rest is excluded. That's wrong.

Mr. Tom Lukiwski: I want to make sure, Mr. Rubin, so I'm clear. Are you suggesting the CBC should or should not reveal its sources?

Mr. Ken Rubin: Of course it shouldn't.

Mr. David McKie: If I could take up very quickly this whole idea of a record, right now a record can be anything from this piece of paper here, to the contents in this jug, to a database. I think Ken is right. If you start playing around with that definition, it means we would not have been able to get the adverse drug reaction database; we would not have been able to do stories about the ways in which certain drugs are affecting certain segments of our population. All you have to do is look at major issues like the recall of Vioxx, the problems with SSRIs, with anti-depressants and kids.

We cannot have definitions that restrict what a record is. There are departments that will take that literally and say, "Well, no, the act doesn't make that very clear; therefore, we're going to exclude it." I know what road we're going to go down.

● (1700)

The Chair: I think with that point, the 40 minutes has expired.

Gentlemen, thank you very much for coming. You've been very good.

Mr. Ken Rubin: If certain members would like to constructively discuss amendments, I'm sure I or Mr. McKie or a lot of other people would like to join in. The sooner they're out, the better, because transparency's kind of important now.

The Chair: Thank you, Mr. Rubin.

We'll break for a few moments.

● _____ (Pause) _____ ●

The Chair: Please sit down, members of the committee. We have a quorum. We'll call the final portion of this meeting to order.

Paul Thomas, from the University of Manitoba, welcome.

Prof. Paul Thomas (Duff Roblin Professor of Government, University of Manitoba, As an Individual): I'm pleased to be here.

The Chair: Sir, you have a few moments to make some comments, and then the committee members will ask you some questions.

Prof. Paul Thomas: All right. There is a document that I presented.

The Chair: We have that.

Prof. Paul Thomas: I'll try to breeze through this fairly quickly. I know that I stand between you and dinner, and you've been working hard.

I really welcome the opportunity to present my views on what is a very comprehensive, omnibus piece of legislation. Because of its nature, I think it doesn't lend itself to sweeping judgments about being either good or bad, and there'll be lots of disagreement over which are the good parts and which are the bad parts.

I have been working on accountability, privacy, access, deputy ministerial accountability, and so on, for years and years, both as an academic and as a consultant to government. I've tried to offer a range of views on a number of topics that flow out of Bill C-2.

I start with the point that the centre of accountability in a democratic system has to be Parliament. I deliver something of a sermon to parliamentarians, insisting that they need to adopt a more positive, constructive approach to the enforcement of accountability. Principally, they have to look to ministers to answer for things that go wrong within government, and senior public servants should be answerable only indirectly and only under specific, narrowly defined circumstances.

Too much of Parliament, it seems to me, is about playing the "gotcha" game of accountability. Particularly in relation to scrutiny of the public service, the performance of departments, and the performance of programs, as I said, we need to adopt more of a learning approach and less of a blaming approach.

The Chair: Could you slow down a little?

Prof. Paul Thomas: Slow down. Okay. I'm mindful of the clock, that's all.

The Chair: I know. I'm going to ask you to do both, speed up and go slow.

Prof. Paul Thomas: Okay.

I've written in the past about officers of Parliament. We're adding to the population of those independent agencies that serve Parliament. Parliament clearly can't oversee government operations unaided, and it needs the support of auxiliary agencies, like officers of Parliament. But we're adding to the group and we need to ensure that for those agencies we find the right balance between independence, not only from the executive, but also from Parliament, and accountability, most appropriately to Parliament and less so to the government of the day.

Finally, in terms of an opening section, accountability is obviously vitally important in a democracy, but it has to be balanced and accommodated with other values, like effective representation, efficiency, effectiveness in programming, trust within government, and legitimacy of government. We have to be careful that we don't overbuild scrutiny mechanisms so that the public service spends all of its time checking on things and too little time doing things.

I'll say a brief word about whistle-blowing, and then I'd be pleased to answer more questions.

I believe in whistle-blowing legislation; however, in all the jurisdictions that I've studied, and I've looked at these regimes around the world now, it's usually been oversold, passed in the aftermath of a scandal, and oversold in terms of its contribution to the integrity in government.

The reason for that is that whistle-blowing deals with highly unusual and exceptional circumstances—i.e., serious wrongdoing, which isn't an everyday occurrence. Secondly, it involves exceptional individuals: individuals in the public service or working on public programs who are courageous enough to risk retaliation and damage to their careers or those who don't let pessimism discourage them from reporting.

I think that in addition to providing whistle-blowing protection, we should spend far more effort in terms of resources and time on promoting so-called "right doing" through ethics and education, helping people to understand what it means to be ethical and to act with integrity within government.

I understand that the idea of financial incentives for whistle-blowers is pretty much off the table now. I've done a long paper on the U.S. False Claims Act. I'm quite happy to share that with people. It will at least cure your insomnia, if nothing else. My conclusion is that it's had perverse results in the United States. It is not a good piece of legislation. It's made instant millionaires out of a select few people. It's a bad idea. It doesn't travel well north of the 49th parallel. I won't get into that.

I'm very supportive of the idea of extending protection against reprisals to people outside government: contracted-out program delivery organizations; for-profit or not-for-profit; or procurement organizations involved with procurement. I think we have to do that in the "joined up" world of government today.

I'm not sure that I see the need for a new public servants disclosure protection tribunal. As you know, under Bill C-11, the Public Service Labour Relations Board was available to perform the function that's being assigned to this new tribunal. I'm enough of an institutional conservative that I don't see the real need to produce a brand-new tribunal.

● (1705)

I think it's appropriate that employees be granted the opportunity to achieve financial assistance to buy legal counsel. I think that will be necessary. Another consequence of the whole range of changes going in under this bill is the creation of a more difficult legal environment where there's going to be a lot of uncertainty, both for front line employees but also for managers who will see more restraints or constraints on their freedom.

On access to information, I was a member of the advisory committee to the 2002 task force. It was rewriting the Access to Information Act. So I'm frustrated about the delay in modernizing an act that is sadly out of date.

On the other hand, I'm not sure that it should be combined with this particular piece of legislation. I know people want to move ahead with that, and Commissioner Reid certainly does, but I think there is time to do this in the fall and there is a committee to do that in the House of Commons.

I'm also a member of the advisory committee to the Privacy Commissioner, and I just want to make the point that I reinforce Commissioner Stoddart's message that the Privacy Act is sadly overdue in terms of its need for modernization.

I do a little section in the paper on the parliamentary budget office. I think there are aspirations to create a kind of congressional budget office here on Parliament Hill in downtown Ottawa. It will never be as powerful as the CBO in the United States. The CBO has a budget of millions—$35 million—and it employs 760 people. We're talking about a little branch-plant operation in the Library of Parliament.

Parliament must find some way to do better work at scrutinizing the estimates and the hundreds of performance reports that are now tabled and go unnoticed, unread, and unused. It's not just the quality of the information. There have not been enough MPs dedicated to the task of that.

On deputy ministerial accountability, I don't see this as a radical change, provided that it's narrowly defined for financial and management matters, that there's the opportunity for the deputy to report the imprudent use of public money when he or she is ordered to do that, and if deputies are seen as answerable before parliamentary committees, that they're not accountable in the full sense of the word, that the committee cannot apply sanctions or rewards to deputy ministers.

On the appointments commission one, I did a paper back in 1985 that looked at the McGrath committee report. They created the opportunity for the appropriate standing committees of the House of Commons to review order in council appointments, with the exception of judicial appointments. Right from the start, it was subject to gamesmanship by both sides. The government had the Liberal appointees sanitize their c.v.s, the opposition brought only the controversial appointees before the committees, and games were played. A lot of people don't want to be put through that. So if there is going to be an appointments commission that's outside of Parliament, we'd better be sure that it has broad representation on it and that whatever findings it produces are made public. If we continue to use the parliamentary mechanism, I'm afraid we will still get into being partisan again.

