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Chair

Mr. Tom Wappel

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Standing Committee on Access to Information, Privacy and Ethics

Thursday, May 17, 2007

• (0905)

[English]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): Good morning, everyone. I call meeting number 48 to order.

Our first order of the day is the fourth report of the subcommittee on agenda and procedure. You have it in front of you.

Mr. David Tilson (Dufferin—Caledon, CPC): Mr. Chairman, on a point of order, I assume we're going in camera for business.

The Chair: No.

Mr. David Tilson: Yes.

The Chair: No.

Mr. David Tilson: I would move that we do. We've done it every other time we have business. When we have business, we discuss it in private.

The Chair: That's not true, Mr. Tilson. When we discuss—

Mr. David Tilson: I would move that we do it.

The Chair: That's not a point of order, first of all—

Mr. David Tilson: I can make a motion, Mr. Chairman. I just made one.

The Chair: If I recognize you. But you interrupted me on a point of order. I do not recognize your point of order. I'm in the middle of making my comments about our items of business.

Mr. David Tilson: My point of order is, sir, that you cannot talk about matters in public if we decide to go in camera. You just can't start off and talk about a report that the committee may decide to discuss in camera.

The Chair: Sir, I've already pointed out to you that discussing a report of a subcommittee is not in camera. It's not the usual practice of this committee to do that. You do not have a point of order. At the appropriate time, when and if I recognize you, you can make whatever motion you want, but at this point we are on orders of the day and we're talking about item one, which is the fourth report of the subcommittee on agenda and procedure. There is no precedent in this committee for discussing subcommittee reports in camera. The committee could decide to do so.

Mr. David Tilson: Quite the contrary, there is, sir.

The Chair: Are you arguing my ruling, Mr. Tilson?

Mr. David Tilson: Yes.

The Chair: Are you appealing it?

Mr. David Tilson: Surely I have the right to comment on something.

The Chair: You do not have the right to comment on a ruling I have made. You can either accept it or you can appeal it to the committee.

Mr. David Tilson: Mr. Chairman, I'm simply saying—

The Chair: I'm sorry, you're out of order.

The fourth report of the committee is in front of you. It reads—

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Mr. Chair, on a point of order, are we dealing with the committee in public as opposed to in camera?

The Chair: That's correct.

Mr. Scott Reid: I overheard a bit, but you're saying this is normal practice?

The Chair: That's correct.

Mr. Scott Reid: So it's normal practice to meet in public. I could be wrong, but I have to confess I've only ever dealt with committees where it's done in camera. I'd prefer to go in camera, and so I'm wondering if it's possible if we can have a vote on doing this in camera as opposed to in public.

The Chair: The only way you could do that, Mr. Reid, is if you appeal my ruling, as I have found that we are going to deal with this. I found Mr. Tilson's point not well taken. If you appeal my ruling, and if the committee does not sustain my ruling, then we'll go in camera.

Mr. Scott Reid: Okay, as long as we understand that it's not meant to be disrespectful to you.

The Chair: I do not take anything that happens in this committee as disrespectful.

Mr. Scott Reid: In that case, Mr. Chair, as long as I'm not being disrespectful to the chair, it would be my preference, and therefore I guess I am appealing. I guess it's not debatable anyway.

The Chair: That's right, it's not debatable.

The ruling of the chair has been appealed. Is it the will of the committee to sustain the chair?

(Ruling of the chair sustained)

The Chair: We are now proceeding to the fourth report of the subcommittee on agenda and procedure.

Your Subcommittee met on Monday, May 14, 2007 to consider future business of the Committee. It was the consensus of Members present, but not unanimous:

—That, the Committee begin its study of the Department of Foreign Affairs internal report “Afghanistan 2006: Good Governance, Democratic Development and Human Rights” in relation to Access to Information requests for the document by inviting the following people to appear at its Thursday, May 17, 2007 meeting - Jeff Esau, Professor Amir Attaran, and Jocelyne Sabourin, Department of Foreign Affairs, and further, that the Clerk of the Committee request from the Department of Foreign Affairs a copy of the censored version of the report.

It's respectfully submitted by me.

Will someone move the fourth report?

Mr. Pat Martin (Winnipeg Centre, NDP): I so move.

The Chair: Mr. Martin so moves.

To the debate. Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Obviously I was not at the subcommittee, and from a procedural point of view I have two issues. I have no issue with seeing the individuals who are listed on today's agenda. That's certainly appropriate.

There are two things. One, I want to see—and I want to know if they're on the list, since we're talking about what we're doing on this Afghanistan report—the Information Commissioner and the person from the Department of Foreign Affairs who's mentioned here. I would like to see them separately, not with other panellists, and I'd like to see them first. I think it's appropriate, from a procedural point of view, that we get the rules and the regulations and the process piece and then we invite the other individuals who've been involved in the issue to come. That way, as a committee, we would understand the legal ramifications, the process piece. From a process point of view, I think we should hear from our government officials first, as we do in all the other committees I've been on. The government comes first on whatever the topic happens to be, if they're involved, and they are definitely involved on this one.

So the government officials, the parliamentary officials first. Then we ask the other folks to come. That's one.

Then second, Mr. Chair, to be fair to the government officials, whether it's the Information Commissioner or Ms. Sabourin, is that they be on a separate panel from the other people who've been involved in the issue, from a newspaper point of view or whatever. I'm sorry we're doing this in public, but I want to know what the discussion was at the committee, if that's possible—and that is possible from a procedural point of view—and whether that was discussed. Since we're dealing with a report, I don't know from a committee point of view what I need to do to at least put that on the table.

• (0910)

The Chair: Fair enough.

I am not going to give you a reading of the transcript of the subcommittee report, because you had a representative of your party there who can brief you.

However—I'll also answer your question—I will tell you that the subcommittee considered this from the access to information point of view. We thought it would be best to begin at the beginning, and therefore we thought we would ask the two people who made the

access to information requests of the Department of Foreign Affairs to appear first so they could tell us what they did, when they did it, what response they got, how they got it. We thought it would then be appropriate to call the official from the Department of Foreign Affairs who is responsible for answering access to information requests. That's Madame Sabourin.

So that, we thought, would be the logical way of proceeding, to start with the people who made the access to information requests, find out what they asked for and what they were told, and then find out from the departmental official who was responsible, what the department's response was, how, etc.

With due respect, I don't consider the Information Commissioner to be a government official. He is a person who reports to Parliament. And we did discuss the Information Commissioner. I believe he's on the list to be a witness. We also discussed what we thought he might or might not say. We invited suggested witnesses from all parties, and there were people at the steering committee who made some suggestions, but that does not preclude other people from making other suggestions.

The Department of Foreign Affairs has advised the committee that Madame Sabourin will be available to the committee the week after the break. So she will be here on Tuesday, assuming we proceed with this report in whatever fashion we have to proceed with it.

If you want to proceed in a different way from what this motion sets out, then you have to suggest an amendment to the motion.

I'm going to recognize Madame Lavallée.

Mr. Mike Wallace: Do I still have the floor, Mr. Chairman?

The Chair: No, you don't, because you concluded your remarks and you asked me some questions. So now I turn to Madame Lavallée.

Mr. Mike Wallace: Put me back on the list.

The Chair: Yes, of course.

Pardon me, Mr. Martin?

Mr. Pat Martin: Do we have a speakers list?

The Chair: Yes, we do, and Madame Lavallée is on it and she's next.

[Translation]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Mr. Chair, the majority of committee members voted in favour of the motion to immediately begin an inquiry into the way that the rights of various individuals were treated under the Access to Information Act with regard to the Department of Foreign Affairs and International Trade's internal report. The motion was passed, and it is our duty to begin this inquiry in all haste.

Is it not true that this motion is good for us? If it is good for the Bloc Québécois, the Liberal Party and the NDP, it is also good for the Conservative Party.

I want to remind our Conservative friends of an editorial that appeared on Saturday in the *Globe and Mail*. It is not the Bloc Québécois, the Liberals or the NDP saying so, but rather the *Globe and Mail*. The article refers to the speech that Mr. Wallace made in the committee during his apparent filibuster. It also states that, as soon as a journalist arrived in the room, Mr. Tilson called for the vote.

You may laugh, Mr. Wallace, but it is not funny. It is not funny for democracy.

I want to quote from the article:

Mr. Wallace, and any who encouraged him in his filibuster, could use a refresher course on the realities of minority government.

I am not the one saying this, it is the *Globe and Mail*, and it also gives a little lesson on the nature of a minority government. The editorial concludes as follows:

The concern is that the Conservatives have got into the habit of using procedural tricks to block vexing hearings. The Conservative government has embraced the notion of accountability in principle. It should encourage its MPs to respect it in practice.

I would remind the Conservatives that this motion was passed by the majority. I would officially and solemnly ask them to quit resorting to procedural tricks so that we may immediately proceed with the inquiry on the Department of Foreign Affairs and International Trade's internal report, which was subject to a request under the Access to Information Act.

• (0915)

[*English*]

The Chair: I have Mr. Martin, Mr. Tilson, and Mr. Wallace.

Mr. Pat Martin: I would only say, Mr. Speaker, that we don't owe Mr. Wallace.... We have no obligation to go through everything we went through in the planning committee for his behalf. He was represented there. Mr. Tilson was there at the committee. I don't think that's telling stories out of school, even though it was an in camera meeting. Mr. Tilson participated fully and made their points very well as to why he didn't want this particular meeting to go ahead.

Not all committees have planning subcommittees, and in those that don't choose to have a planning subcommittee, then the planning is done in camera in the committee as a whole. For those that do, for streamlining and efficient use of our time, the planning committee is done in camera. The debate on the motion coming out of that planning committee is open to the public, and that's what we're doing today.

But we're going to cry foul if we sense that the Conservatives are throwing obstacles in the way of this investigation. We have the witnesses here. The public wants to know. Public opinion is seized of this issue, and if there's anything more than a simple summary comment from Mr. Wallace, we should publicly state in this public meeting that the Conservatives are deliberately blocking this important investigation and this important study. The shame will be on them, and the public will be well aware of it.

The Chair: Mr. Tilson, please.

Mr. David Tilson: Thank you, Mr. Chairman.

I want to correct something Mr. Martin said. It's unfair of him to say I didn't want this meeting to go ahead, this particular investigation. That's completely unfair.

If I gave him that impression, he's mistaken, because it's quite the contrary. The majority has ruled this process will proceed, and we'll proceed. We abide by the majority of this committee.

The point I made at the subcommittee, since it appears that everything at the subcommittee is now going to be revealed, my position then and my position now—if you read the motion: “That, if possible, the Committee begin on Thursday, May 17, 2007, its study of the Department of Foreign Affairs internal report “Afghanistan 2006: Good Governance, Democratic Development and Human Rights” in relation to Access to Information requests for the document.”

As far as the witnesses who are here today are concerned, I'm pleased they're here and I look forward to hearing what they have to say. Other witnesses were suggested by the committee, and I know other names will be suggested to the committee. We expect a full investigation of this matter, a complete investigation. If there were any violations of the legislation, I think, according to the motion, this committee will try to find out.

The first thing we have to do, though, is this. We're studying a report. I've never seen it. We've seen page one in *The Globe and Mail*—“one” blacked out, and I don't know whether that was the report or whether that wasn't the report. *The Globe and Mail* said it was the report. Maybe it was, maybe it wasn't. Witnesses may come and say they have the report. That's not good enough for me either. I want to see some representative from the government come forward, or at least the clerk report to us that the clerk has the report. This was given to him by a government official, and he presents it to us.

The subcommittee did give the clerk instructions to do that. I assume he's gone off. I think it was made quite clear to us that it's going to be very difficult to get a clean copy of the report. I suppose anything's possible, but without a great brouhaha it's unlikely we'll get the clean copy of the report.

The committee then gave the clerk instructions to get the report where portions aren't blacked out. I accept that. I don't imagine he's got it today, because part of the reason is that it has to be translated. I accept that too.

Quite frankly, I think that calling witnesses before we see even the blacked-out portion of the report is preposterous. Witnesses are—

• (0920)

The Chair: A point of order.

[*Translation*]

Mr. Robert Vincent (Shefford, BQ): Mr. Chair, I am prepared to listen to Mr. Tilson, however, I think that, last week, we heard in great detail all the recriminations that he is repeating this morning. I don't think that we need to listen to them again.

I think that we should move on to the second item on the agenda and hear the witnesses. Even if he told us everything that happened last week and went into great detail, nothing would change. We will still go on to the second item. If we were to adopt the fourth report, which is the first item on the agenda, we could move on to hearing from our witnesses.

We are going around in circles and we went around in circles for five and a half hours last week. I don't think we need to go around in circles, again today. Today, we need to adopt the fourth report. We have talked about it, we voted to consider the report and to talk about it over the next few days. So, the member was aware of this.

Mr. Wallace says he wants to call upon new witnesses. He knows the procedure: he need only send the list of witnesses to the clerk. He doesn't need to tell the committee that he would like such and such an individual to appear; he can do it in writing, as per the procedure.

I move that we vote on the fourth report and that we get done with it, because they will drag it out until tomorrow morning.

[*English*]

The Chair: Well, Monsieur Vincent, it's not a point of order that I ruled. Well taken.

This is the opportunity for members to debate this motion. Each member is entitled to his comments on this motion. If they are repetitive at this meeting, I will call them to order.

Mr. Tilson is now making the points he wishes to make not about whether or not we should proceed, as I hear it, but how we should proceed. That's part and parcel of the debate about the fourth report.

It may very well be that things may go on. It may very well be that we'll be annoyed about that, but that's life in the committee system. Unfortunately, in this chair I'm not about to abridge people's rights to address a motion if they wish to do so. How they do so and for how long will be up to them and it will be on them.

Mr. Tilson, you have the floor.

Mr. David Tilson: Mr. Chairman, I will say that what I'm about to say I don't like saying, because I find you an honourable person in this House. I respect you. There have been some difficult moments in this committee, and I think under the circumstances you've handled them very well.

An hon. member: Hear, hear!

Mr. David Tilson: Absolutely.

However, I will say that I too have chaired this committee before you, and it's most unusual that business of this committee—business of this committee—is dealt with in public. I've never seen it done—

The Chair: Now you are repeating yourself, Mr. Tilson, I'm sorry.

Mr. David Tilson: Well, I'm going to say something else. Even to the degree.... The only time I ever recall where it was dealt with in public was when Mr. Broadbent was sitting where Mr. Martin was, and Mr. Broadbent wanted a particular issue to be discussed in public. There was a motion made, and the majority of the committee ruled that it would go into public session. Other than that, we've always dealt with things in private.

So it's very difficult—

The Chair: Mr. Tilson, I'm so sorry, I've tried to be patient. I've already ruled on this point. Mr. Martin already explained his view of the difference between the subcommittee, in camera and the other one. I really don't want to hear anything more about it.

Please carry on.

Mr. David Tilson: I've made my point, and I appreciate that.

The other issue, sir, having been a member of the subcommittee, is that we certainly agreed that the three witnesses who are in the fourth report be on a list, as were others—the Information Commissioner, someone from the ministry—and it was agreed that other names could be added at a later date. There's no question.

What I don't recall, sir, is that these particular witnesses appear today in this particular order. Our objection is not that these witnesses appear; I think these witnesses should appear. Our objection is that they're appearing in the wrong order, that the report should be first, the report should be given to the members of the committee so that we know what the report says. Secondly, the process should be explained to us, the process as to where applications under the Information Act go, by someone from the ministry—I think the committee agreed that someone from the ministry would come—and someone from the Information Commissioner's office, because that could ultimately go there, so that the committee—

• (0925)

Mr. Pat Martin: I have a point of order, Mr. Chairman. We are reliving the exact arguments and statements that he made in the planning committee. The reason standing committees have subcommittees for planning is so that we don't have to use the valuable time of the committee to have these very debates.

The Chair: Mr. Martin, that's not a correct point of order. The entire committee was not there. It was in camera. We're not discussing what was there. If Mr. Tilson wishes to make his points to the entire committee, he's entitled to do so.

Mr. Pat Martin: My only point, Mr. Chairman, is that the various parties had representatives at the planning committee, and the obligation of the representative of that party is to brief his party so that we don't have to go through this agonizing process in the committee as a whole.

The Chair: Agonizing as it may be, it's not for the committee to tell members of parties how to deal with their colleagues, or *if* they are to deal with them.

Mr. Tilson.

Mr. David Tilson: Mr. Chairman, I've concluded. Mr. Martin disagrees with what I'm saying, and through you to him, that's the way I see it should be done. He obviously feels differently, and he's entitled to that view. I've listened to his view, and out of courtesy I would hope he would listen to the procedure that I'm suggesting is, with due respect to him—and I respect him as well—the appropriate procedure to follow, not the procedure that Mr. Martin is recommending.

The opposition happens to have the majority on this committee, and you can do pretty well as you like, as you appear to be doing. But that's the procedure that I'm recommending, Mr. Chairman, and I hope other members of the committee would reconsider the position of the subcommittee and change the procedure.

The Chair: Thank you.

You have every right to make that observation, in my view. I also want to go on record as saying that my recollection is that in the subcommittee Mr. Tilson was not opposed to proceeding with this matter; he was talking about how to proceed with it.

I also say that in my view, since I discussed this with the clerk and helped draft the fourth report, that the fourth report does accurately reflect the consensus of the subcommittee.

I now go to Mr. Wallace.

A clarification?

Mr. Pat Martin: Yes, on a point of clarification, Mr. Chairman, just to be accurate, in my reading the fourth report, the second sentence says, "It was the consensus of Members present, but not unanimous".

The Chair: That's right.

Mr. Pat Martin: Seeing as the NDP, the Bloc, and the Liberals were in favour of this study taking place, and there was only one other person present, it was logical for me or any objective third party to conclude that the Conservatives were not in favour of this motion or this study taking place. They can paint it any way they want to. It was not unanimous.

The Chair: No, if you're asking for a point of clarification, it's fair to conclude that they did not agree that the matter should proceed in the manner in which it is set out in the fourth report. Mr. Tilson has made that point again today.

We now go to Mr. Wallace, followed by Mr. Dhaliwal.

Order, please.

Mr. Mike Wallace: First of all, Mr. Chair, because this is a public document, it's come to us, and all I have is one paragraph from the discussion. Obviously I wasn't there. All I was asking for, and I may have a motion to that effect, is that if we are going to name some witnesses, if possible we name all the witnesses that we've invited from the report. Based on what I see here from this report, that's what we're debating and discussing. And just because my colleague was there, it doesn't mean I have to agree with him. I know that may happen in the NDP, but I'm not sure.

Since this is a public document, I'd like to see what other witnesses there are, even if their date hasn't been assigned yet, so that if there are people we've missed and so on, that we.... That's what I would like to see—I'm just telling you—on the list of witnesses. I think I have the right to talk about the report. I'm not trying to talk for three hours, or however the paper put it.

I just want to make one point, because I was somewhat offended personally by Madame Lavallée's characterization of what happened. If we recall what actually happened at the committee, I had moved a motion—

• (0930)

Mr. Pat Martin: What's this got to do with the report?

Mr. Mike Wallace: Well, I was personally attacked. It was said that I was trying to delay something, and you've said it yourself. That is not the case.

I actually moved a motion at a committee—you were not here—verbally. I did not agree that it go forward, because I thought it was appropriate for it be translated and everyone to have it. In fact, once they got it, they didn't like it, but at the time they wanted to vote yes, in favour of it.

I have not been one to be obstructive. You may not have liked the time I spent talking about what was in the act at the last meeting, and that's fair. I had three points to make. I made them. It took a little time. It is not stopping us from moving forward on this. All I was concerned about is that we heard in a logical order the witnesses we would see. That's all I wanted to talk about, Mr. Chairman, and that's why I was asking the questions: are these the only witnesses, and can we publish the other witnesses who have been asked for? That's all I want to know from this report.

The Chair: The answer to the question is that the report clearly addressed the witnesses for today. That's it.

Mr. Mike Wallace: Okay, so it doesn't indicate that this is the limit—

The Chair: Obviously not, absolutely not. These are the witnesses for today.

I can tell the committee that numerous other witnesses have been suggested, and I invite anybody in the entire committee to submit to the clerk any suggested witness they want to have, and if there's any problem, or if any member feels that somehow the chair or anybody else is not going to call a witness they want to call, I'll happily undertake that in a meeting of the committee.

Mr. Mike Wallace: I'm not arguing. I just need to know the procedure on it.

The Chair: That's the procedure.

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

The Chair: Mr. Peterson.

Hon. Jim Peterson (Willowdale, Lib.): Mr. Chair, it's now been more than half an hour that we have been debating or talking about procedure. We have two witnesses here. It is absolutely unconscionable that we would not pay them the respect, because they've disrupted their lives to be here, of hearing them. In the ideal world, maybe you would have something before another, but this is still something that we can deal with. I'm ashamed to be a member of a committee that is acting this way—fighting on small procedural issues that don't go to the heart of the matter. To me, that type of bickering is nothing more than filibuster. I don't want to see that, so let's get on with the work of this committee.

Mr. Tilson has said that he wants to get to the bottom of what happened. I take him at his word. Let's see it happen.

The Chair: Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: May I call the question, Mr. Chair?

[English]

The Chair: No.

[Translation]

Mrs. Carole Lavallée: In that case, I just want to give Mr. Tilson a quick reminder.

At least three times, during the steering committee meeting, I told Mr. Tilson that the purpose of the motion was not to study the report. Yet he still claims that it is. The motion seeks to have the committee immediately consider the issue of the internal report, that it examine the issue, that we hear testimony and that we shed light on this apparent violation of the Access to Information Act.

Mr. Tilson, it is unfortunate that you are not listening to me, because I am speaking mostly to you. Since you are not listening to me, I can tell that I will have to repeat myself. In any case, you can read the “blues”.

Thank you.

[English]

The Chair: *Merci.*

Mr. Dhaliwal.

• (0935)

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

I will carry on with what Mr. Peterson said, because he has life-long experience here, probably more than anyone else.

Hon. Jim Peterson: Thanks a lot.

Mr. Sukh Dhaliwal: I've only been here a year and a half.

I come from a small business background. If the Conservatives ran their businesses the same way as they run this committee, I can tell you they would go broke overnight. We are running the country and we are representing Canadians.

As Mr. Tilson said, we want to get to the bottom of the report. We have two respected witnesses, Mr. Attaran and Mr. Esau. They might have some context to provide that input to us. Why don't we just leave this bickering and filibustering technique they have in every committee and get on with the work, get on with serving Canadians in a very honest and respectable manner?

Thank you.

The Chair: Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chairman.

I had asked—of course, I didn't ask as such, but I indicated my preference—for us to go in camera. Had we been in camera, I'd be able to say this with greater comfort, but I don't have that option, so I now have to say it in an open hearing with everybody here.

I'm very disturbed with the way in which the subcommittee has acted. I don't want to suggest ill will on anybody's part—I don't think that's involved—but the way it's been acting, I think, is extremely problematic. It is in effect, although I'm sure not in intention, abusive of the rights of the committee as a whole, and certainly of me as a member.

I will explain what I mean by that.

[Translation]

Mr. Robert Vincent: Point of order, Mr. Chair.

[English]

The Chair: Mr. Vincent has a point of order.

[Translation]

Mr. Robert Vincent: He should be talking about the fourth report and not about what we should be doing, the way that we should be acting or what happened last week. Is he in agreement with what is written in the fourth report and with its recommendations? If he wants to speak to this, I am prepared to listen. However, if he's going to go off topic and talk about things that are not related to item 1 on the agenda, in other words, the fourth report, I would like you to call him to order.

Thank you.

[English]

The Chair: I want to thank Mr. Vincent.

It was my view that he was speaking to the fourth report and indicating that he felt it was breaching members' privileges, or however you want to explain it, when he was interrupted. The more times the speakers are interrupted, the longer it will take to get through this painful exercise.

Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chairman.

I am trying to explain the context for my concerns and therefore for why I think it would be appropriate to change the report.

The problem here is this.

[Translation]

Mr. Robert Vincent: Point of order, Mr. Chair. At the risk of being irritating throughout this meeting, I must clarify that it is not up to us to change the perspective of the report or explain it. I think that is clear. Is he opposed to studying the report? That is what we want to know. If he is not in agreement, that is his own business; what we need to decide today is whether or not we are going to study the report. He is entitled to disagree; in that case, he need only express his disagreement when he votes. He is saying that things haven't been done properly and they should be, that he does not feel respected and so forth, but that is only his opinion. Does he want to vote on the report? If he is opposed, he need only say nay. That's all.

[English]

The Chair: I recognize that people are frustrated by the process, but the process has to be respected. And the process is that Mr. Reid has the floor. In fact, I took it that he was beginning an explanation of a possible amendment to the motion, which he has every right to do.

So let's hear what Mr. Reid has to say. I'll listen very carefully and I'll rule him out of order if I consider him to be out of order. I have done so in the past and will continue to do so when I think it's appropriate.

Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chairman.

There are two basic problems here. I think we have a conflict between the two pressures that are upon us. That's not quite the right term, but one is the pressure of urgency, which is actually stated right in the motion itself—that we ought to act urgently. That means it's appropriate to try to move expeditiously.

I believe that's why, at the last meeting, I interrupted the speaker with a point of order asking about what was going on. You explained it and mentioned that there were to be witnesses here at the same time as the report.

I believe what you were trying to do, or I guess it would have been what the committee as a whole was trying to do, was cause us to move urgently and quickly. That's one thing we are trying to accomplish.

The second thing is to try to establish a clear respect for rules of order. I guess the rule of law is not, strictly speaking, applying here, but the rule of precedent and order: doing things in an orderly manner that is going to allow us to proceed in a manner that is not an abuse of process, including an inadvertent abuse of process.

I think there is an abuse of process going on here. I think it is inadvertent and I'm trying, because we're not in camera, to emphasize that I think it is inadvertent.

But here is the problem. The first problem is the whole in camera thing: discussing something in camera and then moving to the larger committee, coming out of the in camera situation and presenting us with a report.

Mr. Peterson pointed out that we're being disrespectful of the witnesses by asking them to come here and then discussing the report. I think, with all respect to Mr. Peterson—I don't know whether he's on the subcommittee or not—the decision to invite the witnesses here, where they might find themselves unable to proceed about their normal lives, was a decision made by the steering committee, and not by a group I participated in. So I can't share in whatever guilt there is in that respect. But I think it's important to establish and move in a manner that is respectful of the rights of all involved, and of establishing a clear, coherent process.

The first problem here is with the in camera rule. The in camera rule says that what we discuss in camera cannot be divulged when we are not in camera.

I'm in another committee, the procedure and House affairs committee, which right now is discussing the problem of information that is dealt with in camera coming out when a committee is not in camera. The very act of doing what we're doing now means that information is coming out in public. There are disputes as to what went on, and there's no proof one way or the other, because we only have the word of one committee member against another committee member. We've already seen at least one dispute of that nature.

I find that very problematic. I would like to see us deal with all such future matters as the whole committee. I recognize that's—

• (0940)

The Chair: Mr. Reid, I'm sorry. I do have to call you to order now, because I want you to address the fourth report and not the

procedure of whether or not we're in camera. You've made your point clearly.

Move on, please.

Mr. Scott Reid: You're quite right, Mr. Chair. I've mentioned that concern. You're right; I think I've made the point there.

This is the first occasion today on which I've seen the report. When I raised the question of seeing the report at our last meeting, I was advised that it was unavailable. I think the reason was that it hadn't been translated into both official languages yet. I think that was the reason for it, although I—

The Chair: Is the report you're talking about the report on DFAIT?

Is it this report?

Mr. Scott Reid: Yes. I didn't get a chance to see this before today.

The Chair: Well, I don't know when it was sent. I have to assume it was sent yesterday, at the very latest.

The clerk tells me it's not the practice to send out the report, but just to hand it out at the meeting.

Mr. Scott Reid: Okay. All right. It occurred to me that I might have misplaced it at my office and that I might be at fault for that. But in this case, I'm being presented with something on the spot. This is the first occasion I've had to find out what went on at the steering committee.

Remember that the in camera rule says you can't talk about what went on in committee, so literally that was a secret from committee members until the moment we came into this room.

The Chair: But what went on, Mr. Reid, is synopsised in this report, and this is what we are discussing. So as Monsieur Vincent says, are you in favour of the report? If so, fine; if not, you can tell us why you're not.

If you have a motion to amend, you can do that, but could you get to it?

Mr. Scott Reid: Right. Well, I've explained now the context of the concern, that it wasn't presented to me till now, and so I've been trying to think what would be the appropriate way of moving here. The report does not deal with certain key elements that I'm going to suggest should be included. The elements I've described conceptually, but as a starting point, the original motion that Madame Lavallée put forward and which I amended, you may recall....

I know there have been complaints about other members going on at length, but I think I've tried to be very, very businesslike.

I proposed an amendment, which went through, so there was no presupposition of guilt.

Her original motion, which we are seized with, is on the question of any wrongdoing that might have occurred, specifically breaches of the Access to Information Act. At no point that I'm aware of has anyone pointed to the relevant sections of the access to information law. I think that has to be the starting point.

I'm fully prepared to accept that there may have been such breaches. That's indeed why I proposed the amendment I did, and then was...well, I wasn't actually here for the final vote, but I would have been supportive of the motion as amended.

We need to start by figuring out what it is that's been broken. I printed it out this morning. This is a long, complicated law. So I have a copy right here. I've been trying to go through it this morning, actually, trying to figure out what parts of this might potentially have been breached.

To summon people here, we would have summoned Ms. Sabourin, who I assume is the person who is likely to be the person—

• (0945)

Hon. Jim Peterson: Filibuster.

The Chair: Order, please.

Hon. Jim Peterson: I got carried away.

The Chair: Mr. Reid.

Mr. Scott Reid: Thank you.

I've tried going through *The Globe and Mail* articles, and particularly I looked up one that mentions Mr. Esau. He didn't actually write the article, he was mentioned.

Mr. Pat Martin: You should ask him. He's right here.

The Chair: Order, please.

Mr. Pat Martin: Let him testify.

The Chair: The more speakers interrupt him, the longer it will take to have him make his point.

[*Translation*]

Mrs. Carole Lavallée: In any case, it's going to take just as long, Mr. Chair.

[*English*]

Mr. Pat Martin: I used to know these guys. They used to be quite different.

The Chair: Well, that may be.

Mr. Pat Martin: We used to work together for freedom of information. Remember that, David? Remember the good old days when we were champions of the right to know? Those were the good old days.

The Chair: Order, please. I realize that members are frustrated, but this is the way this committee operates. I might just mention that

Mr. Sukh Dhaliwal: This is a very congested way not to have a meeting...[*Inaudible—Editor*]. You should say that, Mr. Chair.

The Chair: —the committee is the master of its own house; later on, if we want to discuss making rules on how our committee deals with motions and how many times you can speak and how long you can speak, the committee can do that, but not now. That may be something we wish to discuss at a future meeting.

Right now Mr. Reid has the floor, and he's explaining why he believes that the fourth report is deficient.

Mr. Scott Reid: Thank you.

Madame Sabourin has mentioned that she has been summoned here as a witness. She would have been sitting on a panel with Mr. Esau and, I gather, also with Mr. Attaran. I, for one, could not have asked intelligent questions to Professor Attaran because I didn't actually know what the connection was. I couldn't do proper research. So that is a problem as well.

I do have the article that refers to Mr. Esau, so I could have probably stumbled and pieced together a question there. I couldn't have asked very many intelligent questions of Madame Sabourin because I wouldn't have had time to prepare. That is inherently wrong. It is inherently wrong to have the witnesses here at this time, and certainly to have witnesses of whom we were not advised at that last meeting. Mr. Esau was mentioned, but others were not mentioned, and there's a problem when they're being summoned here and we can't ask them proper questions.

I would go so far as to say, Mr. Chair, that what was being proposed here by the steering committee—and again, I do think this was inadvertent, I don't think they intended this—was effectively a court of star chamber. I think we need to move away from that. I think we can move away from that while still being respectful of the initial motion that Madame Lavallée put forward and that I amended.

With that in mind, Mr. Chair, I want to propose an amendment to the motion. The amendment—I've had to do it on the fly, Mr. Chair, and I apologize for the fact, but that's the only option I had—is not in both official languages, but remember, I did not see this until now and therefore I can't be as respectful of—

The Chair: All right. Present it.

Mr. Scott Reid: —both official languages as I would like to be.

Having said that—

[*Translation*]

Mr. Robert Vincent: Point of order, Mr. Chair. I don't want to constantly interrupt the proceedings, but are we talking about the fourth report?

• (0950)

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Robert Vincent: What motion does he want to amend? Has a motion been tabled? I have not seen or heard anything about this.

[*English*]

The Chair: The motion was moved by Mr. Martin that the fourth report be concurred in. So the motion is that the fourth report be concurred in. And that motion is this motion, and Mr. Reid would like to move an amendment to it. I believe that is in order, depending on the wording of his amendment, of course.

Mr. Scott Reid: It may be that there'll be some need for adjustment to the motion. I apologize, I haven't had the time obviously to speak to the clerk and make sure that it follows all the procedures, so I do hope you'll be indulgent in making suggestions that will make it in order, if there is some technical reason why it's not. But certainly it's in the spirit of the initial goal.

What I propose to do is on line 5—these aren't numbered—which begins “the document” in English, insert the following after the word “appear”:

in the following order:

- (1) the Information Commissioner and such other witnesses as are necessary to establish which sections of the Access to Information Act may have been violated;”
- (2) Jeff Esau and Paul Koring of *The Globe and Mail*;
- (3) Professor Amir Attaran;
- (4) Jocelyne Sabourin, Department of Foreign Affairs; and
- (5) such other witnesses as the committee, acting as a whole and in camera, decides to call;

I apologize. I haven't had a chance to write this down. I was actually working on it, but my number came up. I guess you'd have to then, after the bullets, start again where it says “and further”. That would continue on. I'm not suggesting that be taken out, but obviously the parts that refer to individuals and to today's date would actually be removed.

The Chair: Could you give me your copy of that, please?

Mr. Scott Reid: Yes, I can. I apologize for my handwriting, Mr. Chairman.

The Chair: I'll ask for the indulgence of the committee until the clerk and I are sure we have the motion in the exact wording, and I will read the whole motion into the record so that there's no argument later that I did not state the motion correctly or we don't know what the amendment is.

I think I have the amendment correctly stated. I'm going to read the amendment. It is moved by Mr. Reid:

That the fourth report be amended by inserting after the word “appear” in the fifth line the following:

in the following order:

- (1) the Information Commissioner and such other witnesses as are necessary to establish which sections of the Access to Information Act may have been violated;
- (2) Jeff Esau and Paul Koring of the *The Globe and Mail*;

I'm not sure that Mr. Esau is of *The Globe and Mail*, by the way. I believe he's a freelance. So we'll just say “Jeff Esau, and Paul Koring of *The Globe and Mail*”.

- (3) Professor Amir Attaran;
- (4) Jocelyn Sabourin of the Department of Foreign Affairs; and
such other witnesses as the committee, acting as a whole and in camera, decides to call.

So the motion as suggested to be amended, just so we all understand what we're talking about, reads as follows:

That the committee begin its study of the Department of Foreign Affairs' internal report, “Afghanistan 2006: Good Governance, Democratic Development and Human Rights” in relation to Access to Information requests for the document, by inviting the following people to appear in the following order:

- (1) the Information Commissioner and such other witnesses as are necessary to establish which sections of the Access to Information Act may have been violated;
- (2) Jeff Esau, and Paul Koring of *The Globe and Mail*;
- (3) Professor Amir Attaran;
- (4) Jocelyn Sabourin, Department of Foreign Affairs;
- (5) such other witnesses as the committee, acting as a whole and in camera, decides to call; and further,

that the Clerk of the Committee request from the Department of Foreign Affairs a copy of the censored version of the report.

The motion is in order. It has been moved. Is there any discussion of the amendment?

I'll call the question.

● (0955)

Mr. Scott Reid: Hang on, Mr. Chair, I wanted to explain what I'm doing here.

The Chair: I didn't see your hand. Go ahead.

Mr. Scott Reid: Thank you, Mr. Chair.

[*Translation*]

Mrs. Carole Lavallée: The cases have already been made: people will only start repeating themselves.

[*English*]

Mr. Sukh Dhaliwal: Let him speak, and let us come to the question.

The Chair: Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chair.

I've been saying that I think this has been a court of star chamber, and given the behaviour of Mr. Dosanjh and Madame Lavallée, I'm going to be very direct. This is what I've been opposed to, and I've tried to be very low key about it. The idea that people shouldn't be allowed to speak to motions; the idea that they shouldn't be allowed to consider in camera secret decisions, which they were only informed of when they arrived at the meeting; the idea that they should be expected to question witnesses who—

Mr. Pat Martin: Your representative was there. It was a subcommittee—a planning committee meeting, for God's sake. The Conservative Party was represented and in fact took a large chunk of the meeting.

I can't sit here—

The Chair: Order, please. Mr. Martin, you've made that point.

Mr. Reid, you have the floor.

Mr. Scott Reid: I appreciate Pat's attempt to impersonate Joseph McCarthy—

The Chair: Order. That's totally inappropriate, Mr. Reid.

You have been respectful. I'm going to ask you to continue to be so. Kindly address your motion.

Mr. Scott Reid: I appreciate that, Mr. Chairman.

Mr. Chairman, I've been interrupted, I would say, at this point—what, 15 to 20 times in the course of my comments?

The Chair: I don't agree. Carry on.

Mr. Scott Reid: It's something of that nature, if you add up all the different people. It's really very frustrating. I would just like the opportunity to make my points without interruption. I don't think that's unreasonable. It is frustrating.

There is a procedural problem here that was going to turn this committee hearing into a court of star chamber. It looks to me as if Madame Sabourin, who was being called in here to sit on a panel where she would be simultaneously accused—I assume the goal was to accuse her—of having violated the law in some unspecified—

The Chair: Mr. Reid, I'm sorry. You have come to some conclusion for which there is no evidence. Madame Sabourin was called as a witness. There's no indication that she would have been called and seated at the same time as Mr. Esau or the professor. I think that's something you can move on from.

Mr. Scott Reid: I stand corrected on that, and I apologize, Mr. Chairman. You're quite right that this was an assertion on my part that was not verifiable.

What I've tried to do in this motion is establish the kind of procedure you have if you're trying to deal with this question in a logical manner that will be respectful of the rights of all those involved. You are going to start by finding out where the law might have been broken.

From what I've heard from previous discussions, the assertion was that the access to information law was broken because the untruthful statement is said to have been made that there was no report, and reference was made to Madame Sabourin—she's the person cited in the relevant articles—as being the person who presented a letter that made this comment.

Now, we haven't seen the actual letter. We only have *The Globe and Mail's* report of a letter. She was going to be here today to respond, but no one would have the capacity to question her properly. I guess we could have hoped we would be able to recall witnesses and ask further questions, but given the temperament on the far side of the room, where people are constantly interrupting, shutting down, I see no evidence to believe that this was actually going to happen.

Anyway, I had reason to be concerned. So the attempt here is to determine what aspects of the law are actually being broken. I intended as well—and I didn't have a chance to write it in my motion—to ask our Information Commissioner what aspects of the report we would be able to look at without ourselves violating the secrecy laws, before we tried to actually look at the report.

Can we look at things that have been redacted—that is, blacked out—but then have been leaked? To what degree can we ask to see the full documentation? I'm assuming *The Globe and Mail* may or may not have had more documentation. It certainly seems possible. Could we look at it? Would we have to look at it in camera as opposed to not in camera? As we can see, that itself has become contentious in this committee.

This is not meant to be a forum at which we proceed to reveal additional government secrets. That would be inappropriate. It could happen. I'm not saying it's anything anyone intended. I've tried in my comments to make the point that it is the result of inadvertence that we've gone down this path, but I think we have gone down a path where this sort of thing could occur.

This is one point.

Another point I want to go on to is that we're trying to ensure that we won't have a recurrence of today, where people come effectively without notice. We knew about Mr. Esau, but we didn't find out about the other witness, Professor Attaran. We didn't know he was going to be here.

The observation has been made—

•(1000)

The Chair: Mr. Reid, I'm sorry. I guess this will be interruption number 16. You are being repetitive now on that point.

Could you move on?

Mr. Scott Reid: I'm trying to move on here. But I think it's important to point out with regard to this that I could not have known that, right? We were saying, well, your committee member could tell you. We're not supposed to breach the in camera rule and talk about what goes on inside in camera meetings.

Anyway, regarding the structure, asking Mr. Koring to come, as well as Mr. Esau.... I stand corrected about the fact that Mr. Esau doesn't actually work for *The Globe and Mail*. But the only basis I have to know anything about Mr. Esau at this point is what was mentioned in *The Globe and Mail*. It was basically a passing reference that he had placed a number of research requests. So at this meeting, I was operating under the incorrect assumption that he was a *Globe and Mail* employee.

The reason I suggested Mr. Koring is that he wrote the relevant article. It was part of a series of articles, but he wrote the article that's relevant and related to the issue of access to information documents, as opposed to the separate discussion of the treatment of detainees in Afghanistan, prisoners in Afghanistan.

I was trying to think of all the people at *The Globe and Mail*, without being exhaustive or abusive of the process by asking people who aren't relevant, who could actually comment and provide us with proper information on this issue. Thus, the two names.

I listed Jocelyne Sabourin, who of course was mentioned. It's appropriate that she be here. I suggested her coming after the other witnesses, partly because at that point she'd have the capacity to respond. Also at that point, we would have been able to ask Mr. Esau to give us the full text of the correspondence that had gone on between us.

It seems to me that if the assertion is made that someone has been misleading and is in violation of the act, the attempt was made to point arrows at somebody. I'm worried that she would not have an adequate opportunity to defend herself. So that's the logic of putting her on the list.

I apologize. I don't have a copy of my motion in front of me. I'm trying to do this somewhat from memory, Mr. Chairman, as I go through the points.

Hon. Jim Peterson: Filibuster.

•(1005)

The Chair: These are not interruptions, Mr. Reid. They're side comments that I'm not listening to.

Please do carry on.

An hon. member: They're asides. It's like Shakespeare, but it's not Shakespeare. It's far from it.

Mrs. Carole Lavallée: Try, at least.

Mr. Scott Reid: Thanks, Mr. Chairman.

Then I put down, “such other witnesses as the committee, acting as a whole and in camera, decides to call”, and I've already given the explanation of that, so I won't belabour the point. But I think we ought to be making further decisions as a whole committee on who would come as witnesses, so that we are all able to be properly apprised.

What we saw today is that we were not properly apprised of who was coming, because it was sprung upon us. It's the usual practice, but it's a practice that's inappropriate. We need to be properly apprised, so we can do proper work. This is a serious matter.

So in essence, that is what I've got down here.

Actually, I missed on my list that we should get our legal counsel, Mr. Marleau, here to advise us on what we can and cannot request, and how we ought to do it—whether in camera or in public—in order to ensure that we are respectful of what ought to remain secret, while at the same time getting full access to what need not be secret, and at no point reveal what ought to be looked at in camera. I think there is a clear distinction between looking at documents in camera, collecting them at the end, and ensuring that they not be widely revealed.... In other words, I can guess at what we can do, but it's just guesswork. I'm not a lawyer, and I'm certainly not the House of Commons legal counsel.

So those are the observations I had to make with regard to the motion, Mr. Chairman.

The Chair: Thank you, Mr. Reid.

Mr. Marleau is not the legal counsel for the House of Commons. Mr. Walsh is the legal counsel.

Mr. Scott Reid: I'm sorry, I meant Mr. Walsh. You're quite right, Mr. Chair.

The Chair: I have three people on the list, but they were on the list before the amendment was proposed.

Is there anyone else who wishes to speak to the amendment?

Mr. Stanton.

Mr. Bruce Stanton (Simcoe North, CPC): Mr. Chairman, I followed the course of the discussion with great interest. It occurs to me that—and with the greatest respect to honourable members—this is our first piece of business on the agenda today. This is the first opportunity that we've had to see the report and consider it. And really, I certainly freely admit that this discussion is taking some time, but I think that it's perfectly appropriate.

It occurs to me, Mr. Chair, that one of the responsibilities we have as members of the standing committee is to consider the matters before us and ideally have the information in front of us before we come to a committee, be prepared to bring arguments and bring suggestions and debate and hear witnesses.

When you look at the context of this discussion, this topic that we're dealing with, this arose out of allegations that appeared in a

Toronto daily newspaper. Going back to the first motion that Madame Lavallée brought forward, this point of discussion was steeped in insinuations about access being denied, much of which flowed from the very words of a newspaper article. It appears to me, Mr. Chair, that we, as a committee—and I, as a member of this committee—are treading into an area that is relatively thin from a legal perspective. There are potential complications here with references to, for example, an unredacted version of this Afghanistan report becoming available. I don't know, as a committee member, what legal implications that brings to put discussions of that nature into a public forum like this, especially now that it's public.

It also occurs to me that insinuations have been made, presumably directed towards the department, that this report was somehow denied access. I don't know what kind of implications that might bring against the individuals involved. Are we treading into an area where we might be impugning the reputation of a civil servant, a public servant, who may be in fact just exercising the course of their duties?

Mr. Chair, there are some legal questions here, and so I support the amendment. I think it's important for us to have the right context before we start going into hearing witnesses on a question. And I support the notion, for example, that.... I mean, the very first line of the motion says: “That we urgently address the internal report by the Department of Foreign Affairs”, etc. We don't have the report. We haven't seen it except for excerpts that have been showing up on the Internet and so on. I have not been able to be properly briefed and brought up to speed on this issue, except with what's essentially in the hearsay world.

Another point, Mr. Chair, is this. I have to say that as a new member of Parliament I've been amply impressed at the work that our researchers do, our analysts, in preparing information for these meetings. They've had no opportunity to prepare for witnesses and provide the proper context for the debate on this topic. This is the first time we're seeing it. We've been asked this morning, as our first piece of business, to consider the fourth report of the subcommittee on agenda and procedure.

Going back to this concern that I have about the public servants, I think it would be vitally important that before we hear from who I would say are the original crafters of the newspaper article.... Questions revolve around what information is out there. Is it legal for them to have it? What I would propose, Mr. Chair, is a subamendment to Mr. Reid's motion. And I would ask that in addition to the early witnesses on that list, before we hear the potentially volatile and/or insinuating—I don't even know if that's a word—accusations that may be directed against the public service, we understand the proper legal grounds that we're working on.

● (1010)

I would therefore add Rob Walsh, the House of Commons legal counsel, to the list of the witnesses, so that the committee can properly understand the circumstances, the environment we are considering here.

If I could, I would propose that as a subamendment to Mr. Reid's amendment, to add Rob Walsh, then, as legal counsel.

Mr. Chair, I think Mr. Walsh should probably come—this would be, I guess, the new item two on the list—after the Information Commissioner but before Jeff Esau and Paul Koring from *The Globe and Mail*.

The Chair: Are your comments concluded?

Mr. Bruce Stanton: Yes.

The Chair: Mr. Stanton moves a subamendment that Mr. Rob Walsh, counsel to the House of Commons, be added as a witness after “the Information Commissioner” and that clause—because there are other words after that—and before “Jeff Esau, and Paul Koring of *The Globe and Mail*”.

Do I have your subamendment correctly?

Mr. Bruce Stanton: Yes.

The Chair: It's in order.

Is there any discussion on the subamendment?

Mr. Tilson.

Mr. David Tilson: Mr. Chairman, I have a question to the clerk. Since we will be requesting legal advice.... I guess we can say the clerk was instructed to try to get a copy of the report. Can you give us any idea when that might be available for the committee?

The Chair: The question should be addressed to the chair, and the answer is that the Department of Foreign Affairs has the English version. They're in the process of translating it. They assured the clerk that the document would be available. It was my understanding that it would be available in both official languages by today's meeting. It is not. I do not know the reason it is not available in both official languages.

When I'm saying “the document”, I'm talking about the document that's referred to in the fourth report, which is the “censored version of the report”.

Frankly, I'm a little surprised that the document has not yet been translated. I really don't understand the delay in that, and it's certainly a question that could be asked. But that's the answer to the question.

There is no question the department will provide us with a copy of the censored report, and would have provided it but for the fact that it had not been translated. We are in the process of trying to get the official translation from the department and being able to distribute it.

When we do, we'll distribute it immediately, not at the beginning of a meeting.

•(1015)

Mr. David Tilson: Mr. Chairman—and I appreciate what you've said—did they give you any idea when that document would be available to us?

The Chair: Yes: before today—and it's not here. So we'll do our best to find out what the delay is.

Thank you for the question.

Is there any debate on the subamendment adding Rob Walsh, legal counsel? I'll call the question.

(Subamendment negated)

The Chair: Is there any further debate on the amendment?

Mr. Dhaliwal, your name was down. Did you want to debate the amendment?

Mr. Sukh Dhaliwal: Do I have to say something?

The Chair: This is debate on the amendment.

Mr. Sukh Dhaliwal: No.

The Chair: I had Mr. Van Kesteren before Mr. Stanton.

Did you want to debate the amendment?

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Not this one. I have some other comments.

The Chair: Thank you.

I have Mr. Tilson. Did you want to debate the amendment, Mr. Tilson?

Mr. David Tilson: The amendment of Mr.—?

The Chair: Correct.

Mr. David Tilson: Absolutely.

Mr. Chairman—

Mr. Glen Pearson (London North Centre, Lib.): Filibuster.

Mr. David Tilson: Well, you know, I resent these interjections.

The Chair: It's exactly the same in the House.

Mr. David Tilson: I resent these interjections, Mr. Chairman—

The Chair: That may be.

Mr. David Tilson: —and I ask you to call this meeting to order. They have no right to make the suggestions that they do. They want this committee just to rubber-stamp everything, ram it through without any debate whatsoever. That's how the opposition wants to operate.

Madame Lavallée has taken us to task for trying to talk about this matter, trying to debate this matter. She wants us just to rubber-stamp it and bang it through.

You have no right to do that.

The Chair: Order, please. I will call the meeting to order.

You are free to debate the amendment we're discussing now, Mr. Tilson.

Mr. David Tilson: Well, Mr. Chairman, I just want to indicate my support for the amendment. But the process we're following.... We're going to ask the two witnesses who are before us, who have been asked to come today—and I can only repeat, I don't recall agreeing to that. I agreed that they should come, because they are players in this drama, but I didn't agree that they should come in the order that they're coming.

Mr. Reid is quite correct in outlining the process, to explain it so we can properly ask questions of these witnesses, properly prepare for these witnesses. I knew these names, because they were mentioned to me in the subcommittee report. Other members of this committee on both sides may never have heard of these names. The first time they were mentioned was in that subcommittee report.

Am I calling it the correct name, the subcommittee? That's right, there was a discussion where representatives from all four caucuses were present.

That was the first time these names were mentioned. We don't come to these meetings and wing it, Mr. Chairman. We come prepared. We want to know who the witnesses are so that we can research, so that we can ask intelligent questions of these witnesses; otherwise we'll have to have them come back.

The whole purpose of the process is that we have some idea of who these witnesses are, what they have to say. The researchers generally prepare excellent presentations for us for questions that we may put to these two witnesses. They have not had that opportunity. The first time they have had the opportunity to see these names is today. They read the papers like everyone else, I suppose, but they had no idea that these witnesses were coming. At least, I didn't tell them. Unless you or the clerk told them...and I don't imagine you did that, because you're not allowed to.

The first time we had these names available, the names of the two people who are before us, was this morning. So we're going to sit here and just wing it. Some of us don't know the procedure. Some of us do, because we've been through some of these things before, but not all members of the committee, with due respect, are aware of the procedure of how you go through these things.

I'm disappointed that my colleague didn't put the report on, but I'm confident that the report will come, and I accept your statement, Mr. Chairman, that you believed the report was going to be presented today and that it didn't come today.

So I think that the order Mr. Reid has put forward—

• (1020)

Mr. Scott Reid: On a point of order, Mr. Chairman—it's a matter relating to decorum—I stand to be corrected, but I have the distinct impression that Mr. Martin has been passing around copies of the untranslated report in this committee, and we have to be respectful of both official languages. I wonder whether...I would stand corrected on that, but this would be inappropriate.

Could we just get confirmation of that?

The Chair: I don't see what decorum has to do with whatever Mr. Martin is passing around. I don't see your point as a point of order. You interrupted Mr. Tilson, and we'll go back to him.

Mr. Scott Reid: Well, Mr. Chairman, further to this point of order, I've been at a number—

The Chair: I'm sorry, I've ruled on your point. Are you going to appeal the ruling?

Mr. Scott Reid: Mr. Chairman, I haven't finished my point of order, so you can't possibly have ruled upon it.

The Chair: Yes, I did. You finished your point. You pointed it out as a rule of decorum. I ruled your point not well taken.

Do you have another point of order, Mr. Reid?

Mr. Scott Reid: Mr. Chairman, my understanding of the Standing Orders, then, and of the rules of this committee, unless they're different from the rules of other committees in this respect, is that they clearly state that items cannot be distributed unless they are in

both official languages. This is separate from being a matter of decorum.

The Chair: Items cannot be distributed by the committee, by the clerk. An individual member can give an invitation to a party, if he wants, in one official language. He can give out whatever he wants. But the clerk, on behalf of the committee, cannot distribute items, unless they are in both official languages, without the unanimous consent of the committee. That's clearly the rule of all committees.

Mr. Scott Reid: Mr. Chairman, am I to understand that your ruling, then, is that it is acceptable for members to come to committees and distribute documents relating to what's going on in the committee to other members of the committee—obviously, also to other members of the public present in the room—that are only in one official language? Is that what you're ruling?

The Chair: I have no idea whether Mr. Martin is distributing documents, invitations, or copies of a study. I haven't got a clue, but that's not my business. My business is to run this committee, and the things that go to the members from this committee go through the clerk. The clerk provides things in both official languages and only both official languages, unless the committee agrees otherwise.

Mr. Scott Reid: I'm asking what your actual ruling is. I don't know whether I can object to it or not if I don't know what the ruling actually is, Mr. Chairman.

The Chair: My ruling is that your point is out of order. It is not a point of order.

Mr. Scott Reid: But you can't just say that, Mr. Chairman. You have to say, I am ruling that—

The Chair: I don't need a lecture, Mr. Reid, on how to run a committee—

Mr. Scott Reid: I think you do, Mr. Chairman. You're having real problems here.

The Chair: Order.

We're back with Mr. Tilson.

Mr. David Tilson: Thank you, Mr. Chairman.

This is the fourth report: "That, the Committee begin its study of the Department of Foreign Affairs internal report, "Afghanistan 2006: Good Governance, Democratic Development and Human Rights" in relation to Access to Information requests for the document...".

That's why the two witnesses have come to us, I assume. I don't know, because I don't know what they're going to say. I trust they were going to say that the procedure hasn't been followed with respect to this report. The report says that we're going to begin the study of the report.

I believe that you and the clerk have done all you can to get this report to us this morning. It's not your fault, but it's not here. I don't know what questions to ask these witnesses until I've seen the report.

It's not part of the amendment—

•(1025)

The Chair: Excuse me. Could you please keep it down, committee members.

I'm listening to the debate.

Mr. David Tilson: They don't care; they don't listen to what we say anyway.

I'm simply saying that I want to be able to ask these witnesses proper questions. I don't know about the opposition, but certainly on this side, we try to find out the topic, the area of their expertise. We have some idea of what these two witnesses are going to say; they've been in the newspapers.

Quite frankly, I didn't know they were coming this morning. I know you and I have disagreed on that, but I'm going to say that. Certainly other members of the committee, opposition and government, didn't know they were coming this morning. They all want to prepare for it too.

We have an obligation as members of Parliament, as members of this committee, to be as fully prepared as we can when witnesses come. Otherwise we have to listen to what they say and have them come back again. Our job is to prepare, and I haven't had an opportunity to prepare.

One of the ways in which I want to prepare is with respect to this report. I want to be able to look at the report and read it, so I can ask the appropriate questions to these two witnesses, who I assume have seen it, but maybe they haven't seen it. Maybe this is the one they were saying they weren't allowed to see. I don't know, but at least I want to be able to see it, so I can try to ask reasonably intelligent questions. Now, if they come this morning and give evidence, I'm asked to ask questions about a report I haven't even seen. I haven't even looked at it.

Yes, I've seen the two sections in *The Globe and Mail*, and that's all I've seen. I don't even know whether that's the report. That's what *The Globe and Mail* says is the report, but maybe it isn't. I want to see the official report before I ask these witnesses. I think that starting these proceedings at this time is inappropriate without getting the report.

Also, Mr. Chairman, Mr. Reid has quite appropriately listed the Information Commissioner. The Information Commissioner is the expert. We did talk somewhat during the estimates, there's no question about that. We talked about this subject during the estimates, but I think that before we can ask appropriately intelligent questions of any other witness—whether it be from the staff in Foreign Affairs, someone from *The Globe and Mail*, Mr. Esau, the professor, or whoever—Mr. Marleau and his staff should come and give us a full briefing as to this situation and how we should conduct ourselves.

Mr. Chairman, it's appropriate that it be made quite clear by this committee that it's not going to be just exclusive to names that come out of the subcommittee. There may be other names, but we haven't had an opportunity to put those names forward. We haven't had an opportunity to determine the order of those names, because all of a sudden—slam, bang, boom—this report comes to this committee.

There may be other names as a result of the report that the committee may wish to put forward, ahead of Mr. Esau's name and ahead of anyone else.

The committee surely has some control. Surely they have not signing everything over to the subcommittee. The purpose of the subcommittee is to debate in camera, listen to legal advice—and we did get some legal advice—and other matters. That's the purpose. The subcommittee doesn't decide what happens in this place. This committee hopefully rules its own house.

Mr. Chairman, I would encourage members of the committee to support the amendment of Mr. Reid.

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

Is there further debate on the amendment of Mr. Reid? Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

This party on the other side—whatever you want to call it: the Alliance, Reform, or Conservative Party—spoke of the importance of transparency and accountability. Here we are on this issue of great importance to Canadians, and all they have been doing in this committee is blocking, filibustering, and stalling at every opportunity they get. It is disgraceful that we have two advocates for freedom of information who have worked long and hard to get to the truth of this important issue, for access to the information about Afghanistan, and this is the issue this government would like us to lose sight of.

That is disgraceful, and it is a black mark on democracy—not on the words of the report.

I would request that all members, especially Mr. Tilson.... You have been in this committee long before us, and you should get on with it.

•(1030)

The Chair: Just your remarks, please.

Mr. Sukh Dhaliwal: I'm sorry, Mr. Chair.

Mr. Chair, through you to Mr. Tilson, because he is the senior member on this committee, he should advise his colleagues to get on with it and get the transparency. They've lost this concept of transparency and accountability so soon.

I had the report. I knew who was coming to this meeting, and I'm fully prepared for it.

Mr. Tilson is saying, Mr. Chair, that he's not prepared. I don't think that is the excuse. I'm fully prepared with my questions to these fellows. I haven't met those fellows before; I haven't read what they're saying. But this is all about access to information. We cannot block this.

It is a black mark on the democracy. That's what I would say.

Thank you.

The Chair: Thank you, Mr. Dhaliwal, for the brief remarks.

Is there any further debate on the amendment of Mr. Reid?

Mr. Stanton.

Mr. Bruce Stanton: Thank you, Mr. Chair.

Let's talk about accountability. I'm glad my colleague from the other side raised it. Part of the accountability we have, especially on this committee, is to be responsible for understanding what topics we have in front of us. This is the first time we've had this report, this agenda in front of us today.

I suppose the subcommittee voted to have witnesses appear on the same day. All we have had in preparation for today's meeting is newspaper articles.

Madam Lavallée circulated the one on the topic of our meeting last Thursday, and we had another one from several weeks ago that seemed to instigate this whole series of discussions.

There is nothing more important for this committee than to get to the bottom of the issues at hand here. My hope is that as committee members, we find that the proper protocols of access to information have been followed to the T. But the fact remains, Mr. Chairman, that we do not have.... I know it's your committee.

The report here says that we'll request a copy of the Department of Foreign Affairs copy of the censored version of the report. You've indicated verbally that that report was supposed to be here today. To this date, I have not received a copy.

I'm also moved to consider the whole topic of the unredacted version. As committee members, how can we properly devote ourselves to this discussion without understanding the context of what raised the issue here, which were two points: first, there were allegations that initially the report was denied, and second, somehow a newspaper has an unredacted version.

How are we, as committee members, supposed to understand the context of our gathering evidence, as the motion says here, to consider the matter? How am I, as a committee member, supposed to consider the matter when I don't have the redacted version of the report?

To be honest, I don't know what procedures would have to be in place for us to see the unredacted version, but are we to rely on the opinions of just the journalists of our world? I mean no offence to journalists; they perform an important role in providing information to the public. But at the end of the day, our responsibilities go beyond that. We have to get to the facts around this particular issue. How are we to understand the context of this report without seeing the differences?

Perhaps I'll put the question to you: procedurally, how is that to happen? I do this in the context of the reason I say all of this. I'm supporting the amendment. I'd like to have the report in front of me, or at least have a day to have a look at it before we go and start hearing witnesses.

Second is that we have the information in front of us that we need to consider. Is there a way we can get the unredacted copy? Is this something the subcommittee considered?

The Chair: I'm going to answer it this way. We're debating the fourth report. There's no mention of the redacted version in the fourth report. There's no mention of the redacted version in the amendment, so I'd like you not to refer to it anymore.

From the procedural point of view, there may or may not be an opportunity for us to get the redacted version. That is not part of this debate, and it would obviously form part of decisions that we may take in the future, once we've heard evidence from other people. Then the committee would decide what, if anything, it would want to do to try to get the pure version, if I can put it that way, of the report.

There are varying legal opinions as to what the committee can get and how they can get them, but that's not the subject matter of this report, nor the amendment.

Do you have any further relevant comments to the amendment?

• (1035)

Mr. Bruce Stanton: I do, Mr. Chair, to follow up and say that that's why I support the amendment. I believe that the amendment brings a proper and orderly course to this discussion, to this gathering of evidence, as we say.

Notwithstanding what's been said across the way, I think we need to get to the bottom of this issue. We need to get it properly done. But for the sake of what appears to be expediency on some members' parts...we have to do this right. We have to be well informed. I'll say it again: the researchers and analysts have not had a chance to take a look at this. They presented us with nothing.

Here we are called to a meeting, we see this report for the first time, and you want to send us in to see witnesses. All we've seen are newspaper reports. That's the only thing that has been available to us to get properly prepared.

Again, I say that I would be loathe to get into this rather contentious issue without having the proper background and the information that I need as a committee member to properly exercise my responsibility.

So I support the amendment.

The Chair: Thank you.

Is there any further debate on the amendment?

Mr. Wallace.

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

My earlier questions to you went to this exact point, where I thought we should be listing out more witnesses we wanted to see. I appreciate my colleague putting it forward as an amendment.

Comments have been made about trying to see people in an orderly manner; and let's be frank, we're not trying to avoid anything. The witnesses we have here today are listed in the amendment, Mr. Chair, and we just want an appropriate order for them to be seen.

I was a little surprised that the subamendment did not pass, that the committee did not want legal advice on what they can and cannot receive, do with it, and so on.

So the motion goes to my earlier point, that other names have been submitted. There is a process of how an ATI request is handled, and why we're not dealing with it in the same manner, so that we have a logical, step-by-step approach to this issue.

It had been mentioned, and I think it's only fair to say, that my colleague from the Liberal Party gave us a bit of a lecture on this amendment, saying that it isn't transparent. In fact it's more transparent. It lists everybody we want to make sure we see, and it is in an orderly fashion.

Yesterday I was at a committee, Mr. Chairman, where the Liberal chair slammed the gavel and walked out because he didn't like the Conservative motion, and the committee ended. I don't know how transparent that was.

I know that last week the Liberal Senate committee passed something in 43 seconds, because they made sure it happened when the Conservatives weren't in the room. So transparency is not the issue.

In actual fact, the amendment is more transparent than what we have, because I didn't know who else we were inviting. It lists in order who we'd like to see, and why that order would be so, as explained by the mover of the motion. I don't know why we're not moving ahead on this.

I'm also going to ask for a recorded vote on this amendment, if that's possible. The recorded vote is reasonable in that it would show the members of the committee who are supportive of who's coming and those who aren't.

I should have asked for a recorded vote on the legal advice, because I think it would be shocking to most people that the committee doesn't want to see any legal advice on an important issue to the committee—

Mr. Pat Martin: I have a point of order.

The Chair: Point of order.

• (1040)

Mr. Pat Martin: I suppose it's a point of order to clarify some misrepresentation that Rob Walsh, the chief legal counsel for the House of Commons, and Greg Tardi, his right-hand man, sat with us for the entire planning committee meeting and answered a great many questions regarding the legal aspects of interviewing the witnesses scheduled for today.

Mr. Mike Wallace: I wasn't at that meeting.

Mr. Pat Martin: Mr. Wallace's representative was at that committee.

Mr. Scott Reid: How are we supposed to know that?

Mr. Pat Martin: You have the lawyer who was representing you at that planning committee sitting right next to you right now, for God's sake. Don't you guys ever talk?

The Chair: Mr. Martin, please. It's not a point of order; it is a point of clarification. You did clarify it.

It's also incorrect, in my view, for Mr. Wallace to characterize a vote against the subamendment as a decision by the committee not to seek legal advice.

In any event, go ahead, Mr. Wallace.

Mr. Mike Wallace: I appreciate your view on that, but one of the witnesses was for legal advice from the House. It did not pass. So if there's another way we can get legal advice that I don't know about.... As Mr. Martin knows, I was not at that meeting. I did not

get that legal advice, so he can say that another committee member was there, but....

So I was not opposed to getting that legal advice. The issue is, are we doing it in the right order? That's all this is. Are we being transparent by letting everybody know who we're calling and when?

This amendment would also allow us to properly plan the panels that would come, so that we would deal with the Information Commissioner and the individual from the department, mentioned in today's amendment, in a manner where we're not pitting them off against the other. But we would allow a very professional approach to this item.

So I'm supporting the amendment that's in front of us. I'd like to see a recorded vote on it. I think it's important that the public knows where we're going.

I would like to be able to ask questions of the individuals who are listed here. Based on what's in front of us in the fourth report without the amendment, I'm not sure there is another meeting. It doesn't say anything about future meetings; it just talks about this particular meeting.

Through the amendment, this would indicate that there would be future meetings and other witnesses coming. Obviously those witnesses aren't here today. They probably would need proper notice to get here. One witness who we thought might be here isn't going to be here.

Those are my comments. I'm supporting the amendment, and I'm going to be calling for a recorded vote.

The Chair: Thank you. There will be a recorded vote, Mr. Wallace.

Mr. Mike Wallace: Thank you.

The Chair: Is there any further debate on the amendment?

Mr. Tilson.

Mr. David Tilson: Mr. Chairman, I would just add that this is difficult. I asked that we go into in camera proceedings to discuss the business of this matter. You've made the ruling, but I don't agree with it. I respect you for it, but I can only emphasize that it's another example of why we should be discussing this in camera.

The whole idea has now come out that the subcommittee had legal advice. We had two lawyers there, giving us advice on a whole slew of matters. Quite frankly, I think it's appropriate that the committee receive that legal advice. Even with your ruling, you would agree that legal advice should be held in camera and that there might be legal questions that members of the committee will ask.

Incidentally, I'm not sure I agree with your contention at the beginning of this meeting that I can go to my colleagues and talk about what went on in that subcommittee meeting. The contents of that meeting shouldn't really get out until this meeting. The minutes should be in private session, because even now we're talking about lawyers. It has now come out that we had two lawyers come and give us legal advice, which is true. Two lawyers came and gave us legal advice on a wide range of issues. I believe members of the committee should have an opportunity to ask those same types of questions.

Mr. Martin will say I can go and tell my colleagues. Well, I'm not so sure I can do that. I'm not sure you can go and talk to your caucus about those sorts of questions. There may be other questions that members of this committee may have of those lawyers. Quite frankly, they should be asked before we hear witnesses. What rights do we have to ask certain types of questions? What are the repercussions of testimony that may be coming?

We're talking about breaching the provisions of the Information Act, and those are very serious allegations. Someone may or may not make those allegations during this committee hearing, whatever number of days they're going to last. Before we get into that, lawyers should come here, and it should be quite clear to members what their legal rights are, as members of Parliament, to pose questions and to make statements with respect to these matters.

Mr. Chairman, I quite frankly believe that before any proceedings start, before witnesses such as the professor, Mr. Esau, and the person from the foreign affairs department come, we should have a whole slew of introductory briefings before we proceed with that type of hearing. That's not being done.

• (1045)

The Chair: Is there any further debate on the amendment?

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

I'd like to address some of the comments made, first of all. I think this pertains to this filibuster, as it has been alleged.

I'd like to suggest that we were involved in an in-depth study. The honourable member across the way was saying this is a very important thing. None of us will debate that. This is an important issue, and it is something that needs to be addressed.

But I'd like to suggest that the identity theft, the issue that we were discussing before this, is coming.

The Chair: I was just about to ask the question. Please get to the relevant part.

Mr. Dave Van Kesteren: It has much more significance to Canadians in the long run. It might not have the news splash that this particular item has, but we need to address it. We keep hearing from the opposition side that this is filibustering, but I would like to suggest that, in a sense, the opposition has filibustered that study. Again, the far-reaching consequences to the Canadian public are at least as important as what's trying to be identified here.

I think the air has to be cleared on another thing too. At the last meeting, Mr. Wallace spoke eloquently on the motion, but it was the Conservative Party that called the vote. It was Mr. Tilson who had the floor at that time—

The Chair: What does this have to do with the amendment?

Mr. Dave Van Kesteren: I just need to clear the air on a few of these things.

The Chair: Unfortunately, this is not the time to do it. If you have comments on the amendment, I'd like to hear them.

Mr. Dave Van Kesteren: My point is that the discussion is a protest on procedure. This is what the Conservative Party is arguing: the order of the witnesses called, before we've had an opportunity to

examine the article in question, as well as officials from the government who would be responsible to it. This is highly irregular.

When I came here this morning, I was not prepared for this. I would have liked to look into the background. Who are the witnesses? Who do they work for? Are there other articles that they've written? I would have liked to re-read the articles in question. I haven't had that opportunity. To sit here and to suddenly, again....

You asked me, Mr. Chair, what relevance this has in regard to my point. The point is that the rug was suddenly pulled from under us on the last item that we were talking about, and now we suddenly have this new development. It's out of order.

I don't feel we've been given proper time, and I also would argue that the way in which we're proceeding is, first of all, not fair. It's not even fair to the witnesses. It's certainly not fair to the committee members, and I feel this is something that needs to be addressed.

Those of us on this side of the House should be able to have the same opportunity as the other side. Just because they have a majority of votes, they seem to think they can force this thing through. The whole thing is creating bad will. It's certainly not going in the right direction that everybody hopes it would in terms of our coming up with a fair and honest report. I just feel this is going in the wrong direction.

I agree with the amendments to the motion. This has to be studied in more depth.

• (1050)

The Chair: I presume everybody's in agreement that this has to be studied more in depth.

Mr. Stanton, do you have new arguments on the amendment?

Mr. Bruce Stanton: Yes, Mr. Chair.

As our discussion has continued along here, it has become increasingly clear.... In fact, we have the revelation that the subcommittee did have legal counsel available to it. Of course, that legal counsel has not been available to this committee. I realize and perfectly accept that my proposed subamendment to the amendment currently before us did not succeed. But the fact of the matter is, Mr. Chair, that it has now come to light that there was legal counsel involved in shaping the report and the motion before us.

Mr. Chair, that's one of the reasons I certainly support the amendment to the report, so that we can have a proper order. I would say again—and it's really a question to you, sir, and this is perhaps a point of procedure—that should we get through this, for example, and should the report then be put before the committee, there will be a decision taken. Once it's taken, are the deliberations of the subcommittee, which I understand were in camera, then made available to us? I'm thinking that in terms of the context of those arguments that the subcommittee must have considered, it would really be very helpful that we have that information available to us for the course of this study. Is that something...?

The Chair: I suppose the committee could decide that it would be the case, but there's nothing preventing this committee, at any time it wants, from calling any witness it wants. We don't have to decide every witness today; if we don't call witnesses today, that doesn't mean they're not going to be called. We can call Mr. Walsh and his experts at any time we wish.

Mr. Bruce Stanton: So back to the amendment in terms of our consideration, I take the mover's fifth point, that the committee, acting as a committee of the whole and in camera, may wish to call other such witnesses. But what you're saying is that we just need to propose those witnesses, that it doesn't necessarily mean they're going to be following in some order.

My point is that before we hear what I would say is perhaps the more sensational end of our witnesses on this particular subject, it's proper...and this is where I go back to my whole support, the essence of my support, for the amendment. As committee members we're not properly able to deal with this, and we need to have the benefit of the background.

Mr. Chair, with all due respect to the subcommittee, we just don't have it. We don't have the report. I've made that point again. I understand that. But in my experience, and I've sat on a number of different boards, private and public, the responsibility that you have as a committee member is that you're participating in a process to get to the essence of the information that's in front of you. You have to be well informed.

The motion compels us to look for all the consideration we need to give to the subject. The fact of the matter is, Mr. Chairman, that it has not been there. That's why I support the motion. I would also say that in the course of looking at the study, it comes as a complete surprise that we move on this today. I believe the amendment that's in front of us permits us to look at this in an orderly fashion and frankly, Mr. Chair, allows us to get back to the important work this committee already agreed to with respect to the study on identity theft.

I take the point that this was said to be urgent, that we needed to proceed on this in an urgent fashion. I believe the amendment allows us to do that, and it allows us to do that in a proper and structured way, to be able to get back to an orderly business so that we can get to the bottom of these issues, and then get back to the study that we all agreed as a committee needs to be handled in due course and as quickly as we can, and also our study on identity theft.

Again, Mr. Chair, I support the amendment. I believe it would be very unwise for this committee to proceed without proceeding in the manner proposed by Mr. Reid.

•(1055)

The Chair: Thank you.

Mr. Tilson, on the amendment. New points.

Mr. David Tilson: Yes, Mr. Chairman.

Mr. Chairman, Mr. Reid has clarified what he believes is the more appropriate order to follow with respect to this investigation. The report says, of course, that Mr. Esau, Professor Attaran, and Ms. Jocelyne Sabourin should appear. He has suggested that the order should be changed.

You have to remember what this is all about. This is about the allegations that really came from an article Mr. Koring wrote in *The Globe and Mail*, in which he alleged that the government denied the existence of this report. That's how all this happened. That's why we're debating all of this today. It's because of that allegation.

Mr. Reid has quite appropriately put forward the Information Commissioner first, ahead of Mr. Esau and Mr. Koring and the professor, in order to discuss or to explain the processes. I'm not going to go into that, though, because I've already made that submission to you.

In his second point, Mr. Reid then talks about having Mr. Esau and Mr. Koring come. Mr. Koring refers to Mr. Esau in one of his articles—and he wrote several of them. But the main point we have here, as I've said, is in an article that Mr. Koring wrote on April 25, in *The Globe and Mail*. To quote from his column, Mr. Chairman, it stated: Initially, [the government] denied the existence of the report, responding in writing that “no such report on human-rights performance in other countries exists.” After complaints to the Access to Information Commissioner, it released a heavily edited version this week.

That one paragraph tells me that the first person we should see is the Information Commissioner, because that's where all this started, with the allegation that “After complaints to the Access to Information Commissioner, it released...”. That's according to Mr. Koring, at least, but I don't know whether this is true. That's what he says, so we'll have to ask him about it. That's the reason Mr. Reid put the Information Commissioner forward as the first individual.

The second individual is Mr. Esau, because I gather he made an application. He'll tell us whenever he comes to speak to us.

More importantly, one of the first witnesses who should appear before us, after the Information Commissioner—which this amendment addresses—is Mr. Koring. Do you know why? It's because of this article that he wrote in *The Globe and Mail*.

The Chair: Mr. Tilson, I have to stop you there, because it's eleven o'clock.

Is it the will of the committee to continue its deliberations?

Some hon. members: Agreed.

The Chair: Can I have a show of hands by all those who wish to continue the deliberations?

An hon. member: I'd like a recorded vote.

The Chair: It will be a recorded vote.

(Motion agreed to: yeas 12; nays 0)

The Chair: It's unanimous.

We are suspended for a few minutes until we go to room 253-D, and then I'll reconvene the meeting.

•(1100) _____ (Pause) _____

•(1120)

The Chair: Colleagues, I'm reconvening the meeting in room 253-D, and we're carrying on.

Hon. Jim Peterson: I'm sorry to interrupt you, Mr. Chair, but on a point of order, in the interest of transparency, I think we should allow cameras into our hearings. I would therefore move to allow the media to bring their cameras in here too.

The Chair: Just so that I'm clear, this is a room with cameras, but I don't believe there's a crew ready. You're referring to the journalists other than the House of Commons television crew, is that what you're saying?

Hon. Jim Peterson: Yes, I am.

The Chair: We're in the middle of discussing another motion. I don't think you can use a point of order to move a motion, so I can't recognize your motion at this time. If you want to seek my attention later or at another time, I can do that, but not on a point of order.

Hon. Jim Peterson: Could I ask for unanimous consent to allow cameras to be brought in here?

The Chair: I suppose we can ask.

Is there unanimous consent to allow journalists to bring their cameras into the room?

Some hon. members: Agreed.

Some hon. members: No.

The Chair: There is no unanimous consent.

Here's where we are. We are discussing the amendment that Mr. Reid moved, to the fourth report. Mr. Tilson has the floor.

I want members to be very clear. We've had two hours of debate. I'm going to be very strict on repetition. If I hear repetition from anybody, I will stop the speaker immediately, bring them to order, and ask them to move to a new point. If they cannot, I will move to the next speaker.

We are on the amendment by Mr. Reid, and we are hearing Mr. Tilson.

Mr. David Tilson: Thank you, Mr. Chairman.

As I indicated before we had our short recess, what got this all going was a report from an article in *The Globe and Mail*—at least, I believe it was—by Mr. Paul Koring that the amendment addresses. In it, he makes a number of very serious allegations. I want to proceed with this as soon as possible.

I assume members of the committee have seen this article, so I'm not going to read it. I've quoted one or two paragraphs of it. I'm not going to do anything further, other than to say that because of that fact—unless someone's going to disagree with me—that's where many of these allegations came forward. His name isn't on this report. The names that are on the report are people who are most relevant. I submit that I agree with the amendment because this individual should be heard before the other individuals, and after the Information Commissioner.

Mr. Chair, like the original motion, the report requests “that the Clerk of the Committee request from the Department of Foreign Affairs, a copy of the censored version of the report.” You've indicated to me that you have done that, and that you hoped it would be here today.

Mr. Chair, I'd like to go further than this amendment, and I'd like to make a subamendment to the amendment. What I'm suggesting goes after the word “report” in the final line of the fourth report, where it says, “that the Clerk of the Committee request from the Department of Foreign Affairs, a copy of the censored version of the report”. I'd like to propose a subamendment that has the following wording: “and that the Committee as it...?”.

I'm adding on, sir. Are you following what I'm trying to do?

• (1125)

The Chair: I'm not following, and I'll tell you why. The current subject matter is the subamendment.

Mr. David Tilson: Yes, and I'm moving an amendment to that.

The Chair: Okay, but the subamendment ends with the words “decide to call”.

Mr. David Tilson: Yes, it does.

The Chair: I know you don't have this, but the version with the word “report” falls outside the words in the subamendment. You would in fact not be moving a subamendment, but rather an amendment to the fourth report. If you're moving an amendment to the fourth report, then it's out of order because we are debating the subamendment.

Mr. David Tilson: No, sir, because I'm supporting what the amendment says. It may be because I don't have the complete document in front of me. I'm talking about the amendment. I thought the words “in the following order” followed the words “censored version of the report”.

The Chair: No, they follow the word “appear”, in line 5 of the English version.

Mr. David Tilson: If that's the case—

The Chair: I didn't say you can't move an amendment. Once we're through with this—

Mr. David Tilson: I misunderstood what you're saying, sir, so I apologize.

So after the word “report” in the subamendment, which is the main motion—

The Chair: That's right, Mr. Tilson. There is no word “report” in the amendment.

Mr. Martin, on point of order.

Mr. Pat Martin: I'm sorry, Mr. Chairman, not to be difficult, but I thought we voted on the subamendment and it was defeated, and that the debate then reverted to the amendment. Am I mistaken?

The Chair: I have been incorrectly saying subamendment on occasion. There is no subamendment. What we're talking about is the amendment. I'm trying to guide Mr. Tilson, because I think what he's trying to do is amend the fourth report. I think his amendment is outside the wording of the amendment. That's all I'm trying to say. I'm not saying he can't do it; I'm saying this is not the time to do it.

Mr. David Tilson: Mr. Chairman, perhaps I can tell you what I'm trying to do.

The Chair: Okay, and then we can see if we can work it out. Go ahead.

Mr. David Tilson: What I'm trying to do is this. I'm supporting Mr. Reid's amendment. What I'm suggesting is that if he added to those words—and it may be I'm putting these in the wrong place—the words “that the Committee, as its first order of business, receive and consider the subject internal report from the Department of Foreign Affairs, and that the witnesses then appear”.

That's why I think it's important, because I'm referring to these witnesses, in that it's an amendment to Mr. Reid's amendment.

• (1130)

The Chair: Could you read the wording again?

Mr. David Tilson: I'll read it, and if you agree with me, then we can discuss where we should put it: “that the Committee, as its first order of business, receive and consider the subject internal report from the Department of Foreign Affairs, and that the witnesses then appear”.

I was going to suggest, Mr. Chairman, that these words come after the word “report”.

The Chair: If they come after the word “report”, they're outside the wording of the amendment and I would not be able to find your proposal in order. What I'm looking for is to see if there's some way I can logically place them within the amendment for you, so that they would become a subamendment of the amendment.

Mr. David Tilson: That's why I'm asking for your assistance. I quite frankly support the order, and I'll try to translate it without looking at any pieces of paper.

What I'm trying to say, Mr. Chairman, is that in addition to this order that Mr. Reid has suggested, I believe that before those witnesses appear, or before that order or procedure that he has suggested, the committee members are able to receive and consider—and I use those words—the report.

The Chair: Given that, I don't think I can logically fit it into the amendment, because the amendment talks about people who are to appear. Your amendment would suggest that we consider something before people are to appear.

Mr. David Tilson: That's exactly what I'm doing.

The Chair: Right, so I think you will have to bring that as an amendment, not as a subamendment. There's no problem with your doing that.

Mr. David Tilson: I will abide by your wishes, Mr. Chairman, but I hope you will give me an opportunity to make that amendment at the appropriate time.

The Chair: Certainly. Yes, I shall. Thank you.

We're still talking about the amendment. I'm asking if there is relevant further debate that we have not heard from members who have already spoken on the amendment.

Mr. Dhaliwal, do you have any comments that we have not already heard?

Mr. Sukh Dhaliwal: I've already mentioned everything.

The Chair: Thank you.

Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chair.

I'm sorry, but I just had to come here in the same process as we all did. I wound up having a chat with the media, and it's left me a little befuddled. I apologize for that.

The Chair: I can come back to you a little later, so that you can have a few minutes to think.

Mr. Scott Reid: Actually, I'd appreciate that, Mr. Chairman.

The Chair: I do have two other people.

Mr. Scott Reid: Yes, let's do that.

The Chair: Again, I'm reminding everybody: relevant and not already stated.

Mr. Stanton.

Mr. Bruce Stanton: Thank you, Mr. Chair.

I'm going to talk around a topic that I have already broached, but I'm going to propose this in the form of a subamendment to Mr. Reid's amendment.

The Chair: Is it a subamendment to the amendment?

Mr. Bruce Stanton: Perhaps you can help me to achieve this. I'm perfectly cognizant of the subamendment to Mr. Reid's amendment.

You mentioned the information that's available from the subcommittee, with respect to the legal context that the subcommittee was privy to but we were not. In consideration of that, I would propose that we add to the list of witnesses, after the fifth point, which reads, “and such other witnesses as the committee, acting as the committee of the whole and in camera”, in that we express the notion that the committee should also have available or distributed to it the text, the blues, or the minutes of the legal context that the subcommittee had access to in respect of these discussions.

In other words, we've heard that Mr. Walsh and one other representative of the House of Commons legal counsel had that. I respect the fact that the committee has decided it doesn't want legal counsel as part of our group of witnesses. Moreover, we've left that option open to us in the future, but not in the order that I proposed earlier in a subamendment.

Granted that, would it be possible that, at the very least and in addition to the order that has been proposed, we compel the subcommittee to release to us the information that was available to it from a legal point of view? I would say again that I believe it is important for us to have that proper context. Could we therefore add that as an additional item?

The amendment, in fact, is basically mapping out for us a course or a direction, if you will, as to how we're going to proceed on this important topic in order to get to the root of the issue. I believe that's an important piece of the puzzle. If we don't need a witness in there or if the committee doesn't want a witness in that order, then let's have the information available to us, at the very least.

• (1135)

The Chair: Before I get to your subamendment, let me just speak to the committee as a whole. First of all, there's nothing preventing this committee from calling Mr. Rob Walsh at any time they want. Of course, if we pass this amendment and we subsequently pass the motion, we'll have to follow the order, but that does not preclude our calling anyone the committee wishes to call at any time.

So I don't think committee members should be concerned that they're not going to hear from the legal counsel if they don't deal with it today. That's just, in my view, a straw man.

I want to assure the committee that as the chair, at the request of any member of the committee, I would be very pleased to seek the unanimous consent to call Mr. Walsh, and if it were not forthcoming, then we'd get into debate about it. But the point is that there should be no fear on that score.

The clerk advises me that the normal procedure of in camera meetings—this is the normal procedure, but we of course are the masters of our own home—is that any members who wish to review the in camera evidence of the subcommittee can go to the clerk's office and review that evidence at their leisure, but they are not allowed to make copies or notes. That's the normal procedure.

Now, if the committee were of the view that they wanted to distribute the minutes of the subcommittee meeting to the regular committee, then the committee could agree to do so. I would urge that if we do it, we all agree that the evidence remain in camera. If the committee wishes then to agree to the contrary—that the evidence of that meeting will no longer be in camera—the committee has the power to do that, but I don't think that would necessarily be wise.

What I'm saying is, first, that it is already within the purview of members of Parliament of this committee to visit the clerk and review the evidence that was heard and the discussions that took place and the statements that were made by the parties who were there; and second, that there is nothing precluding the committee from calling witnesses who perchance aren't listed here. Mr. Reid was very careful to craft his motion in such a way as to allow other witnesses to be called, in at least two of the five points that he has listed.

Given that, I'm going to say that your suggestion for a subamendment would not be in order, because the amendment talks about witnesses, and calling witnesses in a particular order, and looking at the evidence of the subcommittee is not witnesses.

I make that comment to the committee as a whole, hoping that we can move on with the understanding that there's nothing secret from the committee. If the committee wants to see what happened, they can go to the clerk's office and take a look at it.

Do you have any further relevant comment on the amendment?

Mr. Bruce Stanton: I would say, Mr. Chair, that I appreciate the clarification. I think it comes as important information that we know we can at least have access to that information.

I don't know whether this would be in order, then. I know we're in the midst of discussing an amendment, but can we ask, then, for unanimous consent to have Mr. Walsh or legal counsel from the House of Commons appear as a witness at this committee?

The Chair: Normally I would say yes, but we had a subamendment by you to put his name into the amendment, and it was defeated, for whatever reason. So I'm going to suggest that we not.... I suppose I could ask.

Is there unanimous consent to have...? What was it you were asking unanimous consent for?

•(1140)

Mr. Bruce Stanton: It was that legal counsel from the House of Commons, namely Rob Walsh, appear before the committee as one of our witnesses.

The Chair: Is that at any time, and not at a specific time?

Mr. Bruce Stanton: Yes.

The Chair: Would there be unanimous consent of the committee to have Mr. Rob Walsh appear at some point during our deliberations before our committee? Is that clear?

I don't want to get into a big discussion about it; either it's yes or no. I guess Mr. Stanton is seeking assurance of the committee that Rob Walsh, our legal counsel, would be a witness before our committee. Is there unanimous consent that at some point during our deliberations on this issue we will call Mr. Rob Walsh?

Is anybody opposed?

[*Translation*]

Mrs. Carole Lavallée: I just want to make one comment. Naturally, I will be voting in favour of this motion, but the fact remains that if we have witnesses... According to the spirit of the fourth report and the deliberations of our steering committee, we would begin by hearing from these witnesses, but there would be others. The word "begin" is important, in the text of the fourth report. We know how it works. When we want to hear from witnesses, we need only give the name to the clerk. We don't need to get unanimous consent. I will be voting in favour, but I find this procedure useless.

[*English*]

The Chair: All right. It may be useless, but it might give some reassurance to members who otherwise think this would not be the case.

I hear unanimous consent, so there is unanimous consent that Mr. Walsh be called.

What Madame Lavallée says is quite right, that the fourth report deals only with the witnesses for today. That's also true.

Do you have any comments, then, on the amendment?

Mr. Bruce Stanton: No. That's all I had, Mr. Chair, and I appreciate your indulgence on it. I don't have anything more on the amendment at this time.

The Chair: Are there any other comments of relevance to the amendment?

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Mr. Chair—

Mr. Pat Martin: On a point of order, Mr. Chair, this committee is clearly being filibustered for the second time recently. The official languages committee has now shut down because of government mischief. There is another committee, procedure and House affairs, that is being filibustered and shut down.

In other words, democracy is grinding to halt all over Parliament Hill. This Parliament is out of gas.

My point of order is this. I need to ask the clerk for his legal opinion, but at what point does this become a constitutional crisis needing the Governor General to intervene? If the government refuses to let Parliament do its work in a consistent pattern all across Parliament Hill, are we not in a constitutional crisis, where we're being denied our right to govern as the Parliament of the day? it's a technical question to our clerk.

The Chair: Mr. Martin, it's not a question to the clerk. It's not a point of order. It's a point of debate, clearly.

We are exercising democracy, because we are following the rules of the committee, and every member is entitled, subject to limitations on irrelevance and repetition, to address the motion.

I've already warned people that I'm going to be very strict on relevance and repetition on the amendment.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

I think this is relevant. I beg the committee's indulgence. In our haste in moving, I left the amendment.

Can you please repeat the amendment and repeat it slowly, so that I can at least pen this down? I don't know whether others have had the same problem.

The Chair: The amendment moved by Mr. Reid is to insert—you have the fourth report in front of you—after the word “appear” in the fifth line, the following, and I'm going to ask my researcher and clerk to correct me if I'm misstating it, please:

in the following order:

(1) the Information Commissioner and such other witnesses as are necessary to establish which sections of the Access to Information Act may have been violated;

(2)—

• (1145)

Mr. Pat Martin: Mr. Chair, on a point of order, for the record, I want to formally object to this delay, this obvious delay, in that this is an amendment put forward by his own colleague, who is sitting right next to him. Why should he have to burn up the time of this committee while we dictate, agonizingly and painfully slowly, letter by letter, the amendment that they moved?

The Chair: Mr. Martin, that's not a point of order.

Mr. Pat Martin: Well, it's a point of frustration.

The Chair: It's a point of frustration, but it is true that—

Mr. Pat Martin: I don't know how much more of this I can take, frankly.

The Chair: I guess you'll have to decide that yourself.

It was moved today. It was handwritten today. It was only in one official language. And I did read it.

If you don't mind, let me.... By the time I finish my remarks, I could have read it to him.

It continues:

(2) Jeff Esau, and Paul Koring of *The Globe and Mail*;

(3) Professor Amir Attaran;

(4) Jocelyne Sabourin from the Department of Foreign Affairs; and

(5) such other witnesses as the committee, as a whole and in camera, decides to call.

An hon. member: Can we add to that—

The Chair: No, that is the amendment that has been moved.

I have read it. This is the second time I've read it in full. Do you have any relevant and new commentary on it?

Mr. Dave Van Kesteren: Just as a point of clarification again, Mr. Chair, at this point can we make amendments to this...?

The Chair: You can move an amendment to the amendment.

Mr. Dave Van Kesteren: Okay. I'd like to follow up where Mr. Tilson was going. He and I were discussing it beforehand.

It's obvious that we have a disagreement as to the procedure. We feel on the government side that this was sprung on us. We also feel that we have no objections to looking into this matter, but obviously the outcome to any conclusion, or at least reporting to...whatever that procedure is, is very important. Thus we have argued, right from the beginning, that we take issue with the fact that if the witnesses who have been called have not, at the least, been called according to a wrong procedure, we haven't put proper protection in order.

When I say “protection”, I'm talking about the fact that we're dealing with something that, as far as we know, is alleged. The reason I needed to have this thing read to me again was to see at what point we can interject the suggestion or the amendment that we first of all have before us the documentation.

The Chair: We're not going to go there again. I've already told Mr. Tilson he can move an amendment. I do want to say that the most recent, up-to-date information I have on this is that the committee would have the censored report in both official languages by noon tomorrow. That's what we're told. That's all I can tell you.

Whether or not it's worthwhile doing that motion is another issue. Do you have any comments on the amendment?

Mr. Dave Van Kesteren: I do. I think if that's the case, if we cannot have that information, then I would like to see—and perhaps I can just talk to some of my colleagues before this—some type of interjection into this amendment, so that witnesses, or information brought forward by the witnesses, reflect what the committee finds after we have a chance to study this report.

I just don't think it's fair that witnesses—not only is it not fair, but it's not prudent—can make statements without at least having the very basis of those statements in front of committee members.

So is there a possible way that we can interject—

• (1150)

Mr. Pat Martin: On a point of order, Mr. Chair, on the matter of relevance, there is absolutely no precedent that we have to have circulated to the committee documents outlining what a witness is going to tell us in advance of that witness giving testimony.

Mr. Van Kesteren is making stuff up to stall and delay this committee. Show me any committee where we anticipate what a witness is going to say and then don't let him testify until such time as we've circulated everything he's going to say in both official languages to this committee. It's laughable.

The Chair: Again I rule your point not well taken. I think what Mr. Van Kesteren is saying is that in his view it would be prudent to have the report before we proceed with any witnesses.

But then, that's not relevant to the amendment, because it's not mentioned in it.

By the way, witnesses do not have to provide a written statement or any statement before they come, and they can say what they want. I don't think it's fair to the witnesses to presuppose what their evidence will be. We'll hear what their evidence is and we'll decide at that time whether it's relevant. We can assess what weight we want to put to hearsay, or whatever the case may be.

So I ask again, are there any comments relevant to the amendment, Mr. Van Kesteren?

Mr. Dave Van Kesteren: I will be speaking to my colleague beside me. I really think we can make an amendment here that even members on the opposite side could agree to too. Although we've been accused repeatedly of filibustering, we really feel that we have a legitimate case here—

The Chair: You may feel that way. It will be decided upon through a vote. And yes, you can have discussions with colleagues. I'm asking you if you have any specific comments on the amendment that you have not already addressed.

Mr. Dave Van Kesteren: Mr. Chair, I would maybe move my spot over to the next, so that I'll have some time to gather my thoughts. I might possibly have some in the next few minutes.

The Chair: All right.

I'll go to Mr. Reid, to whom I gave an opportunity to gather his thoughts.

Mr. Scott Reid: Thank you, Mr. Chair. I appreciate that. It was very helpful.

The Chair: Please go ahead, Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chair.

I'll start, Mr. Chair, by saying that I got intemperate earlier on and made some inappropriate comments. I want to apologize for those, and to you specifically. That's not relevant to the point at hand, but I wanted to say that.

The Chair: I took no offence.

Mr. Scott Reid: Thank you.

The point behind trying to structure things as I've laid them out in the amendment is to allow us to proceed with the witnesses in an orderly fashion, and in a fashion that allows them to present fulsome testimony without our being—

The Chair: Mr. Reid, that is true. You have made that point. It's clear why you moved the amendment. It's clear that you want an orderly procession of witnesses. That's why you've moved an orderly procession of witnesses. Do you have anything new to say?

Mr. Scott Reid: Yes, I'm trying to respond to what I think is Mr. Martin's incorrect observation that might cause him or others in the committee, if the impression is not corrected, to fail to see the necessity of what I'm trying to do here. He made a comment with reference to the provision of documents, and he stated that there is no requirement that witnesses before committees present what

they're going to say to the committee. Of course that's quite true, but that wasn't the purpose of doing this. I can see, therefore, that what I've been trying to say has been misunderstood, and this is what I'm trying to clarify now.

The purpose of getting the first witnesses is to allow us to determine what documents we actually can see. Of course, we have to consider the documents at some point if we are to determine whether or not there was wrongdoing under the Access to Information Act. Of course, I still want to figure out what part of the Access to Information Act has been violated or potentially violated.

Certainly there's the provision of the relevant documents in which items were held back, or redacted, as they say. There's another version that, for all I know, may have been circulated. I saw a version being circulated by—

• (1155)

The Chair: We don't know what was circulated. There's no evidence to that effect, other than your observation.

Carry on.

Mr. Scott Reid: All right, but I saw what I saw, Mr. Chair. Some members of the media have copies of it now.

The Chair: There's no reference in the fourth report to anything other than the censored version of the report, which we're entitled to in any event, since it has already been in public.

Mr. Scott Reid: That's quite true. However, the first page of the report is available out there in an unredacted form. Sections are quoted in at least one *Globe and Mail* article, and possibly several, and therefore in other places. We actually do have more than one piece of evidence out there.

I have to assume there's a parent document from which these came. I don't know all the details of everybody who has it or exactly what is in these things, but as I went out when we were leaving the last—

[Translation]

Mrs. Carole Lavallée: Mr. Chair, his speech, his pep talk, has nothing to do with his amendment. He is going off topic.

[English]

The Chair: Thank you for your advice, Madame Lavallée.

The motion that was passed requires us to urgently address the internal report of the department. We're getting the internal report of the department, as censored. We're told by the department that we're going to be getting it, as a committee, by noon tomorrow. What's your next point?

Mr. Martin.

Mr. Pat Martin: You just read the motion that was passed before by Madame Lavallée. The motion that is being debated currently is the concurrence on the fourth report.

The Chair: You're absolutely correct. I was simply pointing out that the committee is going to be seized momentarily of the censored report, and I'm not really wanting to hear debate about an alleged redacted report at this point. The motion didn't talk about multiple reports; it talked about the internal report of the Department of Foreign Affairs, which we're going to get.

If the committee decides to go off on other angles after we've seen that report, or if the committee decides that it wants to see the full report, we can deal with that at that point. I'm just trying to bring some relevance to Mr. Reid's comments, so that I can make sure he stays on the topic of his amendment.

Mr. Pat Martin: So as I understand it, you are ruling that Mr. Reid's going off on this tangent and wandering in this direction is in fact irrelevant and therefore out of order.

The Chair: What I'm asking him to do is bring his remarks back to his motion and refer to the report that is referred to in the fourth report, which is the censored version.

That's given you a little bit more chance to consider things, Mr. Reid. Are there any other comments on your motion?

Mr. Scott Reid: Yes.

The researcher has just given me her copy of the fourth report. I apologize; I must have left mine behind in the last committee room when we were trying to get over here. So I have that and also the original motion, which of course we are trying to address, and which is the parent of everything that is done here.

Does it actually say "the redacted report"?

The Chair: It says the censored report. "Censored version", I believe, is the wording.

Mr. Scott Reid: Oh, it's "that the Clerk of the Committee request from the Department of Foreign Affairs, a copy of the censored version of the report."

So we can't make the request to the Department of Foreign Affairs until this motion is concurred in. Is that the way it works?

The Chair: We've already done it.

Mr. Scott Reid: Oh, it's already happened.

The Chair: Yes, but now we're talking about it because that was something we decided.

I was trying not to waste a lot of time. Given that the steering committee had agreed by consensus, the clerk quite properly called the Department of Foreign Affairs and asked for a copy of the report. In fact, he asked for it beforehand as a result of the motion that was passed in this committee, so that we could move things along, because the word "urgently" is in the motion.

Hon. Jim Peterson: What date did that request go in?

The Chair: I believe it went in on the day of the passage of the motion or the day after.

Hon. Jim Peterson: That was last Thursday?

The Chair: That was last Thursday. The clerk was advised last week—on Friday, I believe—that the document was only in one language but that they were translating it and would provide it to us

as early as possible. It was my belief that we would have it by Tuesday.

Hon. Jim Peterson: How many translators does it take to translate that document?

The Chair: I cannot answer that, Mr. Peterson; I know you're asking a rhetorical question.

There were other methods we could have used, but we were assured by the department that it would provide the translated report. Now we're assured that it will come by Friday at noon. I can only assume that the committee would be very upset if, by the time we return a week from Tuesday, that document is not before us in both official languages, and we might decide to do something else. But that's a different issue.

Can we get back to dealing with this amendment and then move on, so that we can deal with what we need to deal with?

Mr. Reid, do you have any further relevant and non-repetitious arguments with respect to the amendment you moved?

• (1200)

Mr. Scott Reid: You're quite right to try to keep order here, Mr. Chair. I want to point out that Mr. Peterson's intervention when I had the floor was not really in order.

I thought his point was not inappropriate, by the way. I think—

The Chair: He was asking for a point of information. Other members have done that in the course of this debate, and I provided it.

But you have the floor, sir, so please proceed.

Mr. Scott Reid: Thank you.

He actually has a good point. I'm not sure why it takes so long—it's a good question—to translate documents. I gather it's a short report, because he's holding what looks like a copy of the entire thing in his hand.

Hon. Jim Peterson: It's a lot shorter, because a lot of it was crossed out.

The Chair: Do you have any further comments on the amendment?

Mr. Scott Reid: Yes, I do.

I also have to be clear that in asking the question the way I did, and looking through it, I was not suggesting that the clerk was acting inappropriately. I think it was quite appropriate for him to go out and seek it ahead of time.

The Chair: Are there any comments on the amendment?

Mr. Scott Reid: Yes.

We have now a situation in which, with reference even to the English-only redacted version of the report, the only documents that would provide us with—

Mr. Pat Martin: What is the relevance, Mr. Chair?

The Chair: He hasn't even finished his sentence, Mr. Martin. I would really appreciate it.... I'm listening very carefully. Please don't interrupt, because it just drags things out.

Mr. Reid.

Mr. Scott Reid: Even for the version of the report that is currently requested by the committee, there's a copy of it that appears to be around. I'm not trying to raise the issue of whether Mr. Martin distributed it. I'm going on a different tack here, just before I get interrupted again. The—

Mr. Pat Martin: I have a point of order, Mr. Chairman.

The Chair: Mr. Martin, on a point of order.

Mr. Pat Martin: You've brought him back to order half a dozen times to speak about the amendment, the amendment to the motion to concur in the fourth report of the planning subcommittee, etc., which would open the door to finally putting the concurrence motion to a vote so that we could finally hear our witnesses.

Every time you correct him, he goes back to the phantom report—and he seems to be the only guy in Canada who hasn't seen it. But that's irrelevant; that is not the subject of the debate today.

The debate is on concurrence in the report to hear these two witnesses, who have been waiting for three hours now while these guys make a mockery of Parliament. These guys are running roughshod over everything that is decent and holy about this institution, and they should be brought to task.

How much longer will we tolerate it?

The Chair: I'm going to call you to order, because that's not a point of order; that is debate.

This gives them an opportunity to caucus.

I'm going to move to the next person.

Mr. Tilson.

Mr. David Tilson: Thank you, Mr. Chairman.

I'd like to specifically refer to the second item of the amendment, which says that Mr. Esau and Mr. Koring appear before others; that the Information Commissioner appear first, and then those two witnesses.

I think there's sound reason for that. Mr. Esau may have written a number of articles, but the only one I can find is one he wrote way back on November 13, 2006, for the *Ottawa Business Journal*, which really has nothing to do with this. But he is referred to in Mr. Koring's column of April 26, where he says: At least two other complaints will be filed with the Information Commissioner. Jeff Esau, a journalist and researcher retained by The Globe and Mail, will complain that he was told in writing that "no such report on human rights performances in other countries exists."

It's most appropriate that he come as a witness. However, he is here now, and it's most appropriate that we hear him. The only reason I can see why he's called is that he's referred to in two articles, one article of Mr. Koring's and a subsequent article.

• (1205)

The Chair: Mr. Tilson, I'm sorry, the fourth report calls him and the amendment calls him, so it's very good that you're speaking—

Mr. David Tilson: That's what I'm debating on, sir.

The Chair: — but it's not relevant and it's not new, since everybody's in agreement that he should be called. The only issue is when.

We don't care how many articles he wrote. Everybody on the committee is in agreement that he should be called. The issue of the amendment is when he should be called.

Do you have anything new to say about that?

Mr. David Tilson: Yes, I do, sir. I'm trying to emphasize that Mr. Koring should be called, really, after the Information Commissioner and before anyone else.

The Chair: So you're speaking against the amendment—

Mr. David Tilson: No, I'm not. Mr. Koring—

The Chair: —because the amendment lists Mr. Koring after Mr. Esau.

Mr. David Tilson: I'm calling in support of that, because I seem to be getting the impression from the opposition that they don't want him to come first. I'm trying to say, Mr. Chairman, that Mr. Koring should come first. He's the one who raised all these issues.

The Chair: That he come first from what? What do you mean by "first"?

Mr. David Tilson: Oh, well, the Information Commissioner would be first, according to the amendment, followed by Mr. Esau and Mr. Koring together. The report doesn't say that.

The Chair: That's true.

Mr. David Tilson: I'm saying that I support the amendment, because I believe that Mr. Koring perhaps has the most relevant evidence I've seen so far for this committee. He talks about—

The Chair: I have to interrupt you, Mr. Tilson. We have a point of order.

Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: For some time now we been talking about the order of witnesses. The Conservatives have provided us with the list of all the witnesses they would like to meet. Furthermore, it is said that any other individual could come and testify before this committee. If we know which witnesses are to come, we need only figure out who will come first and who will come second. Do we want to hear from all these witnesses? If he wants to know whether we agree on his choice of witnesses, he need only call the question. Afterwards, he can bring forward all the witnesses he wants. I don't have a problem with that, however, I would like us to call the question to find out if everyone is in agreement. If so, he is talking for no reason, because there is no problem.

[*English*]

The Chair: Thank you, Mr. Vincent. I'm going to rule your point not well taken, but it's the last time I will do that. I'm warning the members that if you are not absolutely relevant in your first sentence, I'm going to cut you off.

Mr. Tilson.

Mr. David Tilson: I think we are generally in agreement. My submission to you, Mr. Chairman, directly refers to paragraph (2). I am supporting the amendment. I think we all—

The Chair: So you're for the amendment. Is there anything else?

Mr. David Tilson: Yes, there is.

The Chair: What is it?

Mr. David Tilson: Mr. Chairman, I believe the point about the legal issue is crucial enough that we should hear those legal people before we hear the main witnesses, perhaps after the Information Commissioner.

I would accordingly move a subamendment to the amendment, Mr. Chairman, that after the Information Commissioner we hear such witnesses as are necessary to guide and ensure the committee that it is not violating the Official Secrets Act or the Access to Information Act.

[*Translation*]

Mr. Robert Vincent: Is that not what we said earlier? Has there not already been a motion to that effect? In my opinion, we're hearing the same motions, the same themes, over and over again. We shouldn't repeat ourselves. I think that this is what someone said earlier, and that is what he is debating.

[*English*]

The Chair: Could you repeat your wording, Mr. Tilson?

Mr. David Tilson: Mr. Chairman, I'm proposing a subamendment that would be a new paragraph after "the Information Commissioner" and before "Jeff Esau, and Paul Koring". This would be the new paragraph (2), and the numbers of the others would then change to (3), (4), (5), and (6).

Paragraph (2) would now read:^{such witnesses as are necessary to guide and to ensure that the committee does not violate the Official Secrets Act or the Access to Information Act;}

• (1210)

The Chair: Would you not consider putting that in the first paragraph? In other words:^{the Information Commissioner and such other witnesses as are necessary to establish which sections of the Access to Information Act may have been violated, and such witnesses as are necessary to guide the committee}

etc.

Mr. David Tilson: Mr. Chair, I have no problem putting it there, as long as it's prior to—

The Chair: Would it not make more sense to add it to that?

Mr. David Tilson: I have no problem with your putting it there, sir, as long as those witnesses are before Mr. Koring or Mr. Esau or the other witnesses who are referred to in the amendment.

The Chair: As I have the subamendment, Mr. Tilson moves to add, in the portion of the amendment following the words, "in the following order", after the words "may have been violated":^{and such other witnesses as are necessary to guide the committee to ensure that it does not violate the Official Secrets Act or the Access to Information Act.}

Do I have your amendment to the amendment stated correctly?

Mr. David Tilson: Thank you, Mr. Chair.

The Chair: It's in order. That is the subamendment that has been moved by Mr. Tilson.

Is there any discussion on the subamendment?

Mr. David Tilson: I'd like to speak to that, Mr. Chairman.

The Chair: Mr. Tilson.

Mr. David Tilson: Mr. Chairman, this whole issue—the purpose of the motion, the purpose of the report—involves whether or not the Access to Information Act has been violated by either the government or by other individuals. And I add the Official Secrets Act.

We're talking about very serious and confidential information. Inadvertently, this committee could blurt something out that they know which perhaps they shouldn't blurt out, that violates those pieces of legislation.

We will need advice, not just from legal people but perhaps from other people, people in the ministry, who will guide us as to the types of questions we may ask and whether those questions are appropriate, to assist us in examining, from witnesses, whether these pieces of legislation have been violated.

I don't think we should be going into this cold, Mr. Chairman. None of us is qualified. Well, I'm not; maybe others are, but certainly I'm not. I want to receive advice not just from legal people; there may be other people whom the committee may deem necessary to call to provide us with assistance before we hear evidence from other witnesses who are on the list Mr. Reid has called for; or indeed, whether that amendment fails or not, other witnesses whom the committee themselves may wish to call at a later date.

That's why, Mr. Chairman, I have proposed this subamendment.

The Chair: Thank you for being brief.

Just on a technical point, I want the record to show that I believe the Anti-terrorism Act changed the name of the Official Secrets Act to the Security of Information Act. I want the committee to understand that whatever the proper, current name of the Official Secrets Act is, that is what Mr. Tilson is referring to, and that's how the subamendment will actually read.

Mr. David Tilson: Thank you, Mr. Chairman.

The Chair: May I call the question?

Mr. Scott Reid: Hold on. Can we debate it?

The Chair: Of course you can debate it. I'm asking whether I may call the question.

Mr. Scott Reid: I'd like to debate it.

The Chair: Yes, go ahead.

Hon. Jim Peterson: Am I on the list?

The Chair: You are on the list. You're before Mr. Reid.

Actually, I have two others, Mr. Van Kesteren and Mr. Stanton, but I thought they had their hands up for the other item, not this one. Is that right?

Mr. Peterson.

Hon. Jim Peterson: I would like to ask the Conservatives whether the Prime Minister's Office or the Prime Minister himself knows that they are filibustering this issue. I assume they have informed their superiors that they are intending to filibuster and have been given the green light by the powers that be, including the Prime Minister, to do so.

•(1215)

The Chair: That's debate. It's not particularly relevant to the amendment, but thank you for your comments.

Mr. Reid.

Mr. Scott Reid: Thank you.

We're on to—

The Chair: We're on the subamendment of Mr. Tilson.

Mr. Scott Reid: Yes, thank you.

Well, the relevance here of trying to protect secrets is considerable. If you go through the Access to Information Act, which I've been trying to do when I get the opportunity in the course of our proceedings today, it becomes clear that it's not simply about saying that all government information is open. It's quite clear that in itself—

[*Translation*]

Mr. Robert Vincent: Point of order, Mr. Chairman.

Mr. Tilson has explained all this to us. He told us why he introduced this amendment, how he prepared it to ensure that everything that came out here would be confidential. I think that he has explained this to us in great detail. This is important to the Conservative's way of thinking. I don't have a problem. Let us call the question. We don't need to discuss everything Mr. Tilson told us he did to come up with the amendment he is moving here. So, let's call the question.

[*English*]

The Chair: Thank you, Mr. Vincent. I'm ruling your point not well taken.

Do you have anything new to add to the debate?

Mr. Scott Reid: Oh, yes. Oh, absolutely.

The Chair: Something new to add that we haven't heard on this subamendment?

Mr. Scott Reid: Yes, you certainly haven't heard this.

The Chair: Yes, please.

Mr. Scott Reid: Mr. Chair, Mr. Tilson was referring to what he referred to as the Official Secrets Act, and as you pointed out, the name has changed. But the point here is that this is something.... We're dealing with the Access to Information Act in the main motion—this is what Madame Lavallée started—and it's relevant to see how it relates to the whole question of secrets, because clearly this is a matter that is in itself anticipated in the access to information law.

The reason it is such a long law is that—

The Chair: I'm sorry, I'm not hearing relevance. You have one sentence to bring yourself back to the subamendment for new information.

Mr. Scott Reid: I'm sorry, the subamendment is...?

The Chair: The subamendment is to call witnesses necessary to guide the committee.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, it's truly regrettable and even unfortunate. The Conservatives are filibustering so much that it's become a farce.

[*English*]

The Chair: I rule your point not well taken.

That's it. There's no further debate on this issue. I'm calling the question on the subamendment.

Mr. Scott Reid: This is different from what I understood it to be.

The Chair: I'm not going to recognize you any further. There's nothing new that's coming forward. We have a considered subamendment to the amendment. I'd like to call the question and I'm going to ask that it be a recorded vote.

Are you ready, Mr. Clerk?

The Clerk of the Committee (Mr. Richard Rumas): Yes, I am.

The Chair: We're talking about the subamendment to the amendment.

Please call the roll.

Mr. Scott Reid: Are you serious?

The Chair: I'm serious, Mr. Reid, because I'm getting sick and tired of this. If people aren't here, then they're not here. You can have a substitute here.

We have to move forward on this, and either we're going to get to the bottom of this issue today or we're going to get to the procedure that we're going to use to get to the bottom of this.

Yes? There's a point of order.

Mr. David Tilson: On a point of order, Mr. Chairman, surely if a member of the committee wants to make sure they understand what the subamendment is, they're entitled to hear what the subamendment is.

The Chair: There's a subamendment spoken on the record.

Mr. David Tilson: This member, my colleague, wants to make sure he understands what he's voting on. He's not clear, and you're not allowing it to be read into the record.

The Chair: That's because I'm getting sick and tired of the way things are going here. I'm going to make the point: no, I will not repeat it.

You have no point of order. It's out of order.

Call the vote.

(Subamendment negated: nays 6; yeas 5)

The Chair: I'm now going to call the question on the amendment.

Mr. Scott Reid: Mr. Chair, there are people on the speakers list.

The Chair: I'm not going to hear any further—

•(1220)

Mr. Scott Reid: Mr. Chairman, this really is out of order. This is most inappropriate. The fact is that I have not finished speaking to this. I was addressing an issue.

I take your particular point that it was inappropriate for the amendment, because I misunderstood, and so I didn't pursue it. The fact is that I'm now speaking to the main amendment, and it is relevant to discuss this.

The Chair: All right, I'll rule your point well taken. You can speak to the amendment, provided it is relevant and that you get to the point immediately.

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, I think we need to vote. I challenge your decision to debate this, Mr. Chairman.

We can vote on this motion right now. Since, normally, we cannot debate such a motion, could we immediately call the question?

[*English*]

The Chair: There's no point of order.

I'll restate what happened. I ruled that we were going to proceed to the vote. You raised a point of order, that you would like to address the amendment. I ruled your point was well taken and I recognized you.

My ruling has been appealed. If my ruling is sustained, we will recognize you. If my ruling is overturned, we will proceed to a vote.

Mr. Scott Reid: Mr. Chairman, you can't make everything into a majority vote simply by saying "we're challenging the chair". Mrs. Lavallée is out of order.

The Chair: This is the procedure that is set out in the rules, and it is not debatable.

The question is, shall the ruling of the chair—to allow further debate by Mr. Reid—be sustained?

All those in favour of the ruling of the chair please signify.

All those opposed to the ruling of the chair please signify.

I don't see any hands. Is anybody voting here?

I'll call it again. All those in favour of the ruling of the chair, put your hands up.

Mr. Scott Reid: I want a recorded vote.

The Chair: You want a recorded vote. Okay.

The question is, shall the ruling of the chair be sustained?

(Ruling sustained: yeas 9; nays 2)

The Chair: The chair is sustained, so I think your remarks, Mr. Reid, about anti-democracy were premature.

You have the floor. Please be very relevant.

Hon. Jim Peterson: Just keep going, guys. We like this.

The Chair: Please go ahead, Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Peterson.

What I was addressing earlier, and I realize it was the wrong place to do it, so you were quite right to—

•(1225)

The Chair: Don't do it.

Mr. Scott Reid: No, but it was the wrong place to do it, and now it's the right place to do it, to talk about looking at the individuals we're suggesting come forward. They would allow us to determine which aspects of the access to information law might have been violated, and also which aspects of the law we might ourselves, if we're not careful, violate in the process of engaging in this discussion. That is really what I'm trying to get at—and also the process by which the revelation is required to take place.

There are a number of points in the access law itself that.... It doesn't deal just with what the government is required to reveal. The law also deals with things that may be revealed under certain circumstances, and primarily that is what it is dealing with: things that can be allowed in certain circumstances, and not in other circumstances. It also deals with issues you're not permitted under this law to reveal.

Mr. Chair, I now want to get to—

The Chair: Mr. Reid, I'm sorry, I'm going to stop you there, because you moved the motion; you've pointed all of this out in support of your motion with respect to why you were calling other witnesses necessary to establish which sections of the Access to Information Act may have been violated. You've made the point.

Is there anything else?

Mr. Scott Reid: I did not actually—

The Chair: Is there anything else?

Mr. Scott Reid: Well, I'm referring to what I didn't refer to earlier, Mr. Chairman. You can't know that without hearing what I'm going to say.

The Chair: I haven't heard anything new. That's why I'm calling you to order. Is there anything else?

Mr. Scott Reid: Well, Mr. Chair, I'm trying to address this. What I'm pointing out here is that it actually says you are not permitted to reveal certain information. I have not said that previously.

The Chair: We know this.

Mr. Scott Reid: We haven't said this previously, Mr. Chairman. It's not old information that I've said before; it's new information.

The Chair: It's in support of the argument you've already made in so many other words. Can we get something relevant?

Mr. Scott Reid: There's no rule, Mr. Chairman, that says I'm not allowed to present arguments in support of a point I have made.

The Chair: You know what, Mr. Reid? I decide what's relevant or not, and I'm finding that your comments are not relevant to continuing the rational debate we were having—if I can call it rational. So unless you have another point, I'm moving to the next speaker.

Mr. Scott Reid: All right, Mr. Chair.

The Chair: Thank you.

Mr. Stanton, on the amendment.

Mr. Bruce Stanton: Yes, thank you, Mr. Chairman.

As we follow the course of this discussion, it becomes very clear that the opposition are not interested in seeing this order carried forward. We think we've dealt with this in a practical way to try to get the right order of witnesses, so that we can be properly informed going forward.

We've also talked about the report. You've said that we now hear we're going to have the report tomorrow. I'm also cognizant of the fact that through the course of our elongated meeting today there are excerpts of that very report being circulated, which government members certainly don't have access to. If we were going to move along here and get this amendment through and proceed with today's business, I think it would only be right that we at least have the same information in front of us as other honourable members are privy to, especially if it pertains to the topic that, as we get through these procedures, we'll be considering.

My suggestion is this. Since the point of contention is that we have witnesses here today and that we would like to see them come forward, I wonder if honourable members might consider that we move the order, such that we would put "Mr. Esau, and Paul Koring of *The Globe and Mail*" in first order; that we move them to the front of the pack in terms of the order of the amendment that has been suggested, followed by all the rest.

I'm cognizant of the fact that the other proposals around subamendments have not been fruitful and have not been adopted, but if we put "Jeff Esau, and Paul Koring of *The Globe and Mail*" in first position, that would be, I suppose, a proposed amendment to the order, a subtle change in the order of this amendment, that honourable members consider.

I would just say one other thing, Mr. Chairman. If we do this, and if we get to the point that we're going to hear witnesses today on this important matter, the government members, or any member, for that matter, who doesn't have excerpts of this report in front of them...that at the very least we all have the same information in front of us before we hear witnesses today at committee.

That's my suggestion. I indulge all honourable members, in the interest of trying to move this along. I hear the complaints from the other side, but the fact of the matter is that this is an important piece of business. There are, as we've said before, people in the public service whose reputations and whose—

The Chair: Yes, you've said that before.

Mr. Bruce Stanton: Yes, I know I have, and I'm happy to remind everybody of it, but the fact of the matter is that's why it's so important.

Let's get the order right. Let's get this amendment passed and move along, with Mr. Esau and Mr. Koring in position number one, in terms of the witness order. That's my—

The Chair: Mr. Stanton, thank you very much for your considered comments.

I can't conceive that the meeting will be orderly if members are going to be throwing out suggestions left, right, and centre and asking other members to consider them. We have an amendment in

front of us with an order. If you wish to make a subamendment to change the order, such an amendment would be in order.

I remind you, though, that Mr. Koring is not here, although Mr. Esau is here and Professor Attaran is here. If you want to make a subamendment, we'll see whether it's friendly and we'll see whether people are interested in it. If you're just throwing out a suggestion, I'm afraid you'll have to have backroom talks, or whatever the case may be, because I can't just allow people to start making suggestions on the fly.

If members in general think it would be appropriate to have a two-minute or three-minute recess to see whether people could caucus and come to some reasonable conclusion—

● (1230)

Mr. Bruce Stanton: Excellent.

The Chair: —and I'm talking about two or three minutes, not ten or fifteen.... If people think that would be useful, then I would be prepared to do that.

It doesn't appear that we have unanimous consent for that.

Mr. Stanton, are you prepared to move a subamendment?

Mr. Bruce Stanton: Yes.

The Chair: What is it?

Mr. Bruce Stanton: I propose that the amendment be changed to reflect the witness order as being Jeff Esau and Paul Koring in first position. If you wish, we can put Professor Amir Attaran in second position, followed by the Information Commissioner and other such witnesses, and the sections...etc.

So we would reorder paragraphs (1), (2), and (3).

The Chair: So your subamendment is to change the order of the amendment so that it would read:

in the following order:

- (1) Jeff Esau, and Paul Koring of *The Globe and Mail*;
- (2) Professor Amir Attaran;
- (3) the Information Commissioner, and such other witnesses

—etc.—

- (4) Jocelyne Sabourin; and
- (5) such other

and so on. That's your subamendment.

I just want everybody to understand what the subamendment is. The subamendment would, if it carried, amend the amendment to change the order of witnesses, so that Jeff Esau and Paul Koring would be first, Professor Attaran would be second, and then the Information Commissioner and others would be third, and so on.

That's the subamendment. Is there any debate?

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair, and I would like to thank Bruce Stanton, my good friend on the other side, who's always very reasonable.

But on this particular question, could he change his sequence a bit? Professor Attaran is here now, and Mr. Esau is here as well. If we can just move Professor Attaran right to the front and get going, I think that would be very appropriate. They've been waiting since this morning, and we have to respect their time, because in fact they are the true servants of Canadians, when we consider their volunteering time to come here. We are trying to filibuster. It's not fair to Professor Attaran.

This is a suggestion I would make to my good friend Mr. Stanton.

The Chair: Mr. Stanton, you have a friendly suggestion. My interpretation was going to be that we call Mr. Esau, and then we call Mr. Koring—and if he isn't here, he isn't here—and then we call Professor Attaran, and if he's here, he's here.

I don't want any trickery. To assure everybody, we know for a fact that Mr. Koring isn't here.

I am asking Mr. Stanton whether he would consider that his amendment be that the first witness be Mr. Esau, followed by Professor Attaran, followed by Mr. Koring, followed by the Information Commissioner.

Mr. Bruce Stanton: I think that would be fine, Mr. Chair.

The Chair: Would that be all right?

Mr. Bruce Stanton: That just happened to be the order. I didn't want to mess it up any worse than it already is, but if that's what we have in front of us....

I would say, though, Mr. Chair, that we still need to keep Mr. Koring on the list, even though he's not here. But if the effect of this is to accommodate the witnesses we have here today, then that's great.

On the second point, Mr. Chairman, I don't know how, but can we just reach a friendly agreement that, whatever copies of this report are in play here today, at least we all have it in front of us? It would just seem to make sense. We're dealing with bits and pieces of everything here and we need to have that in front of us.

The Chair: Whatever that document you're referring to may be, I as your chair do not have it. I have not seen it. I don't believe the clerk has it. If individual members want to provide things to other members, they can do so.

Obviously if something came to the chair that was in order and in both official languages, I would as a matter of course instruct that it be distributed. I don't know what you're talking about; I haven't seen it.

Okay. Do we understand?

The subamendment would essentially—and I don't want to waste time by repeating it—allow us to hear from the witnesses who are here today, while continuing to provide structure to the types of witnesses we hear in the future and the order in which we hear them.

All those in favour of the subamendment.... Is there debate?

Mr. Reid.

Excuse me. Madame Lavallée.

•(1235)

[*Translation*]

Mrs. Carole Lavallée: You said they want to now hear from the two witnesses who are present.

Is the word "now" in the motion?

[*English*]

The Chair: The word "now" is not in the proposal, but in my opinion it follows, because if this amendment were to be called, then we are to hear these people. The date....

Unfortunately, everybody is so distrustful of everybody that we have to make sure the wording is exact.

No, the word "now" is not here. There's nothing specifically in the motion, even as amended, even as subamended, that would indicate that the witnesses would have to be heard now.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: I was speaking to this earlier, Mr. Stanton. It's my understanding that those two witnesses are here and we will hear them now and then we go. I just want to clarify the point I made earlier. Those two witnesses are here now, and because they've been here since this morning, we must hear from them now.

The Chair: All right. I want none of the committee members to feel that they've been somehow tricked. Let's try it again.

Would Mr. Stanton be prepared to have the motion amended so that witnesses be heard in the following order: Jeff Esau and Professor Amir Attaran, now; then Paul Koring of *The Globe and Mail* and the Information Commissioner and other witnesses.

The reason for that suggestion is clear: they're here. We don't want any trickery. We don't want an objection to calling them as witnesses because of anything else. You asked committee members to consider this in good faith. Good faith is rapidly diminishing in this committee, so that's why I'm trying to be clear.

If this subamendment carried, and if the amendment carried, and if the report then carried, then we would go to the witnesses now.

Mr. Bruce Stanton: That's my understanding, Mr. Chair.

The Chair: Is everybody clear?

Mr. Martin.

Mr. Pat Martin: The only question I have, Mr. Chairman, is this. The remainder of the amendment then still says that the next witnesses would be the Information Commissioner; whereas—

The Chair: Paul Koring would be the next witness.

Mr. Pat Martin: Paul Koring, all right.

We've already got Jocelyne Sabourin scheduled, I believe, for the 29th, which is the next ordinary meeting of this committee.

The Chair: She would be available during the week of the 28th, but she's not actually scheduled for a particular day.

Mr. Pat Martin: The reason I ask for the floor, Mr. Chair, is that I feel strongly that she is the next logical witness to be heard in an orderly sequence. It's exactly what we tried to achieve today, in fact, is to have these two witnesses and then hear from Jocelyne Sabourin to explain why she denied the existence of the very documents that we have here today, the main substance of the whole investigation at this point.

I would like to make it clear that we should keep that sequence. I have no objections to adding Mr. Koring and the Information Commissioner, although I think it will be fruitless. It doesn't matter. I believe that the sequence should be maintained that we arrived at in our steering committee, which is Esau, Attaran, Sabourin.

The Chair: I'm being put in the position of trying to broker a deal here, and I'm not comfortable with it. We're dealing with specific motions and specific amendments and subamendments. I'm trying my best to see if we can have some consensus. Every time we get close to consensus, somebody raises something else. I'm not saying it's not legitimate, but I don't know where we're going to go from there.

To try to conclude this, I'll ask the mover of the subamendment if he would be prepared to consider including in his amendment Jocelyne Sabourin before the Information Commissioner. That's something you have to consider, Mr. Stanton. If not, then we can get back to voting.

I think the point is that the fourth report calls for three witnesses. The amendment that has been put forward calls for other witnesses. Admittedly, it did call for them in a specific order. I'm getting the sense that the committee would be happy to have the other witnesses who are put. But the consensus of the committee is that they would like to have the three witnesses that the fourth report identified come first. I think that seems to be what I'm hearing. If we could have some agreement in that regard, fine. If not, then we go back to the actual motion as proposed.

I'm going to ask you, are you prepared to consider that friendly amendment?

•(1240)

Mr. Bruce Stanton: I appreciate the efforts by the honourable member to raise that point.

As I've argued earlier today, I do feel very strongly that the Information Commissioner needs to be early into the process here. The honourable member Martin may not need that, but my preference is to have the proper context. Because of the sensitivity of this information, we need that. I'm quite willing to try to make some compromise to move this thing along.

I note that Madame Sabourin will be in the order here. All we're really talking about here is the Information Commissioner. That's the only difference. I don't think it's a big enough point to stall our process here, to try to move along. I think we've been trying to be accommodating here. I think my proposal is.... Look, we're considering—

The Chair: Mr. Stanton, I take it that your proposal is made in good faith and I take it that you don't want to change the order of Madame Sabourin. That's the end of that.

We do have the subamendment. Mr. Reid has asked to speak to the subamendment that was moved by Mr. Stanton.

Mr. Scott Reid: Mr. Chair, the concern I have is that it deals with providing an orderly approach. As you know, this has been the entire theme of my interventions today and the amendment I've proposed. I'm assuming that now we're back to the order in which essentially the two witnesses who are here today would be able to testify and then the Information Commissioner would come at a later date and Madame Sabourin would come after the Information Commissioner and—this is important—also such other people who would advise us as to what the legalities are that we can see and deal with.

The Chair: There is one exception. Mr. Koring was also mentioned and he would come after the Information Commissioner but before Madame Sabourin, if I'm stating the subamendment correctly.

Go ahead, Mr. Reid.

Mr. Scott Reid: That's good. I understand that. I think I'm generally supportive of the idea of doing this. The first point I made when I raised my first intervention back in the last room was that when it comes to Mr. Esau, we knew he was coming. With regard to Professor Attaran, we didn't know he was coming. I only now have had my assistant run out and get me an article, which is several months old, from February, in which Professor Attaran is making some commentary.

The Chair: That's very interesting. What's the point?

Mr. Scott Reid: The point here is that we're talking about the order we're putting people in. What I'm getting at here is that I'm having some difficulty because there's a document that I don't have access to that's being circulated to the members on the opposite side, and I gather Mr. Martin won't share about it.

•(1245)

The Chair: Do not mention it again or I'll rule you out of order. I've already talked about that and I've already ruled on it.

What's your point on the subamendment? Are you in favour or are you against, and why?

Mr. Scott Reid: Mr. Chair, may I ask why it is that you never rule Mr. Martin out of order when he goes on at great length, interjects these snide comments, and cuts people off?

The Chair: I do rule him out of order, but I have to hear what he has to say first.

Mr. Scott Reid: He's out of order, period. It doesn't matter what he has to say, unless he has a point of order, in which case he would take precedence over me.

The Chair: Perhaps we could address the issue before us, not the rulings.

Mr. Pat Martin: [*Inaudible—Editor*]...he could sit here and filibuster for hours and not expect us not to—

The Chair: Mr. Martin, you're not being helpful.

Mr. Reid.

Mr. Scott Reid: The point is that I am able, with some difficulty, to ask some intelligent questions to Mr. Esau. I would have great difficulty in doing so with Professor Attaran because I had no warning. That is because of the inefficient way in which we go about doing this stuff, or the not very informative way in which this committee deals with subcommittees.

I'm sorry, I'm having trouble concentrating because of noise in the room, Mr. Chair. Could you please call people to order.

The Chair: I'm going to call you to order if you don't make a point.

Mr. Scott Reid: Would you also call them to order, Mr. Chair?

The Chair: I'm hearing you perfectly well.

Mr. Scott Reid: I would appreciate that. I'm trying to organize my thoughts.

The Chair: I'm afraid you'll have to do that a little more quickly, Mr. Reid. I'm sorry, we can't go on here.

Mr. Scott Reid: Mr. Chair, if you want to follow the Standing Orders, which you are bound by—

The Chair: Are you going to debate with me or are you going to debate the subamendment? Please get to it.

Mr. Scott Reid: Thank you, Mr. Chairman.

I have inadequate information here to allow me to properly deal with the professor and with his items, and therefore I would like to propose an amendment to Mr. Stanton's subamendment to deal purely with Mr.... I'm sorry, I overheard the conversation, and that's a good point.

The Chair: I have just heard from the clerk, who advises me that it is out of order to accept a subamendment to a subamendment.

Mr. Scott Reid: May I find out if something else would be in order, then, Mr. Chair?

The Chair: What do you mean?

Mr. Scott Reid: What I mean is this. I would be prepared after this to introduce a motion to hear from Mr. Esau today, but not from the professor today; to summon back the professor at a future meeting—indeed, to summon him back, if necessary, before the Information Commissioner comes here.

But I have to find out whether, if this motion is voted down, I'd then be able to introduce that motion. I don't know that, and that's why I'm asking this question.

The Chair: If this subamendment is accepted, its acceptance does not prevent you from making an amendment to the amendment as amended. If the subamendment is defeated, you can bring your own subamendment.

Mr. Scott Reid: Which would include—

The Chair: Which would include whatever you want, and we'll determine whether or not the committee would pass it.

Mr. Scott Reid: I was supposing this could be considered revisiting a decision and would therefore be out of order. That's why I asked that.

The Chair: No. You've made your point, and you've explained why. I wouldn't allow you to do it again, but I would rule your subamendment in order. Okay?

Mr. Scott Reid: Okay, thank you.

The Chair: Does anyone really want to speak any more to this, or can I call the question?

Let's make sure we understand exactly what the subamendment by Mr. Stanton says. It proposes to switch the order of calling the witnesses, so that the witnesses would be heard in the following order: Jeff Esau and Professor Amir Attaran now, followed by Mr. Paul Koring of *The Globe and Mail*, followed by the Information Commissioner “and such other witnesses” etc., followed by Jocelyne Sabourin, followed by “such other witnesses as the committee, as a whole”, etc.

Am I stating that correctly, Mr. Stanton?

• (1250)

Mr. Bruce Stanton: You're pretty close, Mr. Chair. I don't think we had a consensus to put the “now” in—

The Chair: Did we not?

Mr. Bruce Stanton: —because essentially, Mr. Chair, the way you described it, it would have that effect anyway. I'm not trying to get into trickery, but we also expect that there are some other steps we have to take before we go on to the second order of business.

I don't want to presuppose, but the way you've laid it out, we have an amendment, then there'll be a question on the main report, and then we presumably go from there.

So I think the effect of it was there; at least that's the way I understood it. I thought you spelled it out.

The Chair: I misstated, then, I guess. So we're voting on the amendment as I stated it, except for the word “now”, presumably with the explanation put forward by Mr. Stanton.

We will have a roll call vote. Does everybody understand what we are voting on?

Mr. Martin.

Mr. Pat Martin: I feel I have to take the floor just before we call the vote.

Mr. Stanton has just served notice that if the word “now” is in there, they don't want to support this motion, because essentially there are more items to be dealt with before we move on to the second part of the agenda.

Mr. Wallace just walked in here with his Marleau and Montpetit, a big fat volume of 400 pages, ready to launch another attack on democracy in this—

The Chair: I can't allow you to continue, Mr. Martin.

Mr. Pat Martin: We should be extremely aware and keep our eyes open, because these guys clearly have mischief on their minds, and any level of cooperation now is just going to get thrown back in our face.

The Chair: You're out of order, Mr. Martin. Thank you. You're out of order.

Mr. Mike Wallace: Mr. Chairman, I have a point of personal privilege.

The Chair: There is no point of personal privilege. That's out of order.

Call the recorded vote. The vote is on the subamendment as moved by Mr. Stanton, as I stated it, without the word "now".

(Subamendment negatived: nays 8; yeas 2)

The Chair: We are back to the amendment that Mr. Reid moved. I'm going to ask if anyone has any comments that are relevant and non-repetitious.

I have Mr. Van Kesteren on the list. Did you want to speak to the amendment in a non-repetitive and relevant manner?

Mr. Dave Van Kesteren: I guess I have a question, Mr. Chair. Should we vote on this amendment, and if it were struck down, would I have opportunity to make another amendment?

The Chair: Yes.

Mr. Dave Van Kesteren: Thank you. That's all.

The Chair: Mr. Peterson, did you wish to address the amendment?

Hon. Jim Peterson: No.

The Chair: All right. Then I'm going to call the question.

Mr. Scott Reid: Do you remember earlier I asked specifically about whether I'd be able to put forward an amendment that would deal with—

The Chair: You did. I'm sorry, you're quite right. I'm sorry, Mr. Reid. You're a very soft-spoken person. You really have to speak up a little bit, because I'm getting a little older and I've got the mike in this ear, and unless you get my attention or the clerk's attention.... It is not intentional in any way.

But yes, you did say you were thinking of a subamendment, and yes, you're in order to address that, so I give you the floor.

Mr. Scott Reid: All I was simply proposing earlier—and I already gave my rationale so I won't go through it again—was that we hear from Mr. Esau today and from Professor Attaran.... Is it in order to make that amendment, Mr. Chair?

The Chair: Here's the nice question that we ran into the last time. You are the mover of the motion, and consequently I've already ruled in the past that the mover of a motion would need unanimous consent to amend the motion. Does the mover have unanimous consent to amend the motion?

No. There's no unanimous consent to amend the motion. Is there further debate? Yes.

Mr. Scott Reid: Someone else can move it.

Mr. Mike Wallace: Thank you, Mr. Chair, and I know this is a challenging day for you, but I will move the motion that we will hear from Mr. Esau today and that at the next available meeting we will meet with Professor Attaran.

•(1255)

The Chair: So you're moving to amend Mr. Reid's motion to say item one will be Jeff Esau on May 17. So that's today, obviously.

Mr. Mike Wallace: Today, yes.

The Chair: Number two would be, at the next meeting, Professor Amir Attaran.

Mr. Mike Wallace: That's correct.

The Chair: Followed then by the rest of the list. In other words, Information Commissioner, etc., and Paul Koring of *The Globe and Mail* and Jocelyne Sabourin, in the order that they are in.

Mr. Mike Wallace: Right.

The Chair: Do I have it correctly?

Mr. Mike Wallace: You have it correctly, sir.

The Chair: All right.

Mr. Mike Wallace: And can I just speak to it?

The Chair: Yes, the subamendment is in order and it is to hear Mr. Esau today, Professor Attaran at the next meeting, and then to carry on with the list as it was put in the Reid amendment.

Did you have a comment on it, Mr. Wallace?

Mr. Mike Wallace: Just briefly.

The Chair: Briefly, please.

Please, go ahead. Just ignore everything else.

Mr. Mike Wallace: I just want to remind Pat of his own history of filibustering, as he likes to call it.

The Chair: Go ahead, Mr. Wallace. Let's talk about your amendment.

Mr. Mike Wallace: Hours and hours.

But the point was that earlier, when I supported the original amendment, I think it should have gone in a particular order. The question has been presented here today—and the comments that were presented by colleagues—that they need some more information, particularly to deal with what the professor may be presenting, and that giving us that time to the next meeting would allow that to happen. So Mr. Esau is here in the audience with us. It looks like we're prepared to ask him a few questions, but we need some more time to do more work on Professor Attaran.

Obviously my first preference is to have the Information Commissioner first, which is what I put forward first thing in the morning here, earlier, and I think that's the appropriate way to go. But it doesn't seem to be gaining any support here, unfortunately, to do it in a more orderly fashion.

So that is my amendment, and I'd be happy to hear from any other colleagues on that item.

The Chair: Thank you. We've heard the amendment...sorry, the subamendment. We've heard the subamendment moved by Mr. Wallace. Is there any debate on it?

Mr. Mike Wallace: Mr. Reid.

The Chair: Mr. Reid.

Mr. Scott Reid: Yes, I think there's a second reason why it's relevant to allow Professor Attaran to leave, and that is that he indicated to me as we were coming over from the other room that he is taking care of a mother who is indisposed and it's very difficult for him to stay at this time. If we had dealt with this as I had proposed earlier, he would have been able in fact to have gone home and dealt with his personal situation with less personal hardship. It seems to me that we could accommodate that by allowing us to hear from Mr. Esau today and Professor Attaran at a later point in time. We could easily ask him what's most convenient for him, given his personal circumstances.

That was all I had to say, Mr. Chair.

The Chair: Thank you for that information, Mr. Reid. Neither the clerk nor I were aware of it, and we always invite any witness who is invited to this committee to speak to the clerk or the chair at any time if they're finding things inconvenient or difficult—whatever the case may be—and then we'll ask the committee to deal with it. But I do thank you for that information, for what it's worth.

Can I call the question then, please? The question is on the subamendment moved by Mr. Wallace as follows: that Mr. Reid's amendment be amended after the words "in the following order" by changing the order to read as follows: one, Jeff Esau today, May 17, 2007; two, Professor Amir Attaran at the next meeting of the committee; three, the Information Commissioner...and the remainder of the wording; four, Paul Koring of *The Globe and Mail*; five, Jocelyne Sabourin, etc.; and, six, the final portion about other witnesses, etc.

Is everybody clear on the subamendment by Mr. Wallace?

I call the vote. I would really appreciate it if everyone would speak into their microphones and let me at least hear the votes because I had some difficulty the last time.

(Subamendment negatived: nays, 6; yeas 5)

The Chair: I'm sorry, members, it's defeated. We are back to the amendment by Mr. Reid. Is there any further relevant and non-repetitious debate or are there any further amendments?

Mr. Van Kesteren, you'd indicated a potential amendment to the amendment.

•(1300)

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

In the spirit of goodwill and cooperation, and we've heard much from the opposite side—

The Chair: Colleagues, we are going to hear Mr. Van Kesteren who's wanting to propose a subamendment, if I could just ask for some order. Thank you.

Mr. Dave Van Kesteren: There are many charges on the other side that this is a routine filibustering, not taking into consideration that we have a serious issue with this amendment or the amendment that was just taken off. I would propose this amendment. I haven't had a chance to discuss this with my colleagues, except for one, but I think this is what lies at the heart of the issue.

My amendment would be that the witnesses' statements be taken in camera and that their statements remain confidential until the report is released.

Mr. Martin, it's like a sleep. It's like a birthday party. You have to wait for the next day. It's not that big a deal.

And the committee has the opportunity to examine the study before witnesses' statements are released. At the crux of this matter, we have argued repeatedly—

The Chair: Just so that I understand it, you're moving that the evidence of all witnesses in the committee be in camera and kept in camera until the report is—

Mr. Dave Van Kesteren: The witnesses today.

The Chair: The witnesses today?

Mr. Dave Van Kesteren: The witnesses today.

The Chair: What witnesses?

Mr. Dave Van Kesteren: The witnesses who have been called, I would assume.

The Chair: So this is not in order. That's why I stopped you, because this is not a subamendment to the amendment. This is an entirely new thing.

Mr. Dave Van Kesteren: I thought we just—

The Chair: No, we're still debating the amendment. I thought I understood you to say you had a possible subamendment to the amendment. If I was wrong, I'm sorry, but that's not in order at this time.

Mr. Dave Van Kesteren: So we're still on Mr. Reid's—

The Chair: We're still on Mr. Reid's amendment, and I'm calling for non-repetitious and relevant commentary.

Mr. Dave Van Kesteren: And I will have opportunity to present this motion or this amendment—

The Chair: To the fourth report, assuming we ever get to it, yes.

Mr. Dave Van Kesteren: All right, my apologies.

The Chair: Mr. Martin.

Mr. Pat Martin: I just want to point out that it was the culture of secrecy that allowed corruption to flourish in the 13 years of the Liberals, and Mr. Chair, these guys billed themselves as the most open government in history. That was how they were selling the future in the last federal election, yet they're conspiring to put a veil of secrecy on the testimony of these witnesses.

The Chair: Mr. Martin, I have to call you to order.

We're trying to move a meeting along here, and name-calling doesn't help that. The facts as they come out will speak for themselves.

Mr. Pat Martin: Well, he called me McCarthy.

I have a point of order.

The Chair: No, no point of order. That's it. No.

Mr. Pat Martin: This is a point of privilege.

The Chair: State your point.

Mr. Pat Martin: I had to stand up in the House of Commons and apologize to that government for calling them fascists for their treatment on denying a vote on the Canadian Wheat Board. This guy has consistently called me “Senator Joe”, as if I’m a Red-baiter Republican who frankly bore a lot more resemblance to his party than to any socialist party like the NDP.

So I want him to apologize for calling me McCarthy all the time.

The Chair: I’m sorry, the questions of privilege are not entertainable. You can deal with this as you see fit, but that’s an issue for the House.

Carole Lavallée.

[*Translation*]

Mrs. Carole Lavallée: I want to come back to what Mr. Van Kesteren said earlier, that he was prepared to hear from the witnesses. Yet, all that the Conservatives are doing now belies that fact. If they are prepared to hear from the witnesses, the Conservatives should stop talking and we should call the question. We would ask for nothing more than to have the witnesses come forward and testify.

[*English*]

The Chair: I’m sorry, Madame Lavallée. I ruled Mr. Van Kesteren’s motion out of order, so there’s no discussion of Mr. Van Kesteren’s motion or indeed his comments.

We’re now going to proceed and I ask again, is there any relevant and non-repetitious debate on the amendment?

Call the question, please.

● (1305)

Mr. Dave Van Kesteren: That’s on the amendment?

The Chair: The question is on the amendment of Mr. Reid.

It’s a tied vote. I have to vote. I’m going to vote against the amendment so that we can continue debate on the fourth report.

(Amendment defeated: nays 6; yeas 5)

The Chair: We are now talking about the fourth report. Are there any amendments to the fourth report?

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

Now, I’d like to continue.

An hon. member: Filibuster.

Mr. Dave Van Kesteren: No, I’m going to read this thing. And it would then follow after “report”:

And that the witnesses’ statements be taken in camera and that their statements remain confidential until the report is released.

And I’ve added to that, but I think that that’s something we can talk about:

And that the committee has opportunity to examine the study before witness statements are released.

I say that in the spirit of cooperation... Mr. Martin loves to champion his cause and get on his soapbox and talk about the fact that we are not allowing any secrecy. The very fact that we’re

debating this in the open is somewhat questionable. In light of that, and if they really want cooperation and if they feel that this is something that needs to be done, we agree, but if they would look at our legitimate concerns...and I believe we have legitimate concerns, I’m absolutely convinced and I know our side does, and I even believe that there are those opposite who would agree with that.

The Chair: I’m going to have to stop you. I’m going to happily give you a debate on your motion. I want to make sure I have the motion correctly, though. You said that after the word “report”, you wanted to add “and the witnesses’ statements”. Is that what you said?

Mr. Dave Van Kesteren: I’ll read it again, Mr. Chair, and that this would follow the word “report” on the fourth report: “And that the witnesses’ statements”—

The Chair: Can I stop you there? Could we have the word “evidence”, because the statements would be simply what they would say, but their evidence would be the totality of their answers to the questions, etc.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

The Chair: So it would read: “”....

Mr. Dave Van Kesteren: Yes, “and that the witnesses’ evidence be taken in camera, and that their statements remain confidential”—

The Chair: Well, we’ll be consistent and say “and that the evidence would”...what?

Mr. Dave Van Kesteren: “...would remain confidential until the report is released”.

The Chair: I take it you mean the report of the committee.

Mr. Dave Van Kesteren: No, I’m talking about the report we’re expecting tomorrow.

The Chair: Oh, I’m sorry.

What do you mean by “released”?

Mr. Dave Van Kesteren: I want the committee to have an opportunity to examine it.

The Chair: That’s what you’re saying, then—it’s until the censored version of the report is made available to the committee members.

Mr. Dave Van Kesteren: Yes, and the committee has an opportunity to examine it.

The Chair: All right. Then we have to be very careful. It would read:

and that the witnesses’ evidence be taken in camera and that the evidence would remain confidential until the censored version of the report is made available to the committee and

What was the last part?

● (1310)

Mr. Dave Van Kesteren: It would be before the witnesses’ evidence is released, but I think we’ve covered that in the first part, so that would be the end of my amendment.

The Chair: Yes, but you said something about the members having an opportunity to—

Mr. Dave Van Kesteren: I meant until the committee has had opportunity to examine as such.

The Chair: Okay. I'm going to state the motion as I think I have it. It is that the motion be amended by adding after the word "report" in the last line:

that the witnesses' evidence be taken in camera and that the evidence would remain confidential until the censored version of the report is made available to the committee and the committee has had an opportunity to examine it.

Am I correctly stating the motion?

Mr. Dave Van Kesteren: Yes, sir.

The Chair: Okay, that's pretty clear.

I'll call on you, then, to explain, and in a relatively quick form, if you don't mind.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

Very quickly, we all want this thing to move forward. We all want to get to the bottom of it. What we find objectionable is the fact that certain witnesses have been lined up so that the initial reporting wouldn't be fair to the government side. It's much the same as a court case in which there is prejudice.

I believe our biggest objection to this whole process is the fact that the very opening is one-sided, and there's evidence to that. There's evidence to that, because at the very time that we decided we were going to steer off from our privacy identification theft and we suddenly changed course, we objected to that as well.

Through the course of objection, it wasn't long before the opposition had the press here. They've taken this opportunity to embarrass the government, and we have not had a fair chance before the evidence has been revealed .

We all agree on the same thing. The biggest objection here is that we have not had ample opportunity to prepare for these witnesses and the fact that they're going to be reporting on something that we have not had a chance to look at.

I think this is a compromise and I think it's a fair compromise. It's my own; I've not had opportunity to talk to my colleagues about this. I think this could possibly be a way to get out of this, and we could go forward.

Did you hear that, Mr. Chair? I didn't think so.

The Chair: I'm sorry, committee members. I had to take care of some urgent business there.

Mr. Martin, do you have your hand up to be recognized in debate?

Thank you. I'll put your name down.

I'm just going to make one observation, if I may, Mr. Van Kesteren. Perhaps you could think about it. It's about the last words: "and the committee has an opportunity to examine it".

Mr. Dave Van Kesteren: We'll have opportunity to debate that. We'll have an opportunity to talk about those things, and those are the issues we might just have to fine-tune. But as I stated before, I feel that this—

The Chair: So really, your intent is that once we have that report, then the committee will discuss that report and decide where we want to go from there, and until such time as the committee makes

such a decision, the evidence of these two witnesses would remain in camera and confidential.

Is that the gist of your motion?

● (1315)

Mr. Dave Van Kesteren: That has been my motion. However, I stated that this was something I put on at the end, and I understand that it was causing consternation, and so—

The Chair: That's why I'm bringing it to your attention. We're trying to come to some conclusion, and that pretty well leaves it open-ended. I'm not asking you to draft on the fly. Maybe you could consider what I've just said.

Mr. Dave Van Kesteren: I have considered it, and I would consider the other members' comments to the motion. If there needs to be an adjustment, I'm sure it can be made.

The Chair: Thank you, sir.

Mr. Tilson.

Mr. David Tilson: Mr. Chairman, this fourth report, as it says in the preamble, was the consensus of the members present, but not unanimous. You, sir, knew that it was not unanimous, that there would be some concern expressed about this report.

I can tell you, I have maintained from the very beginning, maintained in the subcommittee—since I'm being forced to talk about what was talked about in a subcommittee meeting—and have maintained throughout all this meeting, an argument that we should have the report.

The fourth report says "begin a study of the Department of Foreign Affairs internal report", and it describes what it is.

[*Translation*]

Mrs. Carole Lavallée: Point of order, Mr. Chairman. He has used that argument many times. He should talk about something else.

[*English*]

The Chair: I'm going to rule the point of order not well taken, only in this sense: that the amendment talks about the committee receiving the report, and I was waiting for the honourable gentleman to tie his remarks into how that relates to the amendment. I'd ask him to do that now.

Mr. David Tilson: Yes, I'm coming to that, Mr. Chairman.

The Chair: No, come to it immediately.

Mr. David Tilson: Yes, I'm coming to it immediately.

Mr. Chairman, since you knew that, these witnesses were called today. With due respect to you, I don't believe they should have been called today, because you knew—

The Chair: What does that have to do with this motion?

Mr. David Tilson: Mr. Van Kesteren is trying to provide some sort of compromise with that concern: that the witnesses be heard at in camera proceedings, that their information be kept confidential until the appropriate time.

You knew that this fourth report would be debated. You knew it because it was not unanimous—you knew I was opposed to it—and yet you insisted on calling these witnesses. I'm saying, sir, with due respect to you, that you shouldn't have done that. You should have waited until this committee approved this report.

Mr. Van Kesteren—if you're asking me to tie this in—is trying to reach some sort of compromise with this thing, and I congratulate him for it. What he's trying to say, to satisfy some of the arguments that have been put forward by me and others, is that these witnesses are here—they shouldn't have been called today, but they're here—and that we'll hear their testimony in camera, and that such information would be released at a later date.

That's essentially the gist of his amendment, and I think therefore I would support it.

Mr. Chairman, you're going to have to wear the fact, with due respect to you, that you called these witnesses inappropriately. You should have waited until this report was approved. If it was going to be unanimous, you would have had a pretty good indication that it was going to be unanimous. But it was indicated that it wasn't unanimous. You knew there was going to be some dispute. You knew that I, for one, was upset with the report.

I'm sorry to take you on like this, sir, because I think you're doing as good a job as you can under the circumstances. I'm simply saying that Mr. Van Kesteren is trying to reach some sort of compromise to cooperate with the witnesses so that they can be heard today and not have to go away and come back again. I congratulate him for coming up with that suggestion.

The Chair: Okay, thank you.

I am, of course, happy to wear what you expect me to wear, because the fourth report calls on the witnesses to be heard today. If we had not called the witnesses or if I had not called the witnesses and the report had passed, the witnesses would not be here, and the report would be irrelevant.

The witnesses were told that there would be a fourth report and that there was a possibility that there would be debate. But it makes no logical sense, given that the fourth report specifies a date upon which to hear witnesses, to then entertain not having those witnesses invited, and then try to pass this report—and if the report is passed, everybody says, “Well, where are the witnesses? We passed the report; Mr. Chairman, you should have invited them.”

In an abundance of caution, we invite the witnesses. If the report passes, we hear from them; if the report doesn't pass, the chairman apologizes for the witnesses being here unnecessarily. That's the rationale, and I'm happy to wear it.

Is there any further debate on the amendment proposed by Mr. Van Kesteren?

Go ahead, Mr. Martin.

• (1320)

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

I think the amendment put forward by Mr. Van Kesteren is fatuous. I think it's frivolous and I think it might even be malicious

and vexatious, because it's designed, clearly, to be an obstacle and a barrier to getting down to the business of this committee.

I question his motivation and I challenge it, because he, of all people, should know as a government-side member that the report everybody's making reference to is in the public domain. A stamp on the front page says, “Document released under the Access to Information Act”—a long time ago.

They're the government, Mr. Chair. For them to say we have to delay or even put a shroud of secrecy over the testimony because they haven't seen this document that everybody and their grandmother has read a dozen times—except for the government-side members—is atrocious.

Mr. Chair, this is in the public domain. Everyone should have a copy if they're paying attention to this issue. It's stamped clearly “Document released under the Access to Information Act”—.

Mr. David Tilson: Who gave it to you? Where did you find that?

The Chair: Excuse me. Order.

Mr. Pat Martin: So I would speak against Mr. Van Kesteren's amendment. I'm embarrassed somewhat that our witnesses have had to witness this debacle here today, but it was the culture of secrecy that allowed corruption to flourish in Ottawa for too long. This government billed themselves as the most open government in history, ever, and now they are trying to put a shroud of secrecy over an issue that they're embarrassed about.

While I have the floor, I will explain a bit about that. What they're really embarrassed about... I suspect that this filibuster is being orchestrated by the PMO for the following reason: the Minister of Foreign Affairs has stood up a number of times in the House of Commons and denied that their government had any knowledge of maltreatment of detainees during the war, yet this document puts the lie to that statement.

It is not only this document, Mr. Chair; the parallel documents from 2002, 2003, 2004, 2005, and now 2006 all caution the Government of Canada that extrajudicial executions, disappearances, torture, and detention without trial are taking place among detainees in Afghanistan, and then they deny the existence of these reports. Well, we have these reports here, and we have people who are willing to give sworn testimony as to the nature of the reports and the fact that the Government of Canada told them these reports didn't exist. This is a bombshell, Mr. Chair, and that's what they're trying to avoid—embarrassment to themselves.

Without even getting into what was censored and what was not censored from the documents, the fact that they denied the existence of these documents is, in and of itself, staggering in its dimensions. With a straight face Mr. Van Kesteren and all these guys are trying to throw obstacles in the way of our committee in doing our work.

I resent it profoundly as a member of Parliament. The general public is watching this. They are running roughshod over the democratic process—not only at this committee but also, as I said, at two other committees at this very same time. All over Parliament Hill democracy is being ground to a halt.

The Chair: Let's keep it relative to this motion, Mr. Martin, please.

Mr. Pat Martin: Well, I'm speaking against this motion in the strongest possible terms.

The Chair: Understood, but let's keep it on the terms we're discussing.

Mr. Pat Martin: This amendment should be voted down on the basis that it is a thinly veiled ruse to avoid the truth from breaking through and to avoid embarrassment. What they're really trying to do, Mr. Chair, by this amendment is stall and delay, hoping they will wear us down, because in two or three more meetings this Parliament will adjourn or even prorogue and this issue could be swept under the rug forever.

We have a responsibility as the freedom of information committee to ensure that does not happen. We have a profound duty. I firmly believe this is one of the most important committees in Parliament. It is a new committee. Its mandate was misunderstood and perhaps it was vague and people didn't pay too much attention to what we were doing, but freedom of information is a cornerstone of our democracy. It's fundamental and it's quasi-judicial in its importance.

Here we have the most egregious violation of the freedom of information laws in this country in history, that I've been made aware of. It is so rare to see the redacted version and compare it with the uncensored version and see just what they're eliminating. It is so rare for the government to be caught so bald-facedly denying the existence of a document. This government is clumsy in the way they treat these access to information requests.

I don't know how much longer we're going to tolerate the mischief, but it's a filibuster plain and simple, and I fully respect the right—

•(1325)

The Chair: Mr. Martin, I'm sorry. There is a point of order.

Mr. David Tilson: Mr. Martin is having a good old time here taking shots at us and he's free to do that, but I don't think this is the time to do it. We're discussing a motion that has absolutely nothing to do with what he's talking about.

The Chair: Thank you.

I rule your point not well taken. He was addressing the issue of whether it should be in camera or not, I believe. I think there was relevance. Carry on.

I'll listen carefully, Mr. Tilson, but I can't call him to order for criticizing the government. That's just the way it is.

Mr. David Tilson: Mr. Chairman, I simply submit to you that it has absolutely nothing to do with this motion.

Mr. Pat Martin: Wait your turn and say so in debate.

The Chair: I'll keep an eye on it.

Go ahead.

Mr. Pat Martin: You don't have the floor, I have the floor.

The Chair: You do have the floor, but you address me.

Mr. Pat Martin: Yes, Mr. Chairman, I have the floor and I'm glad to have this opportunity. I've used a lot of restraint, believe me. I have had to bite my tongue all morning, as these guys clumsily bumble along through one of the most inept filibusters I've ever had to witness.

The Chair: Excuse me, Mr. Martin. There is a point of order by Mr. Reid.

Mr. Scott Reid: I see Mr. Martin is referring to his own expertise at filibustering and the fact that he's had the longest filibuster, I believe, in parliamentary history.

The Chair: That's not a point of order, but an interesting point of information.

Mr. Martin.

Mr. Pat Martin: My point was simply, Mr. Chair, that we should oppose the amendment put forward by Mr. Van Kesteren because he's calling for a shroud of secrecy to be put over the proceedings of this committee—and that secrecy should be used minimally. We of all people, the access to information, the freedom of information committee, should be allergic to secrecy. When the word “secrecy” comes up, we should recoil with horror. We're opposed to secrecy.

The sunlight is a powerful disinfectant, Mr. Chair, and freedom of information is the sunlight of government and democracy. I've heard it said that freedom of information is the oxygen that democracy breathes—the very root, the very cornerstone, of our democracy. To hear these guys suggest that, for no good reason other than to save themselves from being embarrassed, we should put this testimony under a shroud of secrecy to buy time so that the summer recess can come along is appalling to me. I think that's reprehensible, and we should not entertain it. We should go ahead and vote in favour of the motion to adopt the fourth report and hear the testimony from these decent people who have come to give sworn testimony before us today.

The Chair: Thank you, Mr. Martin.

I have Mr. Stanton, followed by Madame Lavallée, for debate on the amendment.

Mr. Bruce Stanton: Thank you, Mr. Chair.

That was quite a dissertation by my honourable colleague. These were all baseless allegations. He talks in terms of upholding the important ethics and the mandate that we have been given as a committee. Mr. Chair, as I looked at the very mandate of this committee, I see we are the one committee that has to uphold those important aspects of ethics, being able to address and monitor, in fact, access to information as it relates to public office holders and the job of ensuring that access to information is provided.

The point is that Mr. Martin's allegations here are groundless. In fact, he's speaking to the point of potentially bringing insinuation on important departments of the federal government. His point is that there are departments.... We've heard significant testimony that has said it's the access to information departments that actually go through the motions of providing information that has been requested of them. They make the decisions about how that information is put forward. That process has been followed. The subject of debate here is to whether it has been followed properly.

The point of the matter here is that because of the spectacle the opposition has made of this whole process, we are taking our time to make sure this committee.... We're delving into potential issues around legality, around people's jobs and important positions in the public service, so we need to be careful. I would support my colleague Mr. Van Kesteren's motion for this reason.

My colleague across the way here in opposition suggested some shroud of secrecy. Look, all we're talking about with Mr. Van Kesteren's motion is that for the time being, and despite these suggestions that there are somehow excerpts of this report floating out in Internet space, if you will, we still don't have the darn report in front of us.

We're saying now that we're going to get this report tomorrow at Friday noon. We could have testimony here today, and Mr. Chair, correct me if I'm wrong, but I understand that when we have testimony in camera, once this threshold that has been proposed by Mr. Van Kesteren is met—and I think it's a sensible one—that the testimony provided is done in camera and we then have the information in our hands, that testimony in camera would become available. It becomes available to the public once we carry on as a committee.

This is in the same fashion, Mr. Chair, as you would undertake when we're in committee, for example, and we're considering a report. We've gone on, in some cases, for several meetings all in camera. Once the report is tabled in the House of Commons, all of the information, as I understand, that was part of those considerations becomes public, as it rightfully should.

So this nonsense about a shroud of secrecy is merely words—I was going to say words on a page—offered here in committee. It's nothing much more than editorializing, because we're talking here, Mr. Chair, about 24 hours. This time tomorrow we will have that report. Mr. Van Kesteren's proposal allows us to move ahead. I suggest that we take it in the spirit of goodwill with which it's been provided, and I support his rightful suggestion that we do just that and hear the witnesses who have come before us today.

•(1330)

The Chair: Thank you, Mr. Stanton.

I have a point of information for the committee, because Mr. Stanton used the example of our deliberations with respect to PIPEDA.

Our deliberations with respect to PIPEDA are in camera and they are never made public. The evidence of the witnesses, of course, was public from the beginning and we haven't had a circumstance yet in this committee, while I've been chair, when we've agreed to hear witnesses' evidence in camera and then to release it later. That's not to say it can't be done. I just want you to be clear that the deliberations that a committee takes in deciding the form of its report are not made public, generally. It has happened, but it's only when a committee decides that it will do so. That's just a point of information.

The other point is, as I mentioned before to Mr. Van Kesteren, that the latter portion of his amendment could be seen to be indefinite, virtually. That may not be the intent. So there may be some suggestion that there be some definitiveness to it. Perhaps members

could, in their own minds, address this: if the report were to be received by the committee in both official languages on Friday, what would the mover have intended? When would the in camera evidence be made available? For example, would it then be made available at the next meeting of the committee? Or was the mover's intention then to get into a debate about the actual report and not be able to release the in camera evidence until the committee made a decision with respect to that particular report?

So I'm merely pointing out that there's some different and possible interpretations of the mover's motion and I just want members to be clear that this at least is out there. But I did want Mr. Stanton to know that we do not release the deliberations that we ourselves undertake when we're doing a committee report. Those remain private.

•(1335)

Mr. Bruce Stanton: We could undertake to do that if the committee so chose.

The Chair: Yes, the wonderful thing about committees is that we can decide to do virtually anything we want, provided it's legal.

I now have Madame Lavallée, followed by Mr. Van Kesteren.

[*Translation*]

Mrs. Carole Lavallée: You currently stated, Mr. Chairman, that, in committee, anything was possible as long as it is legal. Now, games are being played, and I must admit that I don't have a great deal of talent in that field. People are acting like clowns and are introducing one amendment or subamendment after another.

Furthermore, in the last amendment submitted by the Conservatives, clearly to filibuster, we find the words "in camera", "confidential" and "secret". From a government that claims to be transparent and to be applying the Accountability Act, it sounds like dirty words, if I may say so.

Mr. Chairman, Mr. Tilson criticized you earlier for having called witnesses this morning. You will get no criticism from me. The motion I introduced was passed by the majority. According to that motion, the committee should immediately consider this issue. That is what you are doing and you have done it well. I thought that this morning was already a little too late, but I may be in a bigger hurry than the others.

Furthermore, when the steering committee met, the majority agreed on the report. Once again, you did a good job. The secrecy, the in camera meetings, the confidential information and the kind of filibustering that we are seeing now from the Conservative members are quite typical of a government that has things to hide. This kind of situation always leads us to discover major scandals.

I am not going to draw a parallel with other scandals: I think that the members of this old Conservative government know what I'm talking about. I am saying "old Conservative government" not only because it's been in power for more than a year and a half—and I think that it's starting to be quite a long time—but also because it's old in terms of its behaviour and the way it wants to hide information from the public. This is unacceptable.

Mr. Chairman, we are here in the Standing Committee on Access to Information, Privacy and Ethics. It's quite ironic to see that Mr. Van Kesteren's amendment goes against access to information and the disclosure of information, and asks for in camera meetings and for some information to be kept secret. I too am going to start to use big words: it's unacceptable; it's censorship.

For all those reasons, Mr. Chairman, I will be voting against this amendment and I would like to do so as soon as possible so that we can hear from the witnesses who are here in this room. They're waiting to testify. We have invited them. This was a decision made by the majority here, in the committee, and the steering committee. If the Conservative members are serious, they will stop playing games. Then we can invite our witnesses to testify.

[English]

The Chair: *Merci, madame.*

I have three people on the list: Mr. Van Kesteren, Mr. Dhaliwal, and Mr. Reid.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

I'd like to address some of the allegations, some of the charges, from members opposite.

This is a sincere compromise.

The Chair: You have to deal with your motion. You have to debate your motion.

Mr. Dave Van Kesteren: Mr. Chair, I just heard a volley of charges from Madam Lavallée, and I feel I should be able to answer some of those charges. I will address my motion, sir, because I think my motion will be tightened up. I hope Madam Lavallée is listening, because I listened to her, and I hope she listens to me.

This is a sincere outreach to come to a compromise. I will adjust my motion. The motion should read that when we have an opportunity to read it...and that would be, by the sounds of things, 24 hours. The reason is this. We've heard a multitude of charges of secrecy and hiding the facts, and Mr. Martin has just had a grand old time....

I'd like to remind members across, again, that we were right in the process of another study, a very important study, and while we had witnesses there, cameras were brought in. We thought that it was because of the witness we had. But no, lo and behold, Mr. Peterson brought in the CBC because the Information Commissioner was going to be there and there'd just been a report in *The Globe and Mail*.

You want to talk about abuse. That was abuse of the system, just a spectacle. That's exactly what it was. So obviously—

● (1340)

The Chair: Mr. Van Kesteren, I have to interrupt you, on a point of information, so that people listening understand. Reporters did come in, but to the best of my knowledge, and I was at that meeting, there were no cameras. If cameras did come in without the permission of the committee or without the House's pre-approval, that would be totally improper, and I would not allow it.

Mr. Dave Van Kesteren: I know, sir. We did give them permission, but we were told it was because we had a new Information Commissioner and that's why the cameras were there.

The Chair: You're referring to the meeting with the Information Commissioner, not the secrecy that you were talking about.

Mr. Dave Van Kesteren: Yes, sir. And the whole session was devoted to nothing other than just trying to embarrass the government. Yes, we're very sensitive about those things, and we ought to be. We've not had a proper opportunity to investigate these things.

Now, if we didn't want to compromise, we would not make this proposal. This is a simple proposal. I have to think that members opposite.... As I said to Mr. Martin, it's like waiting one day, and your birthday's tomorrow. It's one more sleep. You can hang on. Just give us that opportunity to look at this report, which we have not had opportunity to look at.

We're having witnesses who are going to deal with that report before we've even had a chance to look at it. That's just common courtesy. If you're really interested in cooperation between governments, and I think that's what we're talking about, forget the secrecy stuff. We're going to find out, Mr. Martin, what happened here.

On the government side, we don't want to have a report coming out that is totally biased to this report. So give us that simple opportunity to look at that report. That's the compromise that I'm presenting you with. It's a compromise. We can get out of here or we can sit here all night and keep chattering about nothing.

To wrap up, I'm prepared to say—and Mr. Chair, I leave it to the clerk to do that properly, and if it's acceptable to members opposite—that if we are given opportunity to look at that report, which is coming out tomorrow, I think that's a fair compromise.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Van Kesteren.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

I'm listening to the members on the government side and I look at it this way. Number one, if we have nothing to hide, we don't have to put this meeting in camera. Number two, on this report that we are talking about, the members on the government side had one week to ask for it from the government or the Department of Foreign Affairs. In fact, they should have been kind enough to get that report and circulate it to all of us so that we would have access. To date, we don't have that report available to us either.

Mr. David Tilson: Well, you have. You have something over there.

Mr. Sukh Dhaliwal: No.

● (1345)

The Chair: Go ahead, Mr. Dhaliwal. Don't engage in—

Mr. Sukh Dhaliwal: Okay, I'm sorry.

I usually don't take the floor, Mr. Tilson. If you can give me just a few seconds to talk, I'm very respectful to you any time you speak.

We do not have that report, and never have either. We have shown the documents we had to Mr. Reid. I'm sure he will agree that this report, 2006...whatever this report is, we don't have access to that either.

Personally, I feel we should go ahead and listen to these witnesses even if it's public. Let's be open and transparent. Big deal. If we have nothing to hide, we should be as open and as transparent as possible.

The other thing I want to do is this, and I don't know if I have to make a motion, but it seems as if it's becoming a tradition for this meeting to be this long every week. Why don't we just change the time from nine to eleven o'clock or, with the consent of all the members, from nine to maybe two o'clock, or even eight o'clock in the evening, so we don't have to change the room every week. This is what I would like to say.

I would urge all members, let's get on with this important task we have in front of us, and be open and transparent to the public and listen to those two witnesses we have today.

The Chair: Thank you, Mr. Dhaliwal.

Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chair.

I have three very specific comments I want to make, all of which I think are very strictly relevant to the question before us, the amendment that's been proposed by Mr. Van Kesteren.

And in saying this, I am simply responding to comments made by other committee members, because I know you're anxious to make sure we stay relevant here. When people say things in the committee, we're all speaking with the intention of trying to cause others to consider voting the way that we are leaning towards voting. Therefore, it's important for me, if I hear something that I think was incorrectly stated, to set the record straight, and this is what I'm trying to do in my first comment.

Mr. Martin, in his comment, said this is a public document; these guys are members of the government; they have access to it; they've had access to this stuff, I think he said, for a week. I understand why he might think that, but actually there are several misstatements, or errors, in that.

One is that we're actually not members of the government. We are members of the Conservative Party. We certainly support the government, but in terms of actually being office holders, sworn in, that sort of thing... A lot of committees have parliamentary secretaries, and this is an exception, so—

An hon. member: No, it's not.

The Chair: Mr. Reid, I'm listening intently, so please don't be sidetracked by other members.

Mr. Scott Reid: All right. That's the first thing.

In terms of being a public document, when a document is no longer secret, it doesn't mean that it's then posted on a website or made readily available in that way. Having been a researcher in a former life, and I actually employ a researcher as well right now, when we hear about documents that are public and are of interest, we regularly make an effort to pursue them. That doesn't happen

immediately. We have to go through all the same channels as everybody else. We do not necessarily immediately find these things coming to us.

On the assumption that we've all had the document and therefore we're all thoroughly apprised and can ask fulsome questions of the witnesses, in saying this, I think Mr. Martin is labouring under a misapprehension. I just want to draw that to the attention of all members, including Mr. Martin, so they'd be aware that while I'm sure it was meant sincerely, it's actually factually incorrect.

The second item does relate to the idea that the report, which is going to come in, will then release the testimony we've heard here. If I understand this correctly, I think there's a bit of a problem with this. Although Mr. Van Kesteren ran the idea by me before he introduced it, now that I'm thinking about it, there may be a problem here.

The purpose, I think, of having the redacted, translated version of the document is, I assume primarily—maybe there are other reasons—to allow us to engage in fulsome questioning of the witnesses so we can look down and see what's being discussed and what's in the report. That can't happen because the report is happening tomorrow and the witnesses are here today. So we actually got things backwards. We would make the information public in, more or less, 24 hours from now, but it wouldn't actually assist us in that particular task. I might be wrong. There might be another reason for doing this.

The only other reason I could think of—and this is my third point, Mr. Chair—was that if we receive the documents tomorrow in both official languages, they become available to us then. In terms of the general public, our friends in the media and so on, is there anything that prohibits any of us at that point, if we contact the clerk, from taking the documents and using them in a forum outside of the confines of this committee in order to give context to our comments and remarks and responses that inevitably we'd presumably be asked to make with regard to the substance of what the witnesses had said, which would become public at the same time? Would we actually have access to those for that purpose?

That's a question, but I think it's relevant to the motion.

● (1350)

The Chair: Do I understand the question to be that once the censored version of the report is provided to the committee, can you comment on it publicly?

Mr. Scott Reid: I'd get a copy from the clerk, and therefore—

The Chair: Well, of course you'll get a copy, no question about that.

Mr. Scott Reid: —comment on it publicly, yes.

The Chair: Yes. The answer is yes. As far as I know, the document is not being provided to us with any provisos. It's being provided to us at our request.

Mr. Scott Reid: All right. Thank you, Mr. Chairman.

The Chair: I have only one speaker left on this amendment.

Mr. Martin.

Mr. Pat Martin: I would point out, Mr. Chairman, that this document is readily available, from the access to information coordinator of Foreign Affairs, to anyone who wants it. I'm surprised the government side MPs would be so slow to avail themselves of it, but once a document has been stamped for release and approved and redacted so that it's in the form the government wants, it is quite readily available. It's a 105-page document, or a 46-megabyte file that can be downloaded with the permission of the DFAIT coordinator.

Even though none of you are cabinet ministers, you're the government side, for God's sake. Surely you have some better access to this document.

People were first made aware of the existence of the document in the *Report of the Events Relating to Maher Arar*. When that report was circulated, it made reference to the "Afghanistan 2006: Good Governance, Democratic Development and Human Rights" document, on page 237, I think. Researchers from the university and other journalists, I presume, said, that sounds interesting; they're making reference to the state of detainees and the use of torture, and are making a human rights report that's circulated annually. It didn't take a rocket scientist to say they'd like to see that report, so the applications for the release of it went in. I think we'll hear detailed testimony on how that went when we get to hear these witnesses.

What I'd say to Mr. Reid, if he was still interested or was listening, is that we don't really need to analyze the merits of what was censored and what was not censored, or if it should have been or not. Really, today's question, and the reason these witnesses are before us, is that we want to talk about the administration of the Access to Information Act as it pertains to this document. Why did they deny the existence of a document that was referenced in the Maher Arar report? Why did they deny the existence of a document that had been published and given to government in 2002, 2003, 2004, 2005, and 2006? That was the first reaction of the ATIP coordinator: to deny that any such documents exist. Frankly, I believe that is enough for this committee to be satisfied that it's a justifiable matter to investigate, even without the report.

I argue that the report would be freely available to Mr. Reid if he goes down and gets it from his own government officials. But even if it weren't, there's valuable work that this committee could be doing in questioning these witnesses on their experience in dealing with our freedom of information laws, the frustrations they encountered, and what drove them and motivated them to file complaints to the Information Commissioner on those grounds.

Whatever we're debating in terms of amendment now, dealing with the distribution of the document, should be voted down and we should vote in favour of the main motion, which is concurrence in the fourth report of the subcommittee, the planning committee of the access to information committee.

The Chair: Mr. Tilson.

Mr. David Tilson: Mr. Chairman, I'd like to respond to what Mr. Martin just commented on, about how anyone can get the document. Whether I produce the document, whether Mr. Martin produces the document, or whether a witness produces the document, quite frankly, if the committee is being responsible, it should receive it from one source and one source alone. The clerk has been asked to

get the report, and that's where the report should come from. It shouldn't come from me, it shouldn't come from Mr. Martin, and it shouldn't come from a witness.

I just wanted to comment on that. It may or may not be available to everyone. It may or may not be the report. It may be something else. Quite frankly, if this committee is doing its job, it should rely.... And I'm not casting aspersions on anyone. Let me make that clear. I'm simply saying the report should come from the clerk's office.

• (1355)

The Chair: Thank you.

I call the question on the amendment moved by Mr. Van Kesteren.

(Amendment negated: nays 6; yeas 4)

The Chair: We are now discussing the fourth report. Is there any further discussion?

Mr. Reid, if there is further discussion, what I'm going to do, in the interest.... I don't want to relinquish the chair to anyone else, given the excitement in the meeting. I have to be cognizant of the people on the panel, in translation, everywhere. I'm going to suspend the meeting, for five minutes exactly, for relief of whatever people need to relieve.

• (1355)

_____ (Pause) _____

• (1400)

The Chair: The meeting has resumed, and we are discussing the fourth report of the subcommittee on agenda and procedure.

I had recognized Mr. Reid.

Mr. Scott Reid: Thank you, Mr. Chairman.

Mr. Chairman, we're now discussing the actual report itself. I think it's no secret by now that I have reservations about this, for a variety of reasons. I don't intend to go through them all over again. Indeed, I don't propose to make any further amendments. I do think this was not handled by a process that I would have approved of in advance had I known it was going to be this way. I don't think we've had a proper opportunity to prepare ourselves. I don't think we'll be nearly as fulsome as we could be in our discussion with the witnesses. I don't think we have adequate documentation at our disposal.

Having said that, however, my colleagues and I have tried several times to introduce proposals that would bring some order to this, that would, as I indicated, not turn this into a court of star chamber, which is what I am afraid it might become. Those are my objections.

I've seen no evidence that anything we say is going to change that. It would simply mean we'd come to the same wrong conclusion at a later point in time. That would be disrespectful to everybody here. Therefore, I am not proposing any further changes to the report. I would encourage my colleagues on this side to do the same and allow us simply to go directly to a vote on the motion.

• (1405)

The Chair: Thank you for those reasoned comments, Mr. Reid.

Having no one else on the list, I call the question, which is to concur in the fourth report of the subcommittee on agenda and procedure. I call the question because Mr. Wallace had wanted a recorded division at some point.

(Motion agreed to: yeas 6, nays 4)

The Chair: The fourth report of the subcommittee on agenda and procedure is concurred in.

Consequently, we move to the second item on the orders of the day. That item is the witnesses that we have here, so I would invite Messrs. Esau and Attaran to come to the witness area.

While they're doing so, I'll make this comment. Given today's experience, I think what we'll try to do from here on in, when we're discussing further items of committee business, etc.—unless I'm overruled—is not go to a subcommittee, but deal with these matters in full committee. We can then decide whether we want to go in camera or not. Everybody will have their kick at the cat, and then, whatever the decision of the committee is for future business, it will be that way. We'll give that a try and see if it works. If it doesn't, we can always go back to the subcommittee and we can be creative as well.

How are you doing there, Mr. Esau? Are you ready to go?

Mr. Jeff Esau (As an Individual): Very well, thank you. I appreciate the time here.

The Chair: Professor, we don't want to hold up the committee, so when you're ready, you can just come right up. We'll get Mr. Esau going.

Mr. Martin.

Mr. Pat Martin: I have a question, Mr. Chairman.

I would like to recommend that we treat the time as if it were nine o'clock and a normal starting time, and that we give the witnesses the two hours that we had scheduled and had contemplated with the original motion.

The Chair: That's how I was proposing to proceed, and if indeed the questions evaporate before that time, so be it. I don't think there's any need to unduly lengthen the meeting, but we do want to hear what the witnesses have to say.

Mr. Esau, this has been perhaps mildly entertaining for you, and mildly frustrating. Just as a comment, welcome, number one. Number two, the committee is investigating the report, as you've heard. We're looking for your commentary on it, since you were one of the original people involved in it. We'll give you about ten minutes. We'll then go to the professor for about ten minutes, and then we'll go to questions.

I presume you do not have any written remarks.

Mr. Jeff Esau: No.

The Chair: In that case, what we would like to hear is how it is that you are involved in this matter. Perhaps you could start with that in a logical, chronological way.

Mr. Jeff Esau: I will. Thank you very much, Mr. Chair. Yes, it has been mildly entertaining.

I appreciate the opportunity to speak. I know there has been a lot of interest in just who I am. I can assure the committee that I have written an article since November 12 or whatever date was cited earlier. The thing I need to make clear is that I'm a freelance writer. That means two things.

The first thing is that I am not an employee of or affiliated with any particular news outlet or journal. The word "freelance" means just that: I work on an article-to-article basis.

The second thing about being freelance is that I'm probably the only person in the room today who is not being paid to be here, so I'm not beholden to anybody. I have no political affiliations. I have no other organizational affiliations. I'm a journalist.

I came to journalism partly out of necessity. I was a serving officer in the Canadian Forces for 16 years. I retired at the rank of major and had to leave the military as the result of a service-related injury.

The reason I feel that's relevant is that for three years while I was serving in the military, I was the policy and training officer for National Defence, for access to information and privacy matters. In other words, I was one of the main advisers to the associate deputy minister, the director of access to information and privacy, and people with stars on their shoulders about access to information and privacy matters. For three years running, I was the one who prepared the annual report that comes to Parliament from National Defence, so I have a little bit of background in access to information and privacy. I've given lectures on it. I know it at a very good expert level, I would say, and I have used the act in my journalistic endeavours in order to obtain source documents that I feel are relevant to stories I'm writing.

My particular interest is in military and foreign affairs, partly because I feel the Canadian public is woefully uninformed about those important public policy areas. I feel it's appropriate that I tell that story, or be one of the people who tell that story. In order to do that, I need source documents from the government, and the only legal recourse I have to do that is the Access to Information Act.

So that's a little bit about my background.

My relationship with *The Globe and Mail* is not an employer–employee relationship. *The Globe and Mail* has retained me for a fee to conduct, on their behalf, research into matters they feel are germane and within my expertise. In the case of detainees, torture, and Afghanistan, those areas are consistent with my background and expertise, and that's why I agreed to take them on.

That's pretty well all I need to say about myself. I'm certainly willing to answer any questions people may have about my qualifications, my past writing, or my military service. I'd be happy to take those questions or any other questions you have.

•(1410)

The Chair: Did you want to make any comments with respect to your involvement with the document, "Afghanistan 2006: Good Governance, Democratic Development and Human Rights", if you had any such involvement?

Mr. Jeff Esau: Yes. One of the things I'd like to make clear is that I have never seen the redacted version of that document. I have never received anything from the Department of Foreign Affairs and International Trade. I have not received it from anybody in the room or outside the room. And I have never seen a copy of the uncensored report.

I just want to make it clear that I'm not coming here with any preconceptions about what may be in the report. When I get it officially, I will analyze it and I will report back to the people who have retained me.

My involvement in this particular series of events started when I was asked to inquire within Foreign Affairs about a specific report that was produced—allegedly produced at that time, because I take nothing at face value. And I was going to explore whether or not that document existed, and if it existed, get hold of it and basically do an analysis of it and write a story about it or contribute to stories about that document and the larger context in which it involved the Canadian Forces and the three-D approach that's being used in Afghanistan.

This is one of the misconceptions that I've heard today. I made two requests, and I'm going to read the wording of the requests into the record so that there's no ambiguity about that. In my first request that I sent in, which was received by the Department of Foreign Affairs and International Trade on March 14, 2007, I requested “A copy of DFAIT's 2005-06 annual or semi-annual report or the 2006-07, if it's been drafted, on human rights performance in countries around the world.” That was the request.

One week later, approximately a week later, I received a letter—on March 22. It was not signed by Jocelyne Sabourin; it was signed on her behalf by somebody, and I was told in the letter, “Please be advised that Canada does not produce an annual human rights report analogous to reports produced by, for example, the United States or the United Kingdom. Therefore no such report on human rights performance in other countries exists.”

•(1415)

The Chair: I'm sorry to interrupt.

You're quoting from a document.

Mr. Jeff Esau: Yes.

The Chair: Would you be prepared to provide us with copies of both of the documents that you're referring to?

Mr. Jeff Esau: Absolutely. I'm all for openness.

The Chair: Okay, thank you.

You can give that to the clerk and then he can make a copy for us.

Mr. Jeff Esau: Sure.

The Chair: Thanks.

Mr. Jeff Esau: Because of my background in access to information and privacy—

[Translation]

Mrs. Carole Lavallée: [Editor's Note: Inaudible] translation.

The Chair: Of course.

[English]

Mr. Jeff Esau: Yes, I received that in English only. That's my first language. I don't have a second language, although I was raised in Newfoundland, so I guess that's sort of another language.

In any event, I was not satisfied with that answer. I had reason to believe, from sources that I keep confidential, that a report about Afghanistan in particular, among other countries, did exist. I pursued this with the officer who was responsible for this file. After I received this response, I went back to her in a series of e-mail traffic that I can provide to the clerk. I wanted to make sure she wasn't saying something didn't exist based on an unsympathetic reading of my request.

The Treasury Board guidelines that help access to information coordinators respond to requests give guidance on how to treat requesters. I reminded her of that, and I quoted it to her. I just said:

If the records do exist but I failed to use the precise title of the reports, please let me know. In other words, I'm hearing from other sources that DFAIT does in fact produce human rights reports and I just want to confirm DFAIT's position on this, that human rights reports DO NOT exist and that my request was not interpreted with undue narrowness by DFAIT. I want to be very clear on this.

She wrote back, saying, “We feel that we've answered the letter of your request.”

I then went back to her and said, “I'm assuming that there is some type of report produced by somebody, somewhere in DFAIT about issues concerning Afghanistan?” I then quoted the report “Afghanistan 2006: Good Governance, Democratic Development and Human Rights”, and stated that I felt this was a chapter in a larger document. I wasn't sure, but I said: “My understanding is that this document or chapter or section or case study or whatever you want to call it exists, and if, by calling it annual or semi-annual I misled you, please be disabused of that.”

She said she would do some digging and get back to me. I'm presuming that what she did was go back to the people who would have produced the document that I quoted, the record holders. She basically came back and said that DFAIT only produces reports on a “situational basis”.

I wrote an e-mail back to her confirming the points that she had given to me over the phone: that these situational reports deal with one country at a time, and that it would take more than a hundred hours of search time to obtain all these individual reports that were produced in one year. For a researcher, a hundred hours translates into ten dollars an hour, so what they were asking for was a thousand dollars to find the reports, which for a private citizen is very steep—and the fees are something I can answer questions about.

She confirmed that I was correct in all the points that I had made back to her. That's when I felt I had battled the department to a standstill on this one, and that they were not, even with egging on and gentle persuading and prodding, willing to come out and say what they had and that I should pick what I wanted.

Because I never like to be caught up the creek without an ATIP request, I had simultaneously submitted another request at the same time as I had submitted the one I've just spoken about. This one was for "a copy of the latest assessment by DFAIT of the human rights practices, compliance, and performance of Afghanistan". That's pretty direct. It's pretty specific. In the event that they were not able to interpret this in an appropriate way, this was the second thing I sent in.

• (1420)

They received that request on March 13, which was the day before they received the one I spoke about just a few minutes ago. I have not received an answer to this request. What I got back was a letter saying they had received it, but that they were going to need an extension of 90 days beyond the 30-day statutory time limit. That means that instead of giving me a response on April 13, which would have been 30 days, they needed three months after April 13. I found that interesting, given the fact that by this point redacted versions of it were appearing in the newspaper.

I got a call late yesterday afternoon, because I had asked about the status of my request. I was told it was being sent to me post-haste, but I haven't received it yet. I still have not received a formal response from DFAIT on this second request.

That status inquiry was not signed by Madame Sabourin either. It was signed on her behalf by somebody whose signature I can't read.

So that's how I became involved. At each point that I had communications with the department, I basically went back to the people who retained me and told them what I was getting and what I had said, because I needed them to have all the facts. At one point, we agreed that I would be submitting a complaint to the Information Commissioner.

I don't submit such a complaint lightly, because having worked in the ATIP world, I know that a complaint just takes up the time of the people who are supposed to be working on the requests. If you flood or inundate a department with complaints that are really not something you want badly, you're just bugging up the system, as it were.

In this case, I felt a complaint to the Information Commissioner was in order, and I wrote one on April 26, within the sixty-day allowable time limit. I basically said that I felt the department had inappropriately and wrongfully and knowingly withheld a document that I was after, and that the relevant records did exist and they knew they existed.

That's my allegation. That's my contention, my personal belief as expressed to the Information Commissioner. I'm willing to share that. This is normally confidential correspondence between me or any person and the Information Commissioner, but that's what the wording of that is, so that people understand.

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

Just as a point of clarification before we go to questions, we would like a copy of the e-mails you offered to provide to us. Thank you.

Mr. Jeff Esau: Absolutely.

The Chair: You also referred to "she" throughout, when you were talking about that first set of e-mails. Is "she" Madame Sabourin?

Mr. Jeff Esau: No, she was an ATIP officer, Francine Archambault, who works within the access to information and privacy directorate.

The other thing I want to make very clear is that, having submitted hundreds and hundreds of requests to many federal institutions over a number of years, as well as having been on the other side of the table as a serving uniformed officer, it has been my experience that the ATIP organization within a federal institution is extremely anxious to please a requester. Their goal, in virtually every case of which I'm aware, is to provide to the requester the documents that the requester wants. They want to serve their clients.

The difficulty, the dynamic that I have found within National Defence and in other federal institutions—especially the large, highly publicly visible ones—is that the ATIP people have to go to the individuals within the department who actually hold the records. Getting the records from the people who create them or hold them is a challenge for anybody in ATIP. So when I gave this e-mail to the Information Commissioner, it was made very clear that Ms. Archambault was going back to find out other things from the people who held the records, and that these things formed the basis of her responses to me.

• (1425)

The Chair: Thank you, sir.

We'll now take ten minutes for opening comments from Professor Attaran.

Again, perhaps you could follow the same format, Professor. Tell us a little bit about who you are, what your interest in this matter is, and what your involvement specifically with the document is.

Professor Amir Attaran (As an Individual): Thank you, Mr. Chairman.

If I could just raise a point, though, I know my colleague Mr. Esau is keener to get out of here sooner than I am. I would not object if you preferred to take questions from him. I can wait. It's really at your discretion, sir.

The Chair: Is there a pressing need for you to leave, Mr. Esau? I feel that if we—

Mr. Jeff Esau: By suppertime. I live in Greely and I have three teenage kids, so it's a little hairy.

The Chair: We're going to go until about four o'clock at the outside, because we started at about two, roughly speaking. I think it might be helpful if we heard an opening statement from the professor as well, because it might help the questioners.

Mr. Jeff Esau: I think my parking meter has expired anyway, so we're in it for the long haul here.

The Chair: Thank you, sir.

Go ahead, Professor, and thanