



House of Commons  
CANADA

# **Standing Committee on Access to Information, Privacy and Ethics**

---

ETHI • NUMBER 007 • 1st SESSION • 39th PARLIAMENT

---

**EVIDENCE**

**Wednesday, September 27, 2006**

**Chair**

**Mr. Tom Wappel**

Also available on the Parliament of Canada Web Site at the following address:

**<http://www.parl.gc.ca>**

## Standing Committee on Access to Information, Privacy and Ethics

Wednesday, September 27, 2006

• (1530)

[English]

**The Clerk of the Committee:** Honourable members, *honorables membres du comité*, I see a quorum.

[Translation]

Our first item of business is the election of the Chair.

[English]

I'm ready to receive motions to that effect.

**Hon. Jim Peterson (Willowdale, Lib.):** I would like to nominate our former chairman, who did an outstanding job for us, in terms of being fair, intelligent, informed, well briefed, and a delight to work with.

**Some hon. members:** Hear, hear!

**Hon. Jim Peterson:** I would very pleasingly nominate Tom Wappel.

**The Clerk:** It has been moved by Mr. Peterson that Tom Wappel be elected chair of the committee.

Are there any further nominations?

I declare the motion carried and Tom Wappel duly elected chair of the committee.

(Motion agreed to)

**The Clerk:** Before inviting Mr. Wappel to take the chair, we'll now proceed to the election of the vice-chairs.

I'm prepared to receive motions to that effect.

**Mr. Mike Wallace (Burlington, CPC):** I'll nominate David Tilson.

**The Clerk:** It has been moved by Mr. Wallace that David Tilson be elected as the first vice-chair of the committee.

Are there any further nominations?

I declare the motion carried and David Tilson duly elected first vice-chair of the committee.

(Motion agreed to)

**The Clerk:** Now, the nomination for the second vice-chair, just to remind you.

**Mr. Paul Zed (Saint John, Lib.):** I nominate Mr. Martin.

**The Clerk:** It has been moved by Mr. Zed that Mr. Martin be elected second vice-chair of the committee.

[Translation]

Are there any other motions?

[English]

I declare the motion carried and Mr. Martin duly elected second vice-chair of the committee.

(Motion agreed to)

**The Clerk:** I will now invite Mr. Wappel to take the chair.

**The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)):** Thank you, colleagues. Thank you, Mr. Clerk.

The order of business for today, after the election of the chair, is committee business.

Is it the will of the committee to go in camera, or do you want to do this publicly?

Everybody's okay with it in public then? Thank you.

Ladies and gentlemen, we have four notices of motion before us, and the proponents of all four are here. I've taken a look at the motions, and I want to remind you of the bullet points for committee business. However, if we deal with the motions, it may obviate the need to deal with some of the bullet points. I wanted to offer a suggestion on how to deal with the four motions, and I hope the committee will agree.

Three of the motions arise out of the same subject matter, namely, the motions of Mr. Zed, Mr. Kenney, and Mr. Martin. Having examined the motions, I think the motion of Mr. Kenney is the broadest motion and I would suggest that we deal with the motion of Mr. Kenney first. The reason is that if it were passed it would not be necessary to deal with the two motions by Mr. Zed and Mr. Martin. If it isn't passed, then we can go to each of those individually and have whatever debate we need.

Madame Lavallée's motion, in effect, springs from the appearance of Minister Toews last summer, and also from a letter that Mr. Wallace sent to the minister, the subject matter being the same. I feel we should deal with that motion after the motion of Mr. Kenney. Because it deals with access, it also deals with one of the bullet points.

Mr. Kenney, are you prepared to move your motion?

• (1535)

**Mr. Jason Kenney (Calgary Southeast, CPC):** Yes, Mr. Chair, I move my motion.

**The Chair:** Do you have any discussion on it?

**Mr. Jason Kenney:** Yes, Mr. Chair, I'll be brief.

I spoke very briefly with Mr. Martin about this after we both tabled our motions, coincidentally, without prior coordination.

I'll speak for myself. I think they're similar in intent. I tried to construct a general motion without limiting the committee. I don't think we need to spend several weeks in an exhaustive study of this issue, but it is an issue of importance. This is the appropriate committee to examine the question of the confidentiality of the names of access to information applicants, particularly as it relates to the alleged practice—the current or former practice—of furnishing those names to political staff in either the offices of ministers or in the Prime Minister's office. I think this is the right place to deal with it.

I do think it's important. I think Mr. Zed's motion, with respect, is much more limited and simply requests that the Privacy Commissioner come before us.