I think the idea to institute a uniform approach to the appointment of officers and agents of Parliament is overdue, whereas we multiply these types of agencies. There are still issues related to the appropriate balance between independence and accountability for such entities, particularly for new funding mechanisms for parliamentary agencies. You had committee reports on that earlier, and I'm quoted in a couple of those.

Finally, on that point, I would say that the more of these agencies we create, the more there are going to have to be links between them and efforts to coordinate their activities, because we're going to have investigations going on through different parliamentary officers. We're going to have to form a club of some sort and get them to wear uniforms and meet regularly, because they're going to be working on some of the same issues.

I'll finish with this point, that the way this has been promoted and part of the political rhetoric around this is that it's about fighting corruption. I fear that in the aftermath of Gomery and this piece of legislation and the rhetoric surrounding it, the public is going to be even more cynical and discouraged about honesty and integrity in government.

● (1710)

Gomery pointed out that a small number of people were involved in the misdeeds that he investigated, and that the vast majority of people, both elected and appointed, worked within the parameters of the law. They worked effectively. They worked diligently and with integrity.

One of the crucial requirements going into the future will be to build trust in government. We've eroded trust severely, and somehow we have to restore trust. That must be done on numerous levels. Parliament has a role to play there by following a more constructive approach to accountability.

Finally, Mr. Chair, when it comes to scrutinizing the operations of departments and programs, the government is going to have to relax, in terms of party discipline, and allow committees to make inquiries into the operations of departments, programs, crown corporations, and other non-departmental bodies with less government control, and the opposition is going to have to take a more constructive approach by asking how it can help make government work better. A lot of these issues just don't lend themselves to partisan disagreement. There is lots of room for partisanship, but many of these issues of how to make government work better and be more accountable don't lend themselves to the theatrics of party debates.

Thank you.

● (1715)

The Chair: Professor Thomas, thank you very much. I don't know how you did it, but you summarized a very thorough paper in ten minutes. Good for you.

We have some questions.

Mr. Tonks, go ahead, please.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you, Mr. Chairman, and thank you, Mr. Thomas, for that overview.

Mr. Thomas, there was just one part at the end, in which you talked about the best approach to parliamentary accountability being summed up as “trust but verify”. When I was a kid, we used to look at the American dime that said “In God We Trust”. We used to throw in the ending, “All Others Pay Cash”.

I guess the reason I tried to go through the levity window is to say that we have to establish a culture of trust. There are two initiatives in the proposed legislation that you have pointed to. The first establishes the role of the deputy minister as the financial officer accountable and responsible for expenditures. You, quite rightly, have pointed out that this hasn't changed much, and that the deputy minister is responsible through the minister to Parliament. I guess that would be the right way of saying that.

But when you combine that with the concept of a parliamentary budget office, is there any way that the oversight of committee could be enhanced? Because in my experience, calling the deputy minister before the committee has been rather perfunctory. We have the estimates and we go through them in a day or whatever. It really isn't the accountability over the purse that you referred to in your document. Could you help the committee to understand how the accountability loop could be completed? Could it be, in fact, through committee, through the budget officer, or through deputy ministerial responsibility enhanced in some way? Would that not go a long way to contributing to that sort of culture of trust that you're talking about, so that people could trust that the system was working?

Prof. Paul Thomas: Just because parliamentary committees cannot assign or award sanctions against deputies doesn't mean that deputies don't take these appearances before committees seriously. I know them. I've interviewed the deputies. Over the years, I did work for the Lambert commission on financial management and for the Treasury Board on the reform of the supply process. I've done so many studies up here on Parliament Hill.

Perhaps this is the most frustrating part of the parliamentary process. You have this huge expanse of government spending sitting in front of you. You try to understand what it's all about, and it's not easily intelligible. You're doing it under the pressure of time and so on. So I think that some additional assistance, particularly in terms of scrutiny of department spending and operations from professional staff attached to the Library of Parliament, is appropriate. There may be another avenue of staffing, which I mention in the paper.

For the revenue side of the budget process, I think that really is open to serious political debate. It's something you want to talk about in very broad political terms—about what you stand for in terms of taxing and spending.

