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Chair

Mr. Tom Wappel

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● (1530)

[*English*]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): I am calling the meeting to order.

Good afternoon, colleagues. We have a number of witnesses today.

I'll go through the list of witnesses as I have it: Mr. John Gustavson, president and chief executive officer of the Canadian Marketing Association; Wally Hill, vice-president, public affairs and communications, from the same organization; and Barbara Robins, vice-president, legal and regulatory affairs, Reader's Digest. As well, from Federally Regulated Employers—Transportation and Communications, or FETCO, we have Don Brazier, executive director; Edith Cody-Rice, senior legal counsel; and Barbara Mittleman, director.

Welcome, everyone. I presume each organization has an opening statement. We'll have you present first and then we'll go to questions from our committee members.

I guess I'll call on the Canadian Marketing Association to begin.

Mr. John Gustavson (President and Chief Executive Officer, Canadian Marketing Association): Thank you, Mr. Chairman. It's a pleasure to be here today.

I might just add to the introduction you made a moment ago that Barbara Robins is also chair of our ethics and privacy committee. Her responsibilities as vice-president, legal and regulatory affairs, extend not just to Canada but to Latin America and the Asia-Pacific region as well. So she has some international perspective that might be of interest to the committee.

I also want to take a quick moment to thank the committee for its indulgence. We were asked to appear next week, but that appearance conflicted with our board of directors meeting to consider our annual plan and budget. Given the fact that we have 37 people on our board, that would have been a little difficult to move.

In 1995, this association was the first national business association to call on the federal government to pass privacy legislation to govern the private sector. CMA believed that a well-balanced privacy law would result in benefits for consumers and for information-based marketers, an increasingly important sector of the Canadian economy.

Marketers know that respect for personal information is good for business. They advocated a law that would provide clear direction on how personal information could be collected, used, and disclosed, and a law that would be sufficiently flexible to enable businesses to grow the economy and take advantage of our new and emerging technologies. And to a great extent, PIPEDA has fulfilled these high expectations, although we remain in the early stages of implementing this new privacy framework. It should be kept in mind that for the vast majority of the private sector, this law only came into effect on January 1, 2004.

CMA is the largest marketing association in the country, with more than 800 corporate members representing a wide variety of marketing sectors, and we do have a code of ethics and standards of practice that is mandatory for our members. It is the self-regulatory code that provides our members and other marketers with a comprehensive set of best practices. We've provided committee members with a copy of that code for your future reference in your deliberations.

Privacy provisions of the code are structured to reflect PIPEDA's 10 privacy principles but are supplemented with additional rules for marketers. For example, for marketing to children, our code requires the express consent of a parent or guardian before a child's personal information can be collected, used, or disclosed for marketing purposes. CMA members are required to offer an opt-out opportunity with every e-mail marketing communication that's made. CMA members are banned from using unsolicited email, or spam, to acquire new customers. And CMA members must use our do-not-contact program, the only service of its kind in Canada, and it is offered free to consumers. All these provisions and the rest of the code are supported by detailed compliance guidelines.

With respect to PIPEDA, CMA takes the position that it's still too early to consider substantial changes, especially given the fact that the act has only been in effect, for most of the private sector, since January 1, 2004. The law does appear to be working well, as demonstrated by the noticeable downward trend in the number of complaints directed to the Privacy Commissioner and the increasing proportion of these complaints that are resolved or settled. At the same time, CMA's research, conducted for the Privacy Commissioner, shows the need for improvement, particularly among small and medium-sized enterprises in terms of both awareness and compliance. We have provided the committee clerk with a copy of that research.

In her own presentation to this committee, the Privacy Commissioner observed that this is not the time to make major changes in the framework of PIPEDA. CMA supports the Privacy Commissioner's view in that respect, and were Parliament to consider changes in the near future, we would strongly advise that these early adjustments be limited to technical amendments for purposes of clarifying meaning and intent.

The commissioner raised some issues that we'd like to comment on. First, I'll go to the question of the commissioner's powers and whether the existing ombudsman model has been effective. The evidence of the past few years clearly indicates that the ombudsman model has worked very well in promoting and protecting the privacy rights of Canadians. In response to complaints, organizations have invariably demonstrated a willingness to follow the direction of the Privacy Commissioner. We also feel that the commissioner's role as a privacy advocate is one that inherently contains positional bias and is therefore more compatible with an ombudsman's role.

Most importantly, however, the reality is that the commissioner's powers of influence are well supported by the discretionary power to publicize privacy breaches and by the ability to seek binding orders through the Federal Court. The last thing any marketer wants to see is their name on the front page of the *Ottawa Citizen*, being identified as being in breach of the privacy provisions, in the opinion of the Privacy Commissioner.

● (1535)

Another subject that has been the topic of much discussion over the past year or so is notification to consumers where there has been a breach of security or accidental disclosure of personal information. The question is, under what circumstances should organizations report a loss or theft of personal information to consumers? CMA believes that organizations do have a responsibility to notify consumers where the loss or theft of personal information poses a reasonable risk of harm to the individual. The challenge is to establish the correct threshold for triggering that notification. For example, how would we best define a risk of harm to the affected individuals?

We do not want to unduly alarm individuals with interminable notices of inadvertent disclosures of information that are totally innocuous. Our proposed approach to this issue is to request that the Privacy Commissioner of Canada consult with all stakeholders to develop and publicize national privacy breach response and notification guidelines. Those national guidelines can then be easily adjusted as we come to better understand the impacts of breaches and the impacts of notification, and they could subsequently form the basis of some legislative action by Parliament.

The Privacy Commissioner, on another issue, has also indicated that she is satisfied that her office can also deal with the matter of cross-border information flows by providing guidance to organizations. In our experience, that has worked very well and we agree with her assessment.

I have a couple of concluding remarks, Mr. Chairman.

Today's information-based economy continues to present new and innovative ways for business to interact with existing customers and potential customers and grow their customer base. Indeed, consumers expect more, demanding more tailored offers, convenience, and better service, requiring business to become more sophisticated in its ability to anticipate and meet these needs. Central to that marketing relationship is the collection, use, and disclosure of personal information.

Canadian marketers have long recognized that consumer confidence, privacy protection, and transparent information practices are critical for continued success. Good marketers know that respect for personal information is good business. PIPEDA is a privacy framework designed to achieve that delicate balance. In the words of a former Attorney General of this country, it is “a remarkable national consensus based on a series of delicate compromises”, one that all stakeholders believe would provide effective privacy protection while allowing businesses and not-for-profit organizations to responsibly use personal information to grow our information-based economy.

And there is much at stake. In 2001, through information-based channels, marketers generated over $107 billion in annual sales. That supported over 850,000 jobs in the Canadian economy.

PIPEDA has been working well, although there's work to be done in improving its performance and making small and mid-sized enterprises aware of its provisions. That being the case, CMA fully supports the existing act, and we urge the committee to resist making any fundamental changes to PIPEDA until we've had a few more years' experience with the legislation in its current form.

Mr. Chairman, thank you very much. We look forward to your questions and your committee's questions.

The Chair: Thank you very much, Mr. Gustavson, and thank you for coming with some specific suggestions. That's always appreciated.

Now we'll go to FETCO, and Mr. Brazier.

● (1540)

Mr. Don Brazier (Executive Director, Federally Regulated Employers - Transportation and Communication (FETCO)): Thank you very much, Mr. Chairman.

First of all, I should just clarify the titles of my colleagues here. FETCO can't afford a senior counsel. Edith Cody-Rice, here with me, is senior legal counsel with the Canadian Broadcasting Corporation.

The Chair: That's my mistake, sir. I didn't fully read the—

Mr. Don Brazier: I just wanted to make sure everybody understood, for the record.

Also with me is Barbara Mittleman, who is responsible for privacy issues at the Canadian Pacific Railway Company. Her title is director of employee relations.

Since we're rather tight on time in terms of the time we're given for introductory comments, I'm not going to go into much background about our organization. I'm not going to spend a lot of time going through any details about FETCO. We've been around for 25 years. We're involved in all aspects of labour relations and employee relations issues at the federal level. Our brief does not include a list of our members, but I did e-mail the clerk a list of our members and he may have circulated it. I'm not going to spend time going through it, but the list is available for anybody who would like to know that information.

Unlike many organizations, the ones that are basically considered to be provincial jurisdiction, with the exception of Canada Post, which is a FETCO member and is covered by the Privacy Act, all our members are covered by PIPEDA—if that's the proper pronunciation, but we're not really sure—and have been since 2001.

The Chair: No one is sure.

Mr. Don Brazier: We therefore have the five-year perspective rather than the shorter period that other organizations have.

We are going to talk about employee issues, and we're going to be exclusively talking about it because it's the only thing we talk about.

From FETCO's perspective, PIPEDA is one of many pieces of labour legislation regulating our businesses. Others include the three parts to the Canada Labour Code, the Canadian Human Rights Act, and the Employment Equity Act. It is our belief that Parliament intended these various statutes to be applied in such a way as to minimize conflict. Through their application, the other statutory obligations placed on employers would be given cognizance, minimizing interference with normal business operations.

I'll reiterate the comment we made five or six years ago to the committee at the time, which I think was the industry committee, that this looks very much like a piece of commercial legislation. Canadians were told about it in the consultation process. It really wasn't until we saw the bill that we realized the larger labour implications. We think perhaps the bill has suffered and the act is suffering from the fact that not enough thought went into the actual provisions dealing with labour issues.

In the brief I circulated, which hopefully was sent to members—I think I sent it about 10 days ago—we cover a number of areas. Quite frankly, we've collectively run into a number of problems with the act.