I am informed, just for the committee's information, by the President of the Treasury Board that when the reports were issued in the media last week about one particular name ending up in a circular memorandum from officials at Public Safety, Minister Baird and Minister Day both called Commissioner Stoddart, just to invite her cooperation with the government in general and with Public Safety in particular, to review the matter. I understand that Commissioner Stoddart informed the President of the Treasury Board that she had received a complaint—I say this generically—but had not yet, speaking as of last Wednesday, determined whether there were grounds for an investigation. Whether she does an investigation into this matter or not, to the best of my information at this point, is undetermined.

I think it would be more important for us to look at this in a broader context.

I just want to close by saying that I think it's very important that we look at both current and previous practices, because we can be less partisan here than in the House, obviously. I honestly believe that there may be certain practices that were inherited by the current government that were just normal business, such as the circulation of minutes of meetings where occasionally these names came up. If that's the case, we'd like to know, our government would like to know, what the source of it is, whether this is some kind of longstanding practice in certain departments or in all departments or in no departments, and then assist the executive branch of government in putting an end to it. Because I think we all agree that it's inappropriate.

I would argue in favour of either my motion or Mr. Martin's, or some version thereof, because I think the intent is effectively the same.

**The Chair:** Thank you, Mr. Kenney.

The motion is:

That the committee investigate and report on issues related to the alleged disclosure of the names of Access to Information applicants to political staff of the current and previous governments.

Is there discussion? Mr. Zed.

**Mr. Paul Zed:** Yes. Thank you, Mr. Chairman.

I have no problem at all whatsoever with Mr. Kenny's suggestion and his motion. My motion, as you may remember, colleagues, was as a result of a certain set of circumstances that had appeared, and I was trying to come in a timely way to the committee.

I appreciate what Mr. Kenny has said, that we are not trying to politicize things, that at this committee we would just want to find out what practice should be adopted. And if there is something that has happened in the past that shouldn't have happened, or something that's currently happening that shouldn't happen, and it violates the law, that practice should end. I think in the spirit in which the motion has been put forward, I would support it.

**The Chair:** Thank you.

Is there any further discussion? All in favour of the motion?

(Motion agreed to)

**The Chair:** Mr. Martin, Mr. Zed, does that mean we don't need to deal with your motions?

**Mr. Paul Zed:** I withdraw my motion.

**The Chair:** Thank you very much.

**Mr. Pat Martin (Winnipeg Centre, NDP):** I won't move mine either.

**The Chair:** We then turn to Madame Lavallée's motion. Just let me find it. Does everyone have a copy of it?

I just want to make one comment on this. The notice of motion, in effect, calls for a report of the committee. If the committee were to report to the House, then under "motions", it would be acceptable for a member of the House of Commons to move, concurrent with the report of the committee, thereby presumably putting more pressure on the minister.

This arises out of a heated discussion, I might add, that occurred after the minister appeared, debating whether the committee should begin further study—yet again, I suppose one could add—or whether we should, to the extent we can, insist that the minister bring forward some sort of bill so we have something we can physically look at. Subsequent to that, Mr. Wallace wrote a letter to the minister, in effect saying exactly what I just said, asking the minister to consider bringing forward legislation.

Madame Lavallée, are you prepared to move your motion?

• (1540)

[Translation]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Yes.

First of all, I have to say that I haven't seen Mr. Wallace's letter. I don't know why it wasn't sent to me or brought to my attention. Perhaps it was sent to me but unfortunately, I don't have a copy.

[English]

**The Chair:** We'll try to remedy that, but not immediately.

[Translation]

**Mrs. Carole Lavallée:** I drafted this motion without realizing that a letter had been sent out. I don't know exactly what the letter says, although I get the impression it is consistent with my motion. Is that the case? Is the subject matter of Mr. Wallace's letter the same as that of my motion?

[English]

**The Chair:** I'll let Mr. Wallace speak to it.

**Mr. Mike Wallace:** I'll speak in English, I'm sorry. I have a copy of my letter in French for you right here.

I spoke to the minister after our meeting and indicated that from the discussion around the table it would be great for this committee to have legislation to deal with access to information. The response was, "Send me a letter and we'll see what we can do in the fall."

The letter basically says, "Based on our conversation, please send us a bill if you have the ability to do so this fall, if your ministry has time for it." It's slightly different, but that's basically what the letter entails.

**The Chair:** Has there been a response?

**Mr. Mike Wallace:** I have not seen a response yet.

[Translation]

**Mrs. Carole Lavallée:** Thank you very much for clarifying that for me. I don't know why I didn't receive this letter.

In short, I drafted this motion because on May 15 last, I had tabled a motion to the committee, essentially calling on the minister to bring forward a bill. The wording of the motion was identical to one unanimously adopted by the committee on November 3, 2005. Unfortunately, my May 15 motion was defeated.