During those sessions when the deputy is present, I think the government has to be more relaxed in terms of saying that we can talk about some of the undiscussable issues to get to the bottom of why things don't turn out.

I've looked at performance reporting. We have hundreds of these reports now that are tabled. I looked at two years of estimates. I found two references to these performance plans and performance reports. It's depressing. All of those documents, both online and in hard copy, are produced presumably in the interest of promoting accountability. If they're not used—and they're not used internally either, to any great extent—that's a huge waste of money.

Other jurisdictions that I've studied—the U.K., Australia, and the leading states in the United States—have scaled back their performance reporting requirements. Why? Because they're not being utilized. It's depressing news, I'm sorry to tell you. So one of the key features of this new approach to accountability would be that we report on everything. But if the reports don't get used....

So yes, I want public servants to come here. Probably they need clearer rules of engagement for these encounters. I think public servants understand what their roles are. I think sometimes MPs cross the line in terms of taking public servants into areas that are more political, where public servants really shouldn't have a public opinion.

That was too long an answer. I apologize.

● (1720)

The Chair: Thank you. No, it was perfect, Professor Thomas.

Mr. Owen.

Hon. Stephen Owen: Professor, thank you for joining us and for this very comprehensive scan of the legislation.

I have two points. Since you were so rushed in your presentation because it was so comprehensive, I want to bring you back to the idea of this growing parliamentary bureaucracy. I've called it a parallel universe to the executive and Parliament, in some senses because of the loose accountability of those offices—albeit they have great importance in extending the reach of Parliament into monitoring the executive.

I'll go to the specific comment you made. I share your concern that the proliferation can be very confusing, expensive, and complex, with multiple investigations into overlapping issues. But you made the point that you do not approve of these officers of Parliament having order-making power. I assume that's based on the basic principles of ombudsmanship: that you are there for moral suasion, you are there as an extension of parliamentarians, and you are there to investigate independently and report publicly. But you're not there to—

The Chair: You've left about 30 seconds, Mr. Owen.

Hon. Stephen Owen: I'd like you to reinforce that, if you might.

Prof. Paul Thomas: Yes, I say that, and I'd be happy to speak a little more about it.

When you grant the Information Commissioner order-making power, you change the dynamics of the relationship with the agencies he's overseeing. On one day of the week, the Information Commissioner would be seeking to persuade people to do what he believes is the right thing to do and release certain information. The next week, he may be ordering them to do it.

Over the years, Commissioner Reid said he gets 95%-plus compliance with requests. It's very high. It's the controversial and difficult cases that get the publicity. In most cases, mediation, persuasion, and publicity work very effectively.

I think there's a false modesty among some commissioners who think they have to have real power. If you give them real power, they can make mistakes; they can order inappropriate actions. Then to whom are they held accountable?

I am a firm believer in the ombudsman model.

The Chair: Thank you, Professor Thomas.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: I very much appreciate your presentation and your brief, Mr. Thomas. I would like to have had time to read it carefully and to ask you questions about the information it contains. Unfortunately, this committee is in a rush and the government is trying to get Bill C-2 passed as quickly as possible by speeding up all the procedures.That does not allow us to weigh the consequences and impact of this bill, which seem to us...

[*English*]

The Chair: Maybe you could get to your question, Madame Lavallée. This is your preamble to every question. Please get to your question.

[*Translation*]

Mrs. Carole Lavallée: Am I not allowed to make as long a preamble as I wish?

● (1725)

Mr. Benoît Sauvageau: No, that's a new censure procedure, I think.

Mrs. Carole Lavallée: I'm very surprised. That is the first time I've been told that I am not allowed to have as long a preamble as I wish. I will nevertheless continue and introduce my subject, so to speak.

You told us that coming after the sponsorship scandal, Bill C-2 perhaps went a little bit too far in the other direction. I would like you to tell us what aspect of Bill C-2 symbolizes this pendulum.

There are also some implications of the bill that should be weighed and we do not have the time to do so. I do not know whether I am allowed to say that we do not have much time to weigh the implications of the bill. Some members of the public service are in fact paralyzed as perhaps are some senior officials who would hesitate to meet with a lobbyist or who would hold informal rather than official meetings, so that they would not be required to provide information.

I would like to hear what you have to say about this, so that Bill C-2 is not just a bill that plays on public perception, but one that introduces a number of new procedures that would really restore public confidence and establish a new culture within government.

[*English*]

Prof. Paul Thomas: First, when you introduce a wide-ranging series of changes like this, there undoubtedly will be unforeseen consequences. But you could sit in this room all summer long and probably not predict everything that's going to happen. There will be unintended consequences. It's very hard, and I wish social scientists like yours truly had more wisdom to say how particular changes will reverberate throughout the system, how they'll have impacts throughout the system.

We want a public service that is a learning organization. We want creativity. We want innovation. We want prudent risk-taking. But every time a public servant makes a mistake, if we want to haul them before the committee, or we want to have the Auditor General pounce on them and report it, or we require that deputy ministers not buy their own notebooks to write down notes from their minister and things like that....

I mean, you can go overboard with this. I see the spokespersons for the government saying that they don't want excessive rules. I was a consultant to the chief financial officers association, which has been before this committee, on their most recent volume. I contributed to that. I think you can have excessive amounts of control and the government will never operate perfectly. There will be mistakes.

One of the problems is that we're trying to create a public service culture of prudent risk-taking in a parliamentary culture that is unforgiving in terms of mistakes. Those two cultures don't mesh. There's a tension there. I'm saying, have all the partisan debates you want over legislation and big budget issues, but when it comes to scrutiny of the operations of government, relax the partisanship, or find a higher quality of partisanship, which is more constructive.

[*Translation*]

Mrs. Carole Lavallée: You spoke about a tribunal to protect whistleblowers. I do not want to misinterpret what you said, but I understood that you thought it would be preferable for the Public Service Staff Relations Board to play this role. Did I understand you correctly? Could you go into more detail on this subject please?

[*English*]

Prof. Paul Thomas: This is not as well informed an answer as I would like to give. It partly comes out of a certain conservatism on my part with regard to changing institutions. It also comes out of a sense of economy, that you have institutions that can do more than one thing. You have to be careful what functions you combine in institutions. I've led three seminars on whistle-blowing for the Ontario government, and Manitoba has a whistle-blowing law in process now: they're placing it with existing institutions.

As we multiply the institutions and these oversight and appeal bodies of various kinds, we're proliferating them, and it just seems there's an existing organization.

The one drawback to the Public Service Labour Relations Board may be that whistle-blowing may be seen purely in employment terms, that it's about job security. And when we read the reports of the public service integrity officer, he highlights the fact that most of the complaints coming to him are from disgruntled employees who feel they've been disciplined unfairly. Whistle-blowing is about more than dealing with employment problems. It's much broader than that. That's the only misgiving I have about leaving it at the Public Service Labour Relations Board.

The Chair: Thank you very much.

Mr. Dewar.

Mr. Paul Dewar: Thank you.

And thank you for a very concise and in-depth presentation. So many questions come out of it and some of the ideas you've presented. I'm going to start off focusing on an area we haven't really talked about a lot—or at least when I've been present: the budget oversight and the mandate. You talked about comparing it to the American Congressional Budget Office. I think that was born out of the Watergate scenario.

Prof. Paul Thomas: It was 1974.

Mr. Paul Dewar: So it was just around the time.

And you know, obviously with the idea of tightening up financial accountability.... One of the things that is interesting in the bill—I don't know if it caught your eye—is to give cost estimates for private members' bills, which is interesting, because usually you're not allowed to spend money when you're presenting a private member's bill. But there's no initiative to look at government bills. I'd like to get your comment on that, or the logic. Maybe you're not the person to speak to it. It would be important public policy to have that; if you're going to give cost estimates for private members' bills, then you should do the same for government bills.

I'm really interested and very concerned about the estimates process. If we go back to where this bill came from, the Gomery commission, it was about concerns about oversight of spending and the fact that spending became outside of accountability, if you can say that.

I'm a new member of Parliament. I represent a predominantly public service riding, and they said, to a person, when I talked to them: We don't need more overlays like the previous government was intending; we need to be able to breathe a little, to talk about outcome-based policy again, which used to be the way; we want to get there, and we need to come up with some of our own ideas to get there.

But on the estimates—and you've studied provincial governments—it seems to me they do it differently. There's more attention, more time taken to look at the estimates. And here it seems to be—and we saw this with Gomery.... Certainly what came out of there is that attention is given to the public accounts after the money has been spent. And talking to some people, former parliamentarians, it used to be different here in Ottawa. But certainly the experience, and if you could just....

The second question is about the estimates process in other provinces and how that might get to your point about taking the partisanship out of that component, looking at money, cost-benefit analysis, and where it should be placed—at the beginning or at the end of the equation.

● (1730)

Prof. Paul Thomas: First, on the CBO, it does very credible work in terms of estimating the costs of new programs, but the congressional apparatus is so much bigger, and the institutional rivalry in Congress, even when it's controlled by the same party as the President, is so strong that there's motivation there to look in depth.

And congressmen, particularly on the Senate side, have huge personal staffs of their own. That is a big industry. It doesn't mean that they still get it right. The multi-year budget forecasts of spending and revenues have been way, way off, particularly as you get way up.

That was one of the reasons there have been arguments recently to give Parliament more capability in terms of economic and fiscal forecasting, but we shouldn't presume that just because we attach an office to Parliament that we're going to get the forecasting part of it.

I was around here in 1971-72 as a parliamentary intern. I was involved back then at looking at the supply process, and we've been debating supply and the weakness of the supply process since then.

My report to the Treasury Board back in the late nineties asked why MPs are more interested in vindicators than in indicators. Why can't we spend time looking carefully at what we spend and what we get for the money we spend? And it's not just because the information is inadequate. I think even the more sophisticated....

We have to find, maybe, a separate committee that can select part of the estimates and study it in depth, and maybe go on a cycle and find that small, dedicated band of MPs who are prepared to spend a lot of time on it.

I admire this committee. I'm not saying this just to flatter you, but I know a number of people around this committee who have spent time in the past working on the machinery-of-government issues. There is no political gain to be had from that whatsoever, unless there's a rousing scandal of some kind. Mostly, it's unrewarded in political terms to do that, but somebody has to do it.

So I would say, take a minority of MPs who are interested in that, give them adequate staff to go on a cycle, and pick years. And then have the capacity for Parliament to hold up the passing of the estimates. Because we did away with the ability to block spending, and now most of the estimates are deemed to be reported and passed by the House. So it's a kind of ritual we go through, but they never get really examined.

Mr. Paul Dewar: Is it different at the provincial level?

Prof. Paul Thomas: At the provincial level in my province, in other provinces, it often occurs on the floor of the legislature. There is more media coverage of it. There is still the political gamesmanship that goes on, but that's to be expected, I guess.

The Chair: Rob Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you for your presentation. I can certainly relate to some of what you're saying about these performance reports and about other reports on supply, also.

When we do have limited staff, and we try to look at some of this raw material and make some sense out of it, it is a pretty daunting task. So I think we are taking steps in the right direction.

You mentioned that Congress has a much larger staff than ours. I'd be interested in hearing a bit about that, because we can always use more help in doing the work we're doing.

But on the Public Service Staff Relations Board, there has been some debate about that. I'm certainly not interested in creating extra layers of bureaucracy or duplication, but I think we want to set up institutions that are going to work and make the situation better.

There has been discussion in this committee about extending some protections, not only for government employees, but also for contractors and federal government grant recipients. And also there has been discussion on federally funded researchers.

That being the case, when you look at what the traditional mandate of the Public Service Staff Relations Board has been—and you've already expressed the one reservation, whether this is only going to be dealt with in an employment context.... Does setting up a new body—that approach—make a little more sense if we did, in fact, extend some of the reach to federally funded researchers, and so on?

● (1735)

Prof. Paul Thomas: Mr. Moore, it's been a very tricky issue. As I followed this debate over the last decade, we have gone round and round in terms of identifying institutions that could possibly play this role. Now we've come to the point where we've rejected the Public Service Commission and rejected some offshoot of the Auditor General that was once proposed.

You make some compelling points, particularly the point that more and more governments don't do things directly; they do them through third parties, in whose hands, then, public money is put at risk. In those circumstances, it seems to me prudent to allow employees of those organizations, and even citizens on the receiving end, to say that there's a problem here with this money. We had a situation with Hydra House, a for-profit operation for developmentally challenged adults in Manitoba, that became hugely controversial. There were Cadillacs, trips, cruises, and all the rest of it. It was a real mess. Yet there was no avenue, no channel available through which the people who knew these things were going on could get that information to the right people. I'm fully supportive of the idea that it accountability shouldn't stop at the boundaries of government. It's got to go beyond it now.

In the United States now there are even proposals to amend the Whistleblower Protection Act to cover money being spent through state governments. I don't want to wrestle with the provinces on that one, but a lot of money is spent through other orders of government, by both provinces and municipalities. Presumably there can be misuse of public money in those circumstances as well.

Again, I guess at some point you have to ask yourself how much trust you want, and how much control, and how you balance that. You can't have everybody being investigated all the time; it's got to be in exceptional cases only.

Mr. Rob Moore: You also made a remark that hit home with me. I understand we as MPs have to have that direct input. You mentioned something about a pre-legislation scrutiny commissioner. I don't think that's where we want to go. We have a job we were elected to do on behalf of our constituents and on behalf of Canadians. I'm wondering specifically what product you think would be useful in helping members of Parliament digest and make sense of the estimates and performance reports so that we can give input.

Prof. Paul Thomas: I've had a lot of experience with this stuff. A number of years ago I did a paper for the Auditor General—I don't know whether she would share it with you—on the subject of quality information for parliamentarians. The problem is there are 308 of you. I don't mean that you're a problem because there are 308 of you, but because you've all got different interests. One type of information or one way of presenting information may be suitable for your interests and your way of doing analysis and asking questions, but may not be suitable for some other member.

I think there may be something to be said for having a committee on public spending, which is a joint committee of the House of Commons and the Senate. I've done work for the Senate, and though it is a much maligned and ridiculed institution, it does far more good work than it's given credit for, largely through its committees conducting investigations. They are, in effect, evaluations of departments and programs. Because senators don't have the pressures of time, and don't have the re-election concerns, they do some very useful work that doesn't get much publicity but that nonetheless has an impact on the thinking of departments.

If I were designing something, I might think about a joint committee with a small dedicated group of MPs working alongside senators, and with a significant staff capability to tackle this really tough job of understanding what government finances are like, how spending operates, and so on.

● (1740)

The Chair: Thank you.

Professor Thomas, we have come to the end. Thank you, sir, for coming and giving us your thoughts.

Prof. Paul Thomas: Thank you very much.

The Chair: We originally planned that we would break ten minutes ago, have some sustenance in the next room, 237-C, then start at six and go until eight. Now all of a sudden we have two votes at 6:40, and who knows how long that'll take. We didn't anticipate that, as you can understand.

I need some guidance from the committee. We have people who are waiting. There are three groups coming at six that wish to make a presentation. Some of them are in the room, I expect. Does anyone have any bright ideas before the chair says something foolish?

Yes, Mr. Owen?

Hon. Stephen Owen: Mr. Chair, colleagues, how about if we hear the first group of witnesses starting at six, and have a pretty quick turnaround here, with something to eat. Then go for the votes and come back and have half an hour for the second group.

The Chair: Is everybody okay with that? That first group is going to lose ten minutes.

Hon. Stephen Owen: I apologize in advance for suggesting they would lose.

Come back at six. Let's go and have a bite. We'll have the vote, and then come back for half an hour to hear the other group.

The Chair: Okay. We'll start again at six o'clock, break at 6:30 to go and vote, and we'll hope to heck we can get back in good time. The meeting is adjourned.

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