We make numerous recommendations in the area of employee relations. However, I'm only going to spend time on two of them, because we think they're two of the most important: information consent and the formal dispute resolution process.

There is clearly a need to distinguish between truly personal information related to the employee and information that is used for legitimate business activities or business identifiers. It has been a cause of concern in terms of the application of the act. We understand the Privacy Commissioner is perhaps cognizant of this.

For example, identifiers such as a fax number, which is a phone number, and an e-mail address, which is a business address, are provided for the express purpose of running the business. These in fact belong to the employer, not the employee. When the employee leaves the business, the identifiers stay with the business and don't go with the employee. It's therefore very difficult for us to determine why this would be considered personal information.

When I left the Canadian Pacific Railway a few years ago, I didn't take my e-mail address with me. On the day I left the company, they cancelled it.

We believe it's an example of a situation where a little more thought was needed. The act should have been drafted a little differently to capture what is clearly business information rather than personal information.

Given the increased tension among the various pieces of employment-related legislation in PIPEDA and the importance of maintaining a balance in the employment relationship, consideration may need to be given to whether employee consent should be treated differently.

Different options exist for dealing with employee consent, including reliance on implied or deemed consent or even eliminating the requirement for employee consent for the collection, use, or disclosure of personal information related to managing reasonable requests of the employment relationship. I would say, and I'll probably repeat this at the end, we are favourably disposed to the approach taken in B.C. and Alberta.

It is recommended that issues surrounding employee consent be considered and addressed during the review process. We have a couple of specific recommendations in this area.

We recommend that e-mail addresses and fax numbers should be excluded from the existing definition of personal information and that a new definition of personal information should be developed.

We also recommend that the act be changed to permit employers to collect, use, and disclose personal employee information, either without consent or when there is deemed consent in the conduct of routine and reasonable business in the managing of the employment relationship. That's how we think the acts in B.C. and Alberta work.

● (1545)

The second issue is probably more problematic in the context of the day-to-day operation of the business. It is the informal dispute resolution process. And for the record, Mr. Chairman and members of Parliament, the original bill that was introduced into the House of Commons by the Minister of Industry, way back when, didn't have this provision in it. We foresaw all sorts of difficulties in a whole pile of different areas unless there was something to deal with our ability to manage the employment relationship and fulfil our responsibilities under other statutes.

For example, part 1 of the Canada Labour Code requires that there be a process for dealing with disputes without stoppage of work. Investigations are required under part 2 of the Canada Labour Code. According to part 3 of the Canada Labour Code, you have to have a sexual harassment provision. And if Harry Arthurs has his way, there will be a lot of other obligations on employers, given the kinds of things he'll put in his report on the review of part 3. Of course, we are also obligated under the Canadian Human Rights Act to conduct investigations when there is a complaint lodged.

While PIPEDA provides that personal information generated in the course of a formal dispute resolution process not be provided when an access request is received—that's what we requested six or seven years ago when that was put into the legislation—FETCO believes that the definition of what constitutes a formal dispute resolution process and the stipulation that the information can be withheld in the course of a formal dispute resolution process are restrictive and erode confidence in the process.

Employers are required to investigate employee complaints, often on a confidential basis and without the assistance of an outside body. All investigations of complaints or disputes begin with the differing of opinions, which leads to an information-gathering process. It is impossible to resolve a dispute until the facts identifying the dispute have been determined. Doing so is often undertaken by those having knowledge of the incident and providing information about it, often on a confidential basis, in some form, to those in the business of handling the complaint. This fact-finding process is an integral part of the formal dispute resolution process, whether to determine the need for discipline or to investigate grievances, sexual or other harassment, or other workplace complaints. The fact that an employee being investigated can have access to any confidential information provided by complainants and witnesses results in complainants' being reluctant to have their issues addressed through appropriate internal redress systems, and witnesses' being reluctant to give evidence. We think that the definition is too restrictive. We think it has to cover all aspects of the dispute resolution process, including the information-gathering aspects, which would naturally be the early workings of any dispute resolution process. For anything you do, you collect data and you collect information.

At the present time, the integrity of the fact-finding process is very likely compromised by the fact that it is not protected by exceptions to access. In cases like these, the OPC has taken the position that such information is not, in fact, being generated in the course of a formal dispute resolution process, and therefore is subject to access under PIPEDA. It is FETCO's experience that the OPC's current position—that information gathered in the course of internal investigations is subject to access—has an adverse effect on the ability of employers to collect pertinent information and resolve workplace disputes without complication.

We have a couple of recommendations here, specifically the following:

The term “formal dispute resolution process” should be broadly defined to include all established mechanisms used to conduct an investigation, or otherwise resolve an employee complaint.

In all phases of a dispute resolution process, the employer should not be required to provide access to personal employee information.

Information collected while investigating a breach of a law or contract, regardless of whether the information was collected with or without the knowledge and the consent of the individual, should be also exempt from the requirement to provide access.

It is also inappropriate for employees to be able to access opinions and recommendations made by industrial relations or human resources personnel with regard to employee relations matters, including recommendations as to appropriate discipline or suitability for continued employment.

● (1550)

If I might conclude, Mr. Chair, FETCO strongly encourages that the recommendations contained in our brief be carefully examined in this review of PIPEDA. We've been around a long time, and we don't expect you to pick up every recommendation in your report. But we do ask that you give serious consideration to them. It is imperative that this review take into account the implications of this legislation on employers, their workplaces, and their business activities.

We are aware that subsequent to the implementation of PIPEDA, some provinces have passed substantially similar legislation. They have benefited from the experience gained under PIPEDA and have brought more clarity to the treatment of employee issues. The definition of personal employee information—including confirmation that the definition does not include work product—the concept of a formal dispute resolution process, and the reasonable use of employee information without consent are cases in point. We would recommend that in reviewing PIPEDA, examination be made of the developments in privacy legislation provincially. We would specifically direct your attention to Alberta and B.C.

Thank you very much.

The Chair: Thank you very much, Mr. Brazier.

Could you just direct the committee's attention to where the term “formal dispute resolution process” appears in part 1?

Mr. Don Brazier: My colleagues here, being lawyers, will be able to find it more quickly than I can.

Mrs. Edith Cody-Rice (Senior Legal Counsel, Privacy Coordinator, Canadian Broadcasting Corporation, Canadian Broadcasting Corporation): In terms of access, it's in paragraph 9 (3)(d).

The Chair: Thank you very much.

Is that the only place you're aware of that it appears?

Mrs. Edith Cody-Rice: In terms of access, yes, I believe so.

The Chair: Thank you very much.

We'll do the usual, which is that we'll begin on my left. We have an opening round of seven minutes for each person, or ten minutes. Yes, it's seven minutes, sorry.

Hon. Jim Peterson (Willowdale, Lib.): Is it fifteen minutes?

The Chair: No, no. I'm so confused after the weekend.

It will be seven minutes, and then we'll have continuing rounds of five minutes. And we'll start with Mr. Peterson for seven minutes.

Hon. Jim Peterson: Thank you.

I don't want a response from you now, Mr. Gustavson, but you had a chance to listen to Mr. Brazier and the FETCO presentation. You're calling for virtually no changes, and FETCO is calling for a number of changes. I'd be interested in your view as to whether you agree with what they're presenting here.

In terms of employee consent, Mr. Brazier, you recommend that we follow the example of B.C. and Alberta. Could you give me a brief overview of how they would differ?

● (1555)

Ms. Barbara Mittleman (Director, Employee Relations, Canadian Pacific Railway Company, Federal Employers in Transportation and Communications): Don has asked me to speak to that, if that's all right.

Hon. Jim Peterson: Absolutely. Welcome.

Ms. Barbara Mittleman: In essence, the difference would be that where the personal information is employment-related there would be no requirement for consent, provided the information is being used, collected, and disclosed for reasonable business purposes. I'm not using the exact or appropriate terms of that legislation, but in essence, that's the case.

Hon. Jim Peterson: And would that type of legislation get around the problems you're citing here?

Ms. Barbara Mittleman: That's one piece of it. With regard to having to obtain consent for collection, use, and disclosure, that would alleviate some of the pressure on employers, yes.

Hon. Jim Peterson: I certainly agree with your presentation that fax numbers and emails should not be considered personal information, but again, I'd welcome the CMA's view on that.

In terms of fact-finding being part of the formal dispute resolution process, that is, whether it's accessible by employees, I can understand your argument that this could make witnesses reluctant to come forward with information, because it would be disclosed and they would be on record and could be subject to lawsuits, I assume. On the other hand, if I'm an employee and I've been accused of some heinous act, and management has this in their records, wouldn't I want a chance to know that it's there, and shouldn't I have a right to refute it? It could affect my entire working relationship with the company.

Mr. Don Brazier: There's a judgment issue here. In the course, obviously, of any business operation, especially with the types of things we deal with here—grievances, sexual harassment complaints, human rights complaints—often the individual is identified as a potential culprit. So you have to balance between having people come forward, which we're urged to do by law, by the Canadian Human Rights Act or part III of the Canada Labour Code. We urge employees to come forward when they have a complaint. If we can't deal with them in some measure of confidentiality, they're not going to come forward.

Now, in answer to your question, let's say Barbara gets a complaint from an employee saying she's been sexually harassed, and after the investigation it becomes clear that perhaps some action needs to be taken, then obviously we have to provide the appropriate level of evidence in order to take the action. In the process of collecting the data, in the process of doing the investigation, and in the process of talking to other people, with respect, we believe that information should be protected within that context, You're right, of course, that when it comes to actually taking action, we clearly have to provide the evidence to sustain it.

FETCO employers, not entirely but for the most part, tend to be unionized operations, and many, as you know, in the federal sector especially, have a long history of unionization. My previous employer, Canadian Pacific Railway, had its first collective agreement in 1896. So we're talking about long-established bargaining relationships that have built right into the collective agreements these kinds of protections—investigations, how they're held—to ensure that an employee cannot be disciplined without the appropriate procedures. We recognize that, and nobody is suggesting that it should be otherwise.

However, we believe that unless you can provide in the fact-finding process some measure of confidentiality, we're not sure how the thing can work properly. If an employee knows that if she comes in with a sexual harassment complaint and can't deal with a company on a confidential basis, that anything she's likely to say is immediately going to go to the alleged perpetrator, we think that would have a chilling effect on people coming forward.

● (1600)

Hon. Jim Peterson: On the other hand, I can understand where you proceed with some formal hearing in terms of a particular employee. Then the person would have access to all the information that was presented.

Suppose you say, well, we hear your complaint about sexual harassment, but we don't think we have enough proof to be able to substantiate it through the hearing process. But you keep that on your file. So the accused would have absolutely no indication that any charges had been levelled against him. Meanwhile, management has on file that he's been accused of sexual harassment but you just couldn't find him guilty.

Mrs. Edith Cody-Rice: Perhaps I may respond to that. The law provides that you can only collect information that you need to collect for a stated purpose and only keep it as long as you need to keep it for that purpose, and then you must get rid of it. And you may say, well, then how do you police that?

The employee is in a position to go to the Privacy Commissioner and make a complaint that they believe there is information on the file that should not be there, and the Privacy Commissioner could investigate that complaint and demand—

Hon. Jim Peterson: How would the employee know there was any information on file?

Mrs. Edith Cody-Rice: If you obey the law, you would not keep that information on file once you had determined there was no reasonable reason to keep it on file. You're not allowed to keep that information on a file.

Even now, if you know that someone has been convicted of an offence, for example, and if you have an absolute need to know that—for example, someone has been convicted of impaired driving and you're hiring that person as a driver for your company—you could collect that information because you need to know it. You would not be allowed to collect that information just because you're interested in it, unless you needed to know it for the purposes of your company.

The Chair: Thank you, Mr. Peterson.

The Chair: Before we go to Madame Lavallée, in terms of your brief, Mr. Brazier, just so that I understand, is it your preference for the B.C. and Alberta models to be put under part IV, "Human Resource Management and Employee Relations", paragraph A, "Collection and Use of Information for Business Purposes without Employee Consent"? I just want to make sure I understand specifically in relation to what it is that you like about the B.C. and Alberta models.

Mr. Don Brazier: The two issues we raised in our introductory comments, from Barbara and Edith I think, were the ones we certainly looked at. We felt the B.C. model was more workable.

We can only assume that because B.C. and Alberta came after the federal legislation, they had the opportunity to look at PIPEDA and discuss the matter with the Privacy Commissioner. It is my understanding—and I realize this is hearsay, but you would know—that when the Privacy Commissioner appeared, she indicated there were some problems with the employee aspects of the act. I don't know what she said in terms of specifics, but I think that was known by those who deal with the Privacy Commissioner's office. It may well be that those concerns were identified and passed on to the authorities in B.C. and Alberta, and as a result of that, the legislation is somewhat different.

Mrs. Edith Cody-Rice: Could I take one example? The definition of personal information in PIPEDA is very broad. It's basically any information that can be identified with an individual, except name, business telephone number, and business address. That means, in some cases, a person may claim that a memo they signed in the course of their work is their personal information because it's information about them; they prepared the memo. Theoretically, that is possible under PIPEDA.

If you look at personal information in some of the other definitions, for example in B.C., there is a definition of work product information in section 1 that says:

> "work product information" means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

If you then look at the definition of personal information in the B. C. act, it does not include work product information. That solves that problem.

Another potential problem under PIPEDA is if a person gives an opinion about a second person. Under PIPEDA, that information is the personal information of both people—the person about whom an evaluation or opinion was given, and the person who gave the opinion. There is no direction as to whose information it is.

In the Alberta act, and also in the federal Privacy Act, by the way, there is a provision that a personal opinion about a third party is the third party's information. That is, if I give an opinion about someone's work performance, for example, I can't try to prevent that opinion from being given to that person by saying it's my personal information. Both the federal Privacy Act and the Alberta act say that an opinion about a third party is the third party's information. It settles the question.

● (1605)

The Chair: Okay, thank you.

Monsieur Laforest.

[*Translation*]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Welcome.

In terms of the Personal Information Protection and Electronic Documents Act, we know that the committee is reviewing it in order to try to improve the protection of individuals, especially employees of federal corporations. We also know that any legislation, in order to provide good protection, must establish some enforcement tools in order to allow for a better regulatory balance between those who need protection and those who manage its implementation.

My question is directed to both associations. You probably have different views on this, but do you not believe that the act should provide for releasing the name of companies who breach the act? We have heard comments to that effect. Would this not be a means to better protect individuals, rather than businesses, in a situation such as this?

[*English*]

Mr. Don Brazier: There are breaches and there are breaches. Just last week, somebody e-mailed me and asked for somebody else's e-mail address, and I sent it to them. Technically I'm in violation of PIPEDA, but it's hardly a major infraction. It's something we all agree shouldn't have been personal information in the first place. I didn't really feel I was a felon.

There is going to be a lot of this type of thing on whether so-and-so got a piece of information he was entitled to. That might even be routine. I don't know what is achieved by disclosing that.

If you get into a major issue that might affect the public—and everybody remembers the personal banking information that got faxed to a junkyard in West Virginia—that is an egregious situation where disclosure might be justified, but I don't think it is a black and white thing. Employers have to live with millions of statutes. I mentioned some of them. I already mentioned the ones in the labour area. As you know, there are many other statutes in non-labour areas and there may be some situations—my colleagues, being lawyers, might know—where disclosure is required, but I don't think it's the normal practice.

My sense, in answer to your question, Mr. Laforest, would be this: is the public facing some harm? If there is some harm, the public should know there is a breach of the law that impacts them. Maybe there should be some public disclosure, but in routine breaches of the act, I wouldn't see any particular purpose being achieved by doing it.

● (1610)

The Chair: Mr. Gustavson.

Mr. John Gustavson: Let me—

[*Translation*]

Mr. Jean-Yves Laforest: The example you raise is that of a rather serious breach. Maybe we should consider publicizing the name when we have an unusual situation, a very obvious breach.

But what do we do about companies who, without disclosing important information nevertheless frequently fail to meet their obligations? If a company regularly breaches the Act, not about important things but minor matters, this would seem to me just as problematic as one major event. Do you agree?

[*English*]

Mr. John Gustavson: Could I answer that, because some information might be of use?

The Privacy Commissioner currently has a set of standards or policies with respect to disclosure of the name of a company that's breached the act. First of all, she does not normally disclose the name immediately because she wants to use that power with discretion and ask the company to correct what it's doing, change the way they're doing things, do better. If they comply with what they're being asked to do, fine, she will be satisfied, but if they don't, she has the authority to release their name publicly. I can tell you that is a huge power, because no one wants to shake the confidence of their customers in how they protect private information.

As you've suggested, if a company keeps breaching the act, the commissioner could certainly release it. The other time she has said she will release it, as her predecessor said as well, is if there were ongoing harm. If something were happening and the public needed to know right away so they could protect themselves, then she would release the name. There is a process in place as to when the name is released and under what circumstances.

[*Translation*]

Mr. Jean-Yves Laforest: Fine. Thank you.

The Chair: Madam Lavallée, do you have any questions?

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): I just have a comment. I am astonished. In almost all areas of government, under just about every act, when someone breaches the law, that fact is automatically made public; the public is able to know who contravenes the law. However, it seems that when this legislation was drafted, somebody wanted to give these businesses a break by saying that the names of offenders would not be publicized. Personally, this looks to me as an enormous privilege. I cannot understand why such a privilege was given to those corporations at the outset, when the bill was drafted.

Mrs. Edith Cody-Rice: I would like to answer. It is not a privilege, it is left to the discretion of the privacy commissioner. It is a process that she established, but it is up to her to decide if she will disclose or not. Most privacy commissioners do not publicize the names for the time being, but they can change their practise from one day to the next. It is their choice. These decisions are not good only for the company which is the subject of a complaint, but for all of us. For example, we chose those examples or decisions in order to provide guidance. These matters are rather indistinct.

Mrs. Carole Lavallée: Do you mean “vague“?

Mrs. Edith Cody-Rice: Yes. These decisions guide us, they help us to know how to act. For example, until the commissioner made its ruling on e-mails and faxes, we believed, in our company, that e-mails were part of the addresses and faxes were part of the phone numbers. However, following this ruling, we changed our practice. This is left to her full discretion, it is not specified in the act.

● (1615)

Mrs. Carole Lavallée: The simple fact that it is left to the discretion of that person and is not automatic is nevertheless astounding. This is just a comment.

Mrs. Edith Cody-Rice: You would have to put that question to her because it is her practice.

Mrs. Carole Lavallée: Yes, I know, but we could still have in the legislation—

The Chair: Madame Lavallée—

Mrs. Carole Lavallée: Am I at the end of my time? Thank you.

[*English*]

Mr. John Gustavson: Mr. Chair, could I respond to that?

The Chair: Yes, give a quick response, please.

Mr. John Gustavson: I think there's one other element here, and it's a feeling that disclosing the name could do so much harm to a company. Really, with a law, they're still seeking guidance, and the Privacy Commissioner is giving guidance as to what it means. Most companies, as you know, try very hard to follow what the Privacy Commissioner says. Disclosing publicly could be hugely economically damaging. The commissioner usually gives people a chance to correct what they are doing before taking that step. There's a balance between the relative harm and how serious the breach was.