Moreover, we basically agreed that we needed to hear from the Minister and the Information Commissioner. Since these two conditions were satisfied on June 19, I thought that when we returned in September, we could consider a new motion calling on the minister to bring forward draft legislation. I'm very happy to see that the subject matter of both Mr. Wallace's letter and my motion is the same.

[English]

**The Chair:** You have the notice of motion in front of you. It has been duly moved by Madame Lavallée.

(Motion agreed to: yeas 6; nays 5)

• (1545)

**The Chair:** We will now move to further committee business.

I just want to point out that in view of Madame Lavallée's motion, I don't think there's any need to discuss access to information, because the committee's views on access to information are clear.

I want to bring to the attention of the committee that the PIPEDA review has been referred to this committee by the House of Commons.

PIPEDA is...

**Ms. Nancy Holmes (Committee Researcher):** It's the Personal Information Protection and Electronic Documents Act.

**The Chair:** I don't believe there's a time limit or anything. It's simply been referred to us because the statute itself requires that a House of Commons committee review the act within a certain period of time—five years. Therefore, that has been referred to this committee by the House of Commons.

We also have the main estimates.

We have the review appointment of a new Information Commissioner. I don't think that has happened. I think Mr. Reid's term ends at the end of this week and it will be up to the government to name another Information Commissioner.

Then we have a review of a proposed inquiry process for the Ethics Commissioner.

I'm in your hands, but it would seem to me that given the motion of Mr. Kenney, we'll be working on that as soon as possible, calling witnesses, etc. But it seems to me that if the House of Commons has referred something to us and there is a command in the statute that a House of Commons committee review it within a period of time, we have to pay particular attention to that. I would think it would be our next order of business, or possibly even at the same time, depending on how long it takes to get witnesses set up for the inquiry that we're going to conduct pursuant to Mr. Kenney's motion. I'm simply throwing that out for discussion.

Mr. Zed and then Mr. Martin.

**Mr. Paul Zed:** Thank you, Mr. Chairman.

Perhaps if the committee is interested, what I would suggest or offer—I'm not sure you need a motion to this effect—is that as our chair you would create some sense of order from the committee business that I think you've outlined for us and come back to us with a proposed schedule of events, some timing based on the priorities you've outlined. From where I sit, I think that would make the most sense, that you as our chairman come forward with a plan. If that would help facilitate the meeting today, I would move that as a motion. I don't think you need it, but—

**The Chair:** Why don't you hold that in abeyance until I hear what Mr. Martin has to say? I am ready to propose a plan.

**Mr. Pat Martin:** My only point, Mr. Chairman, is that the appointment of the new Information Commissioner might be the most topical and timely issue that we have to deal with, for the simple reason that we might want to consider, as a committee, some of the grievances we've heard about the appointment process to date.

I spoke to the current Information Commissioner. The posting to serve notice that a new Information Commissioner was going to be appointed went up on the government website for exactly seven days. There was no publishing of it in the *Gazette*; there was no nationwide advertising or notice served that interested applicants could come forward. The current Information Commissioner was so horrified that he personally phoned half a dozen people that he thought might be interested, to alert them to the fact that they had seven days to apply for this seven-year appointment at \$250,000 a year. Most people would want a little more time to make application for such an important life-changing situation.

I'm thinking that rather than wait until the new Information Commissioner is appointed and bring him here for the token review that committees do—they ask him if he's ever been convicted of beating his wife, or whatever—I think our committee should get proactive and insist that the process stop in its tracks and that a proper posting and notice be served nationwide, even if it means extending the current commissioner for a month or two months, and do this correctly. I say this in the context of Bill C-2. The Federal Accountability Act changes forever the way appointments are made and does away with patronage. The only reason I can think of for having such a short period of notice is that there's a pre-approved applicant in the minds of the government and they want to reduce the pool of people that they have to consider. It's completely contrary to the idea of casting a wide net to get the best applicant, with transparency and accountability and all the buzzwords we're so used to.

I think perhaps I would speak in favour of making the first order of business to review the appointment of the new Information Commissioner, but actually go further and review the appointment process of the new Information Commissioner and perhaps intervene with a strong recommendation that it be reconsidered.

• (1550)

**The Chair:** All right. That's a recommendation.

Mr. Kenney.

**Mr. Jason Kenney:** Mr. Chairman, I would agree with Mr. Zed that your job, as chairman, is to organize the committee's business. You're an experienced member, and I trust your judgment in this respect because you understand. I don't know what the timelines are on the legislative review we have to do, but we would be comfortable with your judgment on how to organize committee business.

The motion that was just adopted in my name is a matter of some current controversy. We expect this matter will be examined and resolved in a timely fashion, so we would encourage you to consider making that a priority for the committee.

As it relates to reviewing the appointment process for the ATI Commissioner, as per Mr. Martin's remarks, I don't think it's the job of this committee to review the appointments procedure. Other committees have dealt with or are dealing with Bill C-2, with the appointments process. If it's the committee's will to get into that, so be it. But I can assure Mr. Martin there's no hidden agenda in terms of appointing an ATI Commissioner. I haven't heard of any secret candidates out there. Moreover, if the government had a candidate it wanted to push through, it wouldn't matter whether there were 100 applicants or 1,000 applicants, we'd still have the prerogative to put that person forward.

And finally, I'd point out to him the fact that Mr. Reid's term is expiring is hardly a secret. We could Google "Access to Information Commissioner term" and find hundreds of hits. Anybody who follows access to information or these matters knows that there's a change coming. I've received unsolicited letters and applications from people I've never heard of, expressing an interest in the position. So I'm not as pessimistic as Mr. Martin that this is a closed competition per se. But I'll leave that in your hands.

Generally, I can speak for government members here in saying that we trust your judgment as to how to organize the committee business.

**The Chair:** Thank you.

Colleagues, here's my view on things. First of all, I'm not entirely of the view of Mr. Martin that it's a token review. I think the idea, beginning in the last Parliament, was to try to give committees more power to review appointments and to make recommendations. It's true that in some cases the Prime Minister of the day didn't accept the recommendations, but that did not prevent the committee concerned from rejecting the proposed person and giving reasons. That indeed has happened in this Parliament, as I recall. I don't really consider it tokenism, depending on the committee—how feisty the members of the committee are—and the nature of the candidate.

We have a requirement, I believe, to review the Information Commissioner matter when it comes before us, and I think Parliament will be looking to that. If I'm not mistaken, and I could be, the Information Commissioner is an officer of Parliament; Parliament has to approve the appointment. Is that not true? Then it is our committee, we presume, that will be offering guidance to us as members of Parliament—not as people of different parties—as to whether the person proposed should be approved by the House of Commons. I think that's a pretty substantive responsibility for us as a committee.

We can't do that until we hear who the candidate will be. I think, recalling previous practice, there's usually discussion, informally at least, with the leader of the opposition and possibly even the other parties to determine whether there would be a huge fight over it in Parliament or whether everybody could more or less live with the proposed person.

Here is what I would like to recommend to the committee. We have two meetings next week, one on Monday and one on Wednesday. I will not be here Monday, and Mr. Martin will be in the chair. I'd like to suggest that we ask the clerk to see which witnesses we can get here by Monday to get that inquiry started. If possible there is Commissioner Stoddart in particular, as Mr. Zed requested in his motion. I agree with Mr. Kenney that there's some expectation out there that we will deal with this matter with some clarity. I recommend that we try to set that up for Monday. If it's not possible, then we'll shoot for Wednesday of next week. By Wednesday of next week we should be able to line up some witnesses to get the inquiry started.

In the meantime, I can, at the earliest opportunity, table the first report of this committee as soon as it's done. That will take care of that item. Then I think it's necessary for us to schedule in some manner a PIPEDA review as the next order of business after we conclude the inquiry with respect to revealing names of people who make access to information requests. We don't know how long that's going to take, but I would assume as a guesstimate that four, five, or six meetings should be enough to at least hear the appropriate evidence. Then we could begin discussing a report. I'm not comfortable with leaving a statutorily mandated review on the back burner for too long, so I'd like to move on that.

Numerous people at different places have approached me to indicate great interest in a PIPEDA review, which frankly surprised me.

**A voice:** What is it again?

**The Chair:** Personal Information Protection and Electronic Documents Act. They're also waiting for this committee to proceed with that review as well, so I'd like to do that. One would hope it would be early November through to December, and then we'll see how we go. That's what I'm proposing.

In the interim, we have main estimates. That is usually something the opposition parties like to deal with. My past practice in other committees has been to try not to slough that off, because a lot of good information can be obtained under proper and relevant questioning with respect to main estimates. It's been suggested that we have a briefing session on the new parliamentary funding mechanism, which follows this committee's recommendation, before we do the estimates. We might even inquire if the Auditor General would be willing to help us prepare some questions with respect to estimates, as the Auditor General did for the fisheries and oceans committee when I was the chair.

• (1555)

So that would leave me with some flexibility, depending on the availability of witnesses.

I'd like to move on Mr. Kenny's motion immediately and perhaps schedule an extraordinary meeting for a briefing session on the estimates, and then find out what kinds of witnesses we would be looking for, for PIPEDA, and then come back at the next meeting I'm at, which would be a week today, and possibly make some recommendations where we could have estimates stuck in amongst that. I would think those would be the only three things we would do for the balance of this year, subject to the new Information Commissioner and a review of the new Information Commissioner's qualifications.

That's how I'm looking at it. Does that seem like a reasonable plan?

Mr. Wallace.

**Mr. Mike Wallace:** Yes, I'm willing to support that plan, Mr. Chairman. The only suggestion I would make is if you could put it in writing so we have a sense of what's coming when, that would be great for us, whether it's on Monday or on Wednesday.

**The Chair:** The clerk will do that. And we'll endeavour not to lose a day by having nothing to do on Monday. We'll try our best to get something organized.

Mr. Zed.

**Mr. Paul Zed:** By coincidence, on Friday I bumped into the Privacy Commissioner and she indicated that she was going away on Wednesday. So I said I had no idea whether my motion was going to—

• (1600)

**The Chair:** I'm sorry, Wednesday being today?

**Mr. Paul Zed:** No, Wednesday being next week, and she was going away for a couple of weeks. I think she might be available on

Monday, because I asked when she thought she might be available. That's just a point of information. Other than that, I'm fine with your plan.

**The Chair:** Thank you.

So we'll ask the clerk to immediately contact the Privacy Commissioner to see if she can appear, to get the ball rolling, possibly with some other witnesses, on Monday. And we'll see what we can do with respect to Wednesday. That's the plan I propose to follow. Do I see consensus on that?

**Mr. Jason Kenney:** Mr. Chair, what would be a deadline to contact the clerk about prospective witnesses for that hearing?

**The Chair:** For your hearing?

**Mr. Jason Kenney:** For the Monday, yes.

**The Chair:** I don't really have any deadlines because it's not going to be just one day. If we have a number of people who want to approach the committee with their evidence, I'm sure—always being reasonable, but we can't have 15,000 people here. I really don't have a deadline, but the faster you get the names in, the faster the clerk can communicate with them and invite them to come here. So the sooner the better—let's put it that way—for all committee members.

Now, given that, this should take us through to and including Christmas break. Are there any other suggestions as to what we should do?

Mr. Martin.

**Mr. Pat Martin:** I was just thinking about the Monday meeting. The only thing that Jennifer Stoddart is going to really be able to tell us is what rights people have to anonymity in filing a complaint and the fact that she has started an investigation, at the request of a number of people, not the least of whom is the President of the Treasury Board.

The person who can answer the questions about what a person's rights are to having their name kept private is actually the Information Commissioner. I think we would benefit from hearing from that person regarding the incident that Mr. Kenney's motion and my motion relate to.

The Privacy Commissioner's role in this is really quite minor. The Information Commissioner has the obligation to enforce your rights under the Freedom of Information Act and Protection of Privacy Act. So I'm wondering if on Monday we shouldn't ask John Reid to be here as well.

**The Chair:** Mr. Martin, good point, except he won't be the Information Commissioner on Monday. I would suggest that we have Mr. Leadbeater here, his deputy assistant, who would be able to provide some information in that regard, at the same time as Ms. Stoddart. Between the two of them, they should be able to start us off, at least, in terms of where to look at who to call and possibly even the reporter concerned and that sort of thing. But at least those two people.... I don't think we can call Commissioner Reid, certainly in his capacity as commissioner, because he won't be commissioner.

**Mr. Pat Martin:** Imagine the stories he could tell, though, now that he's no longer commissioner. It might be fun to have him as a witness.

**The Chair:** We could certainly invite him as a private citizen and former commissioner. If he wishes to regale us with anecdotes, that's fine.

Mr. Kenney.

**Mr. Jason Kenney:** With respect to the particular case that was the source of the current controversy, we might want to consider calling in the access to information coordinator of Public Safety.

**The Chair:** All right. Thank you.

Assuming that we can get two, at least, of those three, that should do us for two hours on Monday, I would think, and then we can carry on on Wednesday. I think we've pretty well covered the balance of 2006.

If there's no other discussion, I could adjourn the meeting, and we'll get to work at 3:30 on Monday with Mr. Martin in the chair.

*D'accord. Merci beaucoup.*

The meeting is adjourned.

---









**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliament of Canada Web Site at the following address:  
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :  
<http://www.parl.gc.ca>**

---

**The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.**

**Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.**