The Chair: Thank you.

Mr. Martin.

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

In the last Parliament, we came very close to getting the “do not call” list legislation. Did it pass and get implemented? It was a private member's bill that was widely received.

Mr. John Gustavson: The government adopted a version of Ms. Torsney's bill, and it hasn't been implemented yet. It's before the CRTC for implementation.

Mr. Pat Martin: That's the question I was going to follow up with. So that is the status of the list?

Mr. John Gustavson: Yes. However, sir—if I may—we've had our own since 1989. We have 650,000 numbers on it. It's a free consumer service, and our members must use it as a condition of membership. It's free, and it's on our website, if you want to tell your constituents about it.

Mr. Pat Martin: Okay. People do like the idea of being on it. I know that.

Along the same lines, I'm interested in the sort of direct market side of things. The renting of lists is covered in your code of ethics, as item M1.1. How common and frequent is that kind of sharing of lists? Is that a regular routine practice of a lot of your members?

Mr. John Gustavson: Yes, it is. Within the not-for-profit charitable sector, it's more a matter of exchanging and bartering. Within the commercial sector, it's a revenue stream to rent out your lists, obviously with the consent of the individuals on that list.

Mr. Pat Martin: That's what I was going to get at. You mean everybody has to have, at some point in time, signed some kind of a waiver to allow their name to be put on a list that may be shared with someone else?

Mr. John Gustavson: No, that's not the way it works. The act makes a distinction between information that a reasonable person would consider to be sensitive and information a reasonable person would consider to be innocuous, and there are different levels of consent. Again, this is a huge part of the information-based economy, and so the act recognizes that for information, perhaps in the case of a subscription to a general interest magazine, you can use an opt-out consent. We require that if you're going to use an opt-out consent, it be easy to see, easy to understand, and easy to execute, and not buried in paragraph 83 of a 200-paragraph privacy notice. The next level of information is what a reasonable person would consider to be sensitive. There's the obvious: health information and financial information. Even certain magazine subscriptions or video rentals might be sensitive, so then you have to go to the higher level of consent, and obtain express consent from the individual.

Mr. Pat Martin: That's very helpful. That's exactly the information I wanted.

Have you ever heard of a list being put together and sold or rented along ethnic lines or religious lines?

Mr. John Gustavson: No, not specifically, but I would not be surprised if certain subscription lists are available to identify members of a certain ethnic community who may have an interest in a certain product or service.

Mr. Pat Martin: I found this book very helpful. In employing your internal “do not call” list, you go through itemized limitations that I suppose your members themselves have to stipulate, to conduct themselves according to this set of rules. One of the things you've mentioned is sequential dialing; marketers must not engage in sequential dialing.

How do you police something like that? I certainly have been told that's a frequent and common practice amongst telemarketers—maybe they're not members of your association, but telemarketers generally.

● (1620)

Mr. John Gustavson: It's one of the reasons that led to our support for the “do not call” list. Unfortunately, the telemarketing community has not comprehensively self-regulated. Those who conduct it ethically and according to the rules are paying a price now for those who have not.

It is my understanding that sequential dialing is not frequently used, at least certainly not on major national campaigns. I can't speak for small local businesses, but it's inappropriate to take a series of numbers and start sequential dialing. You never know when you're going to hit the intensive care ward of a hospital, amongst other things.

Mr. Pat Martin: It's very popular in my business, in politics. This is the kind of thing that is coming up in election campaigns more and more frequently. We're consumers of telemarketing business too. It seems to me some parties are using that.

Hon. Jim Peterson: Shame.

Mr. Pat Martin: It's hard to imagine.

Mr. John Gustavson: I quite enjoyed receiving the message from my member of Parliament for Willowdale in the last election campaign.

Mr. Pat Martin: Was it on a computerized...? It might have been Jim's voice.

Did you dial all those personally, Jim?

Hon. Jim Peterson: Look at that finger.

Mr. Pat Martin: You actually wore it out. It's remarkable.

I'd be more comfortable, I suppose, if.... What in PIPEDA affects the ability to develop, trade, or sell lists? What regulation is there to how you conduct yourselves other than your very admirable code of ethical conduct?

Mr. John Gustavson: Fortunately we had a code of ethics prior to PIPEDA that reflected those principles, which our members followed, so we were not terrible fussed by the legislation; we didn't have to change very much. But the fundamental of it, of course, is that you need consent to acquire personal information, you need consent to use it, you need consent to disclose it, and it must be limited to the purposes you've identified. That's the basic framework of PIPEDA. It provides considerable restrictions in the marketplace on the use of personal information.

Mr. Pat Martin: But that level of consent is graduated, based on the degree of information you're talking about.

Mr. John Gustavson: Yes.

Mr. Pat Martin: Obviously personal health information would require the most stringent type of informed consent.

Mr. John Gustavson: Yes.

Mr. Pat Martin: I understand.

Mr. John Gustavson: Mr. Chair, I don't want to eat into Mr. Martin's time, but let me make a general comment about the act that I think is important for the committee to understand.

The ten principles that form the basis of the act were negotiated over four long and difficult years—I know, because I was there—by a group of privacy advocates, business representatives, and government officials. We very deliberately did not make it media specific or sector specific or technology specific, because we wanted those principles to apply no matter how technology changed, no matter what sector you're dealing with, and no matter what medium you're in or how that medium was evolving, so that the ten principles we agreed on—and it was, as the Attorney General said, a series of delicate compromises—would last for a long time and could govern conduct no matter what comes at us in terms of technology change or other innovations. That's why we're very supportive of the basic principles of this act.

The Chair: Thank you.

You did eat into his time, but it was only a few seconds.

Mr. Tilson.

Mr. David Tilson (Dufferin—Caledon, CPC): Thank you, Mr. Chairman.

I would like to ask a question that I've asked the commissioner, and that is whether the legislation is doing enough to facilitate small business.

Mr. John Gustavson: We did some research funded by the Privacy Commissioner—and we've left a copy—with respect to small and medium-sized business. The basic problem right now is the lack of awareness. When there is a complaint, then small business will pay attention to it; they will follow the recommendations of the Privacy Commissioner. But in our belief, probably the most needed thing in the marketplace right now is more education, whether it's better funding for the Office of the Privacy Commissioner or the office of consumer protection. We've cooperated on a joint paper with the Ontario Privacy Commissioner as a guide to small and medium-sized businesses in implementing these principles, but there's much more to be done. That's one area we can certainly pay more attention to.

● (1625)

Mr. David Tilson: This afternoon we've talked about breaches, and you indicated that one penalty could be the disclosure of the name of the company breaching the legislation either after one shot, two shots, or whatever. Should other penalties be set forth? One of you gave an example of an item kept on file for a specific purpose and then disposed of. The question is, what happens if it's found that it's not? What happens if a breach has a serious effect on the public?

Mr. John Gustavson: There are provisions in the act. I'll defer to Ms. Cody-Rice to talk about it.

Mrs. Edith Cody-Rice: I'm not sure I could be deferred to, but there is a power in the Federal Court to award damages, as I recall, and I'm just looking for the section now. One can get an order from the Federal Court. In fact, as the Privacy Commissioner pointed out, I believe, this legislation in terms of orders has somewhat more teeth than the federal Privacy Act.

Mr. David Tilson: That's where I'm going on this. I was aware of that, and sometimes you ask a question knowing what the answer is. But the next question would be, should the Privacy Commissioner have quasi-judicial powers? You find out something is wrong and off you go to Federal Court, whether you're talking small business or large business, or whether you're talking a small individual or a large group of individuals.

Mr. John Gustavson: We would have difficulty with that concept because the Privacy Commissioner is quite rightly a privacy advocate, and there's a bias there. That's not a criticism, that's the way she's appointed and that's the way it should be, but giving order-making powers to the Privacy Commissioner is like making the police the judge, the jury, and the executioner all together.

If the Federal Court were impractical, you might look at an independent tribunal or some neutral tribunal, but at the moment I think the Privacy Commissioner is fairly satisfied that this process with the Federal Court—and the teeth behind Federal Court is sufficient, my colleague here has pointed out, at least in our current experience.

Mr. David Tilson: There is an article in a periodical called *FrontLine Security*.I don't know what the date is, but it's issue 3, 2006, and it's on cyber security. It's a series of articles dealing with transborder data flow. There's an interesting observation in an article by Peter Hillier where he pointed out that the private sector must step up to the plate by adhering to the provisions of PIPEDA or similar provincial legislation, where it's available. Then he got into a number of suggestions, and this is with security: the segregation of personal information being handled under the contract from other records held by the contractor, audit trails to closely monitor how information is handled, and the limiting of right to access based upon specific user profiles.

I don't know whether these are good ideas are not; it's his opinion. But it raises the question as to whether you have philosophized on the differences between the information legislation, which says we have to have access to all kinds of things, and for heaven's sake, whether you're a business or whether you're a government, don't categorize. People out there are saying that. He's almost suggesting, for security purposes, you should.

It's unfair of me, because you probably haven't seen this article, but could you comment on whether or not there's any conflict between the information legislation in this country and the PIPEDA legislation?

Mrs. Edith Cody-Rice: The information legislation specifically forbids a head of an institution from providing personal information, unless there's a very strong overriding public interest in some cases. CBC is not yet subject to ATI, although we get third party requests all the time. We have not yet found a conflict, because when we get a request—and I'm sure other companies are the same—if it contains personal information, then we don't release it. We claim an exemption and we will sever portions. For example, under our current regime, if someone's given an opinion, you might release the opinion but not give the name of the person who gave it , because we are under PIPEDA.

Can you think of an example where there is a conflict that you've seen? If you were addressing—

● (1630)

Mr. David Tilson: We've spent some time quite recently on this topic. We had a session here in this committee with respect to allegations of someone in the government releasing information on a reporter. The question is whether the government—this is the government, mind you, this isn't private—should categorize people or categorize individuals.

Mrs. Edith Cody-Rice: By categorizing, do you mean, for example, that it was a reporter who made—

Mr. David Tilson: Yes.

Mrs. Edith Cody-Rice: Yes, but it's interesting, because the Access to Information Act forbids your categorizing a request under the Access to Information Act, and it is quite improper to reveal to anyone, other than the person who has to handle the request, who that person was. You have a right to the information. It doesn't matter who you are, you have the right to information under access to information.

Mr. David Tilson: Okay, you've answered my question. You don't agree with this article, and that's fine.

Mrs. Edith Cody-Rice: I haven't seen the article, so I can't—

Mr. David Tilson: No, you haven't.

The Chair: Thank you, Mr. Tilson.

Next up is Mr. Peterson. Do you have any questions?

Hon. Jim Peterson: Thank you.

Going through your recommendations, Mr. Brazier, recommendation number 11, "That employers be exempt from fulfilling requests for information that are clearly frivolous or vexatious", I can understand that, but how do you know if a request is frivolous or vexatious?

Mr. Don Brazier: For example, somebody who puts in, "Give me anything that has my name on it." I think there has to be some legitimacy to the request. It isn't a fishing expedition. There has to be some basis on which the request is being made.

This is not an unusual provision in law. Frivolous and vexatious complaints can be dismissed by the Human Rights Commission, as an example. We don't really think that we're doing anything here that expands something that isn't already found in other legislation.

Hon. Jim Peterson: So if I were your employee and I sent in a request for any and all personal information held by the company, you could determine that was vexatious or frivolous, and my remedy would be to go to the Privacy Commissioner?

Mr. Don Brazier: It has to be a two-way street here. If the employee has a legitimate interest—and he does in personal information, of course—he should provide the employer with some parameters to get the information. Otherwise, you're asking employers to go through literally millions of pieces of paper and records to find things, if it's a request like, "I need pension information or health information."

Hon. Jim Peterson: But supposing I'm an employee of a company that's keeping extensive records on me, and it's just a bureaucracy to me, wouldn't it be in my interest to at least once a year ask the company to disclose to me, the employee, what information they have? I don't know if the information they have on me is good or not. Maybe I'm not being promoted the way I think I should be.

Mrs. Edith Cody-Rice: That's not frivolous or vexatious.

Hon. Jim Peterson: Okay, but why wouldn't I, once a year, want to find out all the information a company has on me to see if there's anything that is unfounded or wrong?

Mrs. Edith Cody-Rice: That would not be frivolous or vexatious, I don't think. It's a judgment call. Of course, a person to whom a company said, "This is frivolous or vexatious because you've asked this information 50 times before in the last six months and we have no further information", could go to the Privacy Commissioner. The Privacy Commissioner must investigate, has a legal obligation. But also there's a provision in paragraph 13(2)(d) that she doesn't have to prepare a report if she determines that it's frivolous and vexatious.

● (1635)

Hon. Jim Peterson: Sure, which is fair.

On your recommendation 13, I can't understand that if I as an employee sued the company, the company couldn't use any information they have on hand in their defence without my consent. Why would they have to obtain my consent?

Mr. Don Brazier: I will have to defer to my legal friends with respect to that issue.

Ms. Barbara Mittleman: We've had situations where—I'm not talking necessarily about a particular type of lawsuit—an current employee files a human rights complaint, and we've had situations where certain internal departments that hold the information.... For example, the complaint is based on a failure to accommodate, or specifically regarding a medical condition, and the occupational health department will not release the information to the employer so the employer can defend himself, the employer being the industrial relations department, or whoever is in charge of defending the employer in that case; whereas the employee makes a request and rightfully has access to that information, and immediately hands it over to the union. In a grievance situation, the union will be armed with all this information and the company is barred from gaining it.

So there are cases where there are difficulties. The information can be obtained eventually, but there are cases where you get into these internal difficulties because of a lack of clarity in that regard.

The Chair: That seems a bit of a stretch, really. I can't see how it wouldn't be available in a defence of an action in some manner.

Ms. Barbara Mittleman: It happens. It should be, I agree.

Hon. Jim Peterson: Are you saying it happens with PIPEDA?

Ms. Barbara Mittleman: Yes.

The Chair: Can you provide us with some specific concrete examples? I don't mean now, I mean in due course, so that we can take a good look at it so we can see how your proposal would work.

Ms. Barbara Mittleman: Absolutely.

Mr. Don Brazier: Mr. Chairman, I'd just like to add that at the request of Industry Canada, in the process of preparation for the review, they asked us for specific examples. If I recall, one of the examples attached to our brief as an appendix is that very specific case that Barbara made reference to.

The Chair: We'll take a look at that.

Hon. Jim Peterson: Medical records.

The Chair: It's interesting that Industry Canada asked you to do certain things. When we asked them what they would like us to fix, they wouldn't give us an answer.

Mr. David Tilson: Don't be partisan.

The Chair: No, no.

Mr. Stanton.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for coming this afternoon.

Mr. Brazier, in your recommendations, specifically in recommendation 2, you talk about permitting employers to use, collect, and disclose personal employee information without consent in conducting a routine and reasonable business and managing the employment relationship. I certainly get the employment relationship aspect of it.

I wonder if, though, in conducting a routine and reasonable business, this isn't allowing a wide berth for businesses to decide...? And perhaps that begs another question. How would one define just what those parameters might be? For example, would that allow businesses to grant access to lists of employees for the purposes of related companies or third parties for marketing purposes? Could you maybe talk a little more about how one might approach that and still protect the information of employees of a company from going to a broader sphere?

Mr. Don Brazier: Subject to Edith or Barbara correcting me, I think this is the approach in B.C. and Alberta, is it not?

Ms. Barbara Mittleman: The intent here is the management of the employment relationship, the conducting of routine business with regard to employees, certainly not selling your employee's information out to where it shouldn't belong.

● (1640)

Mr. Don Brazier: The examples I referred to a few minutes ago are all on employee relations. As I said at the beginning of my introductory comments, the only thing we're interested in is labour. All the examples relate to issues of employee relations and they all relate to the types of situations that have come up, the anecdotal material that's been referred to when you have a situation.

The formal dispute resolution process is an example where because of the nature of the process, because it's done for proper business purposes, and because it might even be done in accordance with the requirements of a statute, we believe collecting personal information or not disclosing it is legitimate under those circumstances.

No one here is suggesting this be used for other purposes. It's only for the purpose of managing the employee relationship. We're certainly not suggesting that we be allowed to use personal information from an employee and to then give it to a subsidiary for commercial purposes. It's strictly for labour.

The act itself is constructed in such a way that labour issues, the employee relations issues, are basically self-contained in a part, and we look at it that way.

Just about every statute I know of has “reasonable”, which refers to “vexatious” or “frivolous.” These terms are subject to debate, subject to discussion, and subject to disagreement. I would agree that once you have this kind of language, there's always a legitimate disagreement among people.

Mr. Bruce Stanton: I'm sorry, Mr. Brazier. I appreciate the clarification, but I also have one question for Mr. Gustavson and I only have five minutes.

Mr. Don Brazier: I'm sorry.

Mr. Bruce Stanton: I appreciate it.

Mr. Gustavson, we heard a statement from a previous witness, and you alluded to it earlier in your remarks, that PIPEDA was essentially an amalgamation of interests both from the privacy community and from commercial interests. The act effectively became very much a compromise between those two.

If I recall, and I'm really paraphrasing here, the witness essentially suggested it was in fact an inherent weakness in PIPEDA. Could you comment on that type of remark from one of the witnesses we had?

Mr. John Gustavson: I think it's what the Attorney General called “a remarkable national consensus”.

Somewhat to my surprise, during the process of negotiations I learned that privacy advocates are generally not out to shut down business; they're not out to harm the economy. I hope they understand, and I believe they learned through the process, that business respects privacy and that good privacy practices support consumer confidence in doing business with you and are good for business.

I take quite the opposite view. I think the strength of PIPEDA is in the fact that people came together and learned from each other to create a document we could agree on. The 10 principles that apply no matter what the situation is, no matter what the technologies are, and no matter what the evolution of media is, are going to stand us in good stead for a long time.

Mr. Bruce Stanton: Thank you.

Ms. Barbara Robins (Vice-President, Legal and Regulatory Affairs, Reader's Digest, Canadian Marketing Association): I absolutely echo that. That's its strength, not its weakness.

As we're sitting here today, I can tell you that our beautiful piece of law will probably be the model adopted by Singapore. As we speak, it's being looked at by the South African Law Reform Commission, and it's being looked at by many governments and many legislative bodies that are looking for a balanced law.

That's its strength, not its weakness. It's not a compromise; it's a balance.

Mr. Bruce Stanton: That's helpful. Thank you very much.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Stanton.

Monsieur Laforest.

[*Translation*]

Mr. Jean-Yves Laforest: I am returning to the brief of Federally Regulated Employers - Transportation and Communications, or FETCO. You made 14 recommendations and said at the outset that some of those are more important than others. Mr. Peterson mentioned earlier your recommendation number eleven. You recommend that employers be exempt from fulfilling requests for information that are frivolous or vexatious.

How do you define the terms “frivolous“ and “vexatious“? Could you provide any examples? Supposing your recommendation is accepted, how can we ensure that the employer will not interpret those terms in a subjective way?

● (1645)

[*English*]

Ms. Barbara Mittleman: Thank you.

Mr. Don Brazier: Go ahead, Barbara, everybody wants to answer.

Ms. Barbara Mittleman: There will obviously be some subjectivity in the employer's response. An employee, as Edith has said, who makes the same request 50 times and the employer says, look, I've searched everywhere and I don't have this letter that you claim to say exists, or I don't have this document that you claim exists—

We've actually experienced situations like that, where we've made an honest effort and whatever the employee was looking for just wasn't there. It didn't happen. So in a case like that, the employee will file a complaint and the check and balance is that the Privacy Commissioner will investigate, and when they look into it, they'll either find that, yes, lo and behold, it was there and being hidden, or in fact the employee is requesting this thing 50 times and it doesn't exist.

For example, you may have a situation where a union is in the midst of collective bargaining and says, guess what, I think this'll be fun, let's get 50 employees to go and make requests for their files in the next....You have 30 days to respond. I have one privacy person in charge of managing this. Let's just do this as a method of wreaking some havoc, I don't really want the personal information. So there could be things like that.

So the employer, yes, has to make a subjective call, but it is subject to supervision.

[*Translation*]

Mrs. Edith Cody-Rice: There have been cases before the courts where a decision ended up being made that the request was frivolous, but you have to go quite far into the process set out in the act before a request is ruled frivolous. I should tell you that we have had a case where a person who was no longer an employee made a request every three months for information that did not exist. Every three months, she made a new request where she asked for the same thing. At some point, obviously, she lodged a complaint with the privacy commissioner who confirmed that the object of her request did not exist, that it was a frivolous request. A request cannot be considered frivolous the first time, nor probably the second or third time, but after ten or twelve times, it becomes frivolous, I believe.

Mr. Jean-Yves Laforest: Good answer, Madame.

Mrs. Carole Lavallée: Do I still have time left?

The Chair: Yes.

Mrs. Carole Lavallée: I would like to follow up, Mr. Brazier, on your recommendation about the consent of employees for the use of their personal information. I need some examples, I need to understand in what context an employee is asked to sign a consent allowing his employer to access his personal information.

[*English*]

Mr. Don Brazier: Maybe I can just reiterate the comments I made in answer to basically what was the same question, and that is that we're talking solely about management of the human resource system. We're not talking about anything broader.

I think the specific question was something like, with the employee, does this mean you could take personal employee information and give it to a subsidiary and use it for marketing purposes? Obviously not, because as I indicated, this is strictly for employee relations purposes.

I think we've given examples. There are a number of examples in the back of the brief. For example, there are employees refusing to give their employee number at a hotel where the hotel requires it so the hotel can charge the rental of the room to the employer. It's hard to imagine an employee refusing that, but these are the kinds of things that come up.

I'll just go on with that example. If the connecting device between the employer and the hotel where the employee is staying is the employee's number, then we don't think it's unreasonable that we can provide it to the hotel so that when the hotel charges the room to the employer we know who the employee is.

This may sound kind of trivial, but that's the kind of example, and there are many of those types of examples I could use.

[*Translation*]

Mrs. Carole Lavallée: I thought that the consent you had in mind was a consent to be given at the time when the employee first joins the company. The employer says he has personal information on file about the employee and requests the employee to sign a form allowing this information to be used. Does such a process exist?

Mrs. Edith Cody-Rice: It exists in our corporation. We have a consent clause in our commencement form. But some candidates refuse to sign it and we cannot hire them because we cannot communicate to the government their social insurance number or other similar information. This consent clause is included in the hiring form, but what purpose does it serve? The consent is mandatory because we cannot hire anybody without using this information. So why ask for consent? Why do we not have the ability to use some pieces of information for employment purposes without having to ask for consent? It would be enough to tell the employee how we are going to use this information.

● (1650)

Mrs. Carole Lavallée: I have not seen—

The Chair: Excuse me.

[*English*]

We're out of time, and we do have other questioners, so I have to be fair to them.

We'll go to Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): *Merci beaucoup.*

I want to ask a few questions. I appreciate your coming today.

We've been sitting here for a few weeks looking at this piece, and I just want to be clear. From the two organizations we have here today.... I'll be frank. My first impression is that maybe we're too early in looking at this. I know it's the law, but the vast majority have come without a whole lot of change.

Could you just reiterate for me—I'm sorry, I was out of the room for the first part of your presentation—whether your organization believes that we're on the right track in terms of timing? Or is there a suggestion in terms of how long it should take, or should there be an extension before we do a proper review of the piece?

We'll start with you, Don.

Mr. Don Brazier: Somebody must have decided that five years was an appropriate time to have a review. We're also involved in the five-year review of the Employment Equity Act, which is another five-year period of time. Is that an appropriate time, is it 10, or is it 15?

Mr. Mike Wallace: I guess the question is whether, as organizations, you have had enough experience with it. Or do you think you need more?

Mr. Don Brazier: Oh, I think we've definitely had enough experience.

Our problem is that we think that perhaps there wasn't enough.... Again, I don't want to sound parochial here, but we are just looking at the employee relations issue from our perspective. We don't think that perhaps enough thought went into the design of the provisions back six or seven years ago. We think a humungous amount of effort went into the design of areas of a commercial and marketing nature. It was almost as if the employee relations situation was an afterthought.

I have a railway on one side of me and a broadcasting company on the other side of me, and one thing we all know about is regulation. We're regulated—we probably figure that we're over-regulated—but we know how to deal with a regulatory system.

Mr. Mike Wallace: Yes, I've got you.

Mr. Don Brazier: I mentioned a number of other employee relations statutes at the beginning, and they all bump up against PIPEDA in one way or another. We don't want to try to get away from our responsibilities under the law here, but we do think the law should be designed to recognize that we have other obligations, whether they are under collective bargaining under part 1 of the Canada Labour Code or are dealing with human rights complaints. We just think the laws should interact. That's all we're suggesting here. Otherwise, what we have are complaints under one act that we can't deal with because of the restrictions under PIPEDA.

Mr. Mike Wallace: Okay.

I'll ask John.

Mr. John Gustavson: Early in my remarks I pointed out that for most of the private sector, this came into effect January 1, 2004. It's still very early. There is a lot of learning yet to be done. We think more time has to pass before we really understand whether or not significant changes are needed.

Having said that, I tried to acknowledge in my brief as well that there may very well be appropriate amendments to clarify meaning and intent, areas we're not familiar with and can't really fairly comment on.

The law of unintended consequences is always at work, and there may be enough time, when people have had five years, to suggest appropriate technical amendments to clarify how it's going to work.

Mr. Mike Wallace: I have a question for FETCO still.

I think you've provided the most, from what we've seen so far, in terms of amendments—at least ones that are reasonable. We had a delegation last week that was a bit off the wall. These are all changes that are required, based on your input. My main concern is for small business and how much this has cost to implement. Do you have any idea what your larger organizations have been spending to implement PIPEDA?

● (1655)

Mrs. Edith Cody-Rice: Well, we have a very large exemption at the CBC, because information gathered for journalistic, artistic, and literary purposes is excluded from the act. That is basically our core business. So for us it's simply about employees, pretty much—aside from our selling tickets to shows sometimes.

We have a portion of a person who is a privacy officer. We have one person, somewhat more than a clerk—well, a good deal more than a clerk, a professional records manager—who also handles privacy requests. We have a portion of a lawyer. I am the privacy person at CBC. In fact, I'm no longer the privacy coordinator; we now have a compliance officer, Meg Angevine, who's with me in the room, as a privacy officer. Then there is the time spent when all of the other departments—principally human resources and finance—are looking for information.

It's hard to put a figure on it, but I can say, at least for us, who have this large exclusion, that we have about—though maybe I'm being too generous—a third of the time of a senior person, half the time of a more junior person, and probably a quarter of my time being dedicated to this. And then there is the time spent by all the people looking for information.

Mr. Mike Wallace: Barbara, do you have any comment?

Ms. Barbara Mittleman: I would pretty much reiterate that. It's not exactly the same amount of time allotted per person—and I won't go into detail here and I can't give you a dollar figure—but certainly a lot of time and energy is spent in managing and providing opinions under the legislation and gathering the information. That's not to say that some pieces of that are not legitimate and appropriate, but a lot of time is certainly expended and, I would say, should not have to be expended in trying to contort oneself into a law that wasn't necessarily meant to apply to the employment relationship in certain contexts.

Mrs. Edith Cody-Rice: I can say, as Mr. Peterson suggested, that if all of our 10,000 employees did a once-a-year check on the information held on them, we would be utterly swamped. They don't do that, fortunately.

The Chair: Thank you very much.

Just anecdotally, I'm guessing that the five-year period makes some sense, because there's undoubtedly going to be an election and possibly a different group of people looking at the legislation. It may very well have been that the committee who recommended five years had assumed the act would be implemented more quickly. I suppose it could have easily been stated that it would be five years from the date of full implementation of the act, but we have to live with the way the legislation is.

We'll go right to Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you all for coming.

I'm a new MP, and coming from small business, I remember the uneasiness when this act came into being. So I looked at it purely from my perspective. Then of course, as we're introduced to these proceedings and we're introduced to the laws, I can see the other side. So it's very interesting to see all the different aspects and the guidelines, the safeguards.

There's one thing that concerns me, just one thing, and it's the only question I'm going to throw out here. We talked about the employer's responsibility, we talked about the employee's responsibility, and we talked about the rights. The only thing that concerns me is, down the road, have we put together an organization that...? And forgive me for saying this, but it is the only thing that troubles me somewhat—and I would never suspect this from our current Privacy Commissioner. We've met her, and she is doing a great job. But is there a possibility, down the road, that we may create a reign of terror, where the Privacy Commissioner can force laws that are enacted, that obviously aren't going to be...? With the examples I just cited in private business, I've come to understand that those things are really unreasonable to expect, but the laws are there.

Have we put in place any safeguards where the Privacy Commissioner has some safeguards too, so they can't start to put in laws or force things that would make it impossible for a business to continue?

● (1700)

Mr. John Gustavson: The commissioner has no ability to make law or make regulation or make orders. She is an ombudsman, a privacy advocate. She gives guidance. She does have the power to publicize—which, if you noticed earlier in our discussions, s a very powerful one—to compel compliance with her opinions, but it's certainly open to a company to say it's not going to do what she has said she thinks the act means. The only way she could get a change would be to come back to Parliament. She is an officer of Parliament, as you know, not a government official. And the only way to do that would be to come back to Parliament and make a recommendation for Parliament to take action. That's the only way she could achieve a change.

Mr. Dave Van Kesteren: So again, the danger then is that.... Madam Rice, you suggested that if a company or a group of employees demanded.... That's the real danger. There has to be a source of the request, and it cannot come from the commissioner.

Mrs. Edith Cody-Rice: For access, there has to be a source of request. And there can also be complaints about the way personal information is being handled. But to be honest, privacy, like access to information, is a records management problem. And the major source of expense for companies—more than administering the act as such, although there is a lot of paper in administering the act—is that you get a request, and in small business you have to have someone send the request to the people concerned, get the information back, reproduce it, review it to see if there are exemptions, arrange to release it. It's labour intensive, but you also need to find your records. And particularly in small businesses and in some large businesses, including government, that is your major problem: finding the records. You need a good records management program to properly handle privacy.

Mr. John Gustavson: Mr. Chair, just to clarify, I would want to give a complete answer. The commissioner does have the authority to initiate an investigation if she wishes, if she sees something she wants to take a closer look at. But again, at the end of that investigation, all she can do is issue her findings, which are not rulings and aren't binding. They're just recommendations to the company to change. If it was egregious, she could go to the Federal Court, but that court hears the case all over again from the start. It's not an appeal of the commissioner's opinion. It's a whole fresh hearing in court. So there are a few things she could do if she found an egregious situation she wanted to investigate and pursue.

Ms. Barbara Robins: Just to add to that, if you read section 18 with respect to the audit...[*Technical difficulty—Editor*]...he or she still has to have reasonable grounds. It's not wide open.

The Chair: Thank you.

Let me ask a question going back to recommendation 13, Mr. Brazier.

It was pointed out that the commissioner doesn't have to issue a report if the commissioner finds the complaint is trivial, frivolous, or vexatious. So there's already something in the statute that uses those words, and there's legal meaning to that and precedents and all that. But one of the things we note here is that only individuals can seek a remedy. What about changing the act to allow an employer, for example, to go to the commissioner for a ruling as to whether or not a request is frivolous or vexatious?

Mrs. Edith Cody-Rice: That could be useful.

The Chair: Thank you.

Are there any other questions from any committee members? Mr. Peterson.

Hon. Jim Peterson: Mr. Gustavson and Ms. Robins, you've had experience not only with the federal law but all the provincial laws that are in effect as well. Have you seen anything in the provincial laws that we should be looking at adopting here? They're not exactly the same.

Ms. Barbara Robins: No, they're not exactly the same. Of course, they're sufficiently harmonized.

The provincial laws out west have gone a slight step further, for example, in dealing with, if memory serves, what happens to personal information when there's a sale of a business. That's a useful refinement, if you will. But it is something that's perfect for provincial legislation, and so the issue is that it may not even be constitutionally appropriate for this committee to consider.

What I'm trying to say is that there probably are refinements, because with each sort of iteration based on PIPEDA, you identify some of these refinements. But for the most part, they're probably related to provincial jurisdiction, so I would reserve my comments in that regard.

● (1705)

Hon. Jim Peterson: Could I ask you the same question, Mr. Brazier?

You of course wouldn't be subject to any provincial laws, would you?

Mr. Don Brazier: No. I think we've indicated both in our brief and in the subsequent comments that we believe—specifically because we were asked the question in relation to the Alberta and B. C. laws as it relates to consent and to the formal dispute resolution process—that this legislation is a new generation because it came after the federal legislation, and from our perspective it's a more workable one. As far as we know, the Alberta and B.C. laws are working out okay.

Hon. Jim Peterson: Thank you.

The Chair: Committee members, are there any other questions?

Mr. Hill, you're the only person who hasn't had an opportunity to get on the record.

Mr. Wally Hill (Vice-President, Public Affairs and Communications, Canadian Marketing Association): That's all right, Mr. Chairman.

The Chair: So I just wanted you to say, how are you doing today?

Everybody should, at least, get on the parliamentary record, so I wanted to acknowledge that you were here. Did you want to make any comments about anything?

Mr. Wally Hill: I support the comments that were made earlier, and certainly the commissioner's comments when she met with you last week that the act has been working very well for our members. We're very satisfied that it's not in need of major changes.

The Chair: Thank you very much.

Before I gavel the meeting, Madam Lavallée, are you going to proceed with your motion?

[*Translation*]

Mrs. Carole Lavallée: Yes, I would like to.

[*English*]

The Chair: Okay.

I'd like to thank the witnesses very much for coming and particularly for giving specific recommendations and their observations of this statute. We greatly appreciate the time you've taken to consider giving us the advice that you have. Thank you very much.

Now we're going to deal with a notice of motion that was put forward and given the appropriate length of time by Madam Lavallée. Everyone should have a copy of it.

Madam Lavallée, you have a notice of motion you'd like to move, *s'il vous plaît*.

[*Translation*]

Mrs. Carole Lavallée: If you would like to, I could make a short presentation.

First of all, on November 3, 2005, this committee passed a motion asking the minister to prepare a bill and to present it to the committee. On May 15, I raised this motion again because we had a new team. Unfortunately, it was decided at that time to hear from the Information Commissioner, Mr. Reid, and then from the minister, and then to discuss what to do next. We indeed had the commissioner appear, then the minister on June 19. Finally, I took up the issue again on Wednesday, September 27 and this Committee passed a motion asking the minister to bring to the committee a strengthened and updated Access to Information Act by December 15.

We are now the 4th of December. I, for one, have not heard anything from the minister. Maybe you did. It seems very important to me to remind him that we expect his bill by December 15. At this point in time, at 5:10 p.m., he only has nine days left to table his bill, only nine sitting days of this House.

So my motion reads:

> — Further to the appearances of the minister of Justice, The Honourable Vic Toews, and the Information Commissioner, John Reid, before the Standing Committee on Access to Information, Privacy and Ethics; and
>
> — Further to the motion by the Committee recommending to the government that it table in the House by December 15, 2006 a new, strengthened and updated Access to Information Act, which could be based on the work of the Information Commissioner;
>
> Be it agreed:
>
> — That the Chair of the Committee write to the minister to remind him of the December 15 deadline. As of December 4, he will have only ten (10) working days left for unveiling this new bill;
>
> — That in this letter signed by the Chair of the Committee, the Chair ask the minister to inform the Committee what stage the work on the bill has reached, either in writing or by appearing before the Committee.

● (1710)

[*English*]

Hon. Jim Peterson: Agreed.

The Chair: You've heard the terms of the motion. Is there any discussion?

Mr. Tilson.

Mr. David Tilson: Quite frankly, Mr. Chairman, I have trouble understanding the motion.

The original motion of Madam Lavallée, Mr. Chairman, was that this bill be tabled in the House by December 15. Why don't we wait? So we haven't heard anything since; are we going to have another motion next week because we still haven't heard? I mean, we could have a motion on Wednesday; we could have a motion next Monday because we haven't heard. The original motion says that we wait until December 15 for the minister to table a motion. So she's impatient; so what?

There was a subsequent motion with respect to the minister doing some research with respect to the categorization of names—or to use your word, "characterization", Mr. Chairman—under the information act. Presumably, the minister is consulting with individuals. We spent a lot of time on that topic and presumably the minister will as well.

The minister did appear before us and made a—

Hon. Jim Peterson: Mr. Chair, can I put forward a point of order, please?

The Chair: If it is a point of order.

Hon. Jim Peterson: We all know that if we talk this out until 5:30, we can't get it. If it's the intention of the government party to talk this out until 5:30, we could all agree to see the clock as being 5:30 and get out of here.

If that's not your intention, and you want to go to a vote, I'm happy to see it go to a vote.

The Chair: I honestly don't think that's a point of order, but it certainly is interesting information for the government side to hear.

Mr. Tilson, by all means, continue. You have the floor, but you've heard what Mr. Peterson had to say.

Mr. David Tilson: Well, he can go home now and we can have the debate next time. I have some comments to make—

Hon. Jim Peterson: I'm not trying to stop you. I was going to say that if the intent is to go until 5:30—

Mr. David Tilson: No, I have some comments. Quite frankly, I will be—

Hon. Jim Peterson: Okay, fine.

Mr. David Tilson: —voting against the motion for some of the reasons I mentioned—

Hon. Jim Peterson: I understand.

Mr. David Tilson: —and I've started to talk about it.

The Minister of Justice has eleven justice bills before the House and only three have passed. It is the government's position that law and order is an issue in this country. I think in fact that some of the opposition parties talked about law and order during the last election —

Hon. Jim Peterson: That has nothing to do with the bill.

The Chair: Mr. Peterson, I appreciate your intent to help the chair, but Mr. Tilson has the floor.

Mr. David Tilson: Mr. Peterson can be as flippant as he wishes, Mr. Chairman.

The Chair: Well, let's go to your points, not—

Mr. David Tilson: Well, I'm trying to. I would respectfully ask Mr. Peterson to stop interrupting me. I have some things to say, and he keeps blathering on as if he wants to kill time.

Hon. Jim Peterson: Well, carry on.

I apologize, Mr. Tilson.

● (1715)

The Chair: Please carry on.

Hon. Jim Peterson: I don't want to kill time; you do.

Mr. David Tilson: Now, Mr. Chairman, there he goes again. That's most improper to say that I'm trying to kill time. I'm trying to put out reasoned arguments as to why I'm opposed to this bill, and you insist on allowing Mr. Peterson to continue with his rant.

The Chair: Mr. Tilson, surely you shouldn't rise to the bait. Carry on with your remarks, please.

Mr. David Tilson: Oh, Mr. Chairman, Mr. Peterson brings out the worst of us sometimes.

The Chair: Mr. Tilson, carry on.

Mr. David Tilson: Mr. Chairman, my position is that these bills are justice bills and this is before the House. In his interruptions, Mr. Peterson said it has nothing to do with this motion, but it does, unless you want us to drop all the justice bills and move into this topic. And that can be done. It may be that Madame Lavallée and others should start pushing for some of these bills so we can get to the information legislation, which is indeed very important.

Mr. Chairman, I think the motion is premature and she should wait until the 15th to hear what the minister is going to do. The committee has heard from the commissioner and the minister. The minister made some comment on a discussion paper when he spoke to us last June, I think, which was tabled in April, dealing with access to information. This committee has yet to even start looking at that topic.

I assume from the motion made by Madame Lavallée, which carried, that Madame Lavallée doesn't want to talk about former Commissioner Reid's proposed bill, which was adopted by this committee. It has essentially been rejected. Therefore, I can conclude from her motion that she wants the government to ignore that bill and proceed with another bill.

The minister came to this committee and said, here's a discussion paper. We've put it on our bookshelf and we haven't looked at it. Before we start getting on a rant as to why she hasn't heard from the minister, even though she's given until December 15, at the very least she should look at that discussion paper.

Once the committee has had an opportunity to speak to the stakeholders and review the issue of the cost of the proposals suggested by the Information Commissioner, the government would be in a stronger position for the next stage of access reform. The committee hasn't dealt with that. I would hope the committee, before getting into that, would review that discussion paper and talk about what these proposals are going to cost.

Mr. Chairman, those are the main issues. Quite frankly, I think it's a flippant proposal, and I say that with due respect to Madame Lavallée. She should wait until her original motion, which is December 15.

The Chair: Thank you, Mr. Tilson.

As far as I can tell, this motion is simply for the chair to write a letter.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair.

With due respect to Mr. Tilson, a long-serving member of this committee, when I look at the amount of time Mr. Tilson took to talk about this issue, all Madame Lavallée is asking for is the progress report. I think this comment was on transparency and openness, so it's very fair to ask you to write. There are only five or six days left. By the time you write the letter, if he thinks we should wait until the 15th, then by the 15th we will get that response anyway. I think we should ask for this, to write a note, and let the minister's staff handle the progress of the bill. It's not asking any more than the progress made by the minister.

I support this motion, Mr. Chair.

Thank you.

The Chair: Thank you.

Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chairman.

I won't be supporting it, based on what I've heard so far.

I have one question before I continue. I'm assuming you're ruling this is in order even though we have tabled an official document in the House of Commons saying the deadline is the 15th. Does that not take precedence over this? I don't understand why we would not wait until that deadline passed before this committee takes an additional action.

● (1720)

The Chair: The answer to your question is that the motion asks the minister to bring forward an Access to Information Act by December 15. This motion simply asks the chair to write for an update, since we haven't heard from the minister. I don't see any conflict.

Mr. Mike Wallace: Okay. It is only appropriate to give the minister an opportunity to follow through on what this committee asked. We had a very interesting day when he was here talking about the item. As a government, we have tabled the previous commissioner's report. We have made a conscious decision, rightfully or wrongfully, that we're not looking at that, expecting the minister to do something different. That is what he'd heard and what he did.

As previously mentioned, the priority for the justice committee at this particular moment has been on the other justice items, mostly Criminal Code items, and there's only so much time available for his staff or the staff of the group to work on different things.

Based on my discussions, I think the ministry is likely aware of the deadline put forward by the committee. To be absolutely frank, I don't know whether they have had time to work on the issue or not. It is more appropriate and more professional for this committee to set a deadline and put it in the House, have it voted on and accepted, that we honour that commitment and that commitment be respected. Then, for example, by the end of next week, if there has been no indication from the ministry that there is anything coming before Christmas, we will be back at this in late January or early February. I hope we'll be done with PIPEDA shortly thereafter. Then if this is the real work of this committee and this is what the next project is, we should get a response from the ministry on whether they're prepared or have the time and ability to do that, to present the bill. If they can't, they probably could provide reasons why they can't, but they should provide them to this committee.

If this is an invitation to show up in the new year, I may give some consideration for the minister to come to tell us where they're at, if they haven't met that deadline, but we're not asking for that at this point. It is only fair to give them the length of time we said we would, which we have all voted on and which was accepted in the House.

From my side, the previous speaker, whether you liked his approach or not, was absolutely right. We've set a deadline already, and if the ministry doesn't make that deadline, let's invite them back and talk about what's realistic. They indicated to us that we have put a document on the table that was well researched, well done, by the previous commissioner. It was referred to this committee. I don't recall our ever even looking at it. Maybe that's the approach we need to take. If they don't have the time to do it, we need to put it as a priority.

For me personally, access to information is important. I had a choice whether to stay on this committee or move to another committee, as I got moved to finance. I chose this committee specifically for that purpose. I am very interested in access to information, and as a municipal councillor, I spent many years dealing with stuff at the local level.

How am I doing, Pat?

Mr. Pat Martin: You're moving so fast.

Mr. Mike Wallace: Access to information has always been important to me over the last 15 years as a public servant. I don't know if any of us around the table have taken a good hard look—maybe we have, but I know I haven't—at what the commissioner had put forward. Maybe there are things we should be recommending if we're not getting what the committee had recommended and sent to the House. Maybe we should be putting forward some recommendations from that piece, saying here are some positive things for improvement of access to information. We have had delegations on that issue in the past talking about things such as people being identified whether they were from the media or from government or from wherever, and if we have issues with that, we need to discuss those. There is a variety of opinion on that.

I'm particularly concerned with timing and how long it takes to get a piece of information back. If it doesn't hurt the government, I don't know why....

I have five more minutes. Thanks, Jim.

I don't know why it would take so long to get that kind of information. I think we should continue to respect the deadline that we and the House of Commons previously supported, and I don't think writing a letter is going to do anything more or less, so I'm prepared to not support this and respect the previous decision of this committee.

● (1725)

The Chair: Thank you.

Is there no further discussion? I call the question.

I'd like a name roll call.

The Clerk of the Committee (Mr. Richard Rumas): All those in favour—

[*Translation*]

Mr. Jean-Yves Laforest: Mr. Chairman—

The Chair: Mr. Laforest.

Mr. Jean-Yves Laforest: I had asked for the floor.

[*English*]

The Chair: Okay.

Mr. David Tilson: Aren't we in the middle of a vote? What's going on here?

[*Translation*]

Mr. Jean-Yves Laforest: I have asked to speak. I had my hand up for some five minutes, Mr. Chairman.

[*English*]

Mr. David Tilson: Mr. Chairman, on a point of order, you can't just jump in and say you want to say a few more things. We're in the middle of a vote here.

[*Translation*]

Mr. Jean-Yves Laforest: On a point of order, Mr. Chairman.

[*English*]

The Chair: Mr. Tilson, apparently I did not see his hand. I think it's only fair, if he wants to address us, that he have the opportunity to do so.

Am I correct, Monsieur Laforest?

[*Translation*]

Mr. Jean-Yves Laforest: Thank you, Mr. Chairman.

[*English*]

Mr. David Tilson: With respect, Mr. Chairman, I looked over there, and there was no hand up.

The Chair: Well, you're not in the chair, Mr. Tilson.

[*Translation*]

Mr. Jean-Yves Laforest: I do not understand, Mr. Chairman—

[*English*]

The Chair: I was looking at the speaker.

[*Translation*]

Mr. Jean-Yves Laforest: This motion simply asks the Chair to write a letter, since we had previously passed a motion requesting the minister of Justice to table a bill by December 15. If we had said "On December 15", I would understand the argument made by Mr. Tilson and Mr. Wallace, but that is not the case. We clearly said "by December 15".

This is why, on any day, since the tabling of the first resolution, the minister of Justice could have brought forth this bill. Today, we simply ask the Chair to write a letter on behalf of the Committee, which is perfectly reasonable. It is even more justified in view of the fact that the government had committed to reform the whole area of accountability and responsibility. We therefore could expect that a large part of Bill C-2 would be about reforming the Access to Information Act. But this has not happened.

In view of this fact and on the initiative of Ms. Lavallée, the Committee passed motions directed to the minister of Justice. Indeed, he appeared before us and stated that, in his view, preparing a new Access to Information Act would not be such a large task.

This is why I have difficulty understanding why these arguments are made today, when our motion simply asks the Chairman to write a letter.

[*English*]

The Chair: Monsieur Laforest, *excusez-moi*.

It's now 5:30. Is it the unanimous will of the committee to proceed beyond 5:30?

An hon. member: No.

The Chair: I adjourn the meeting.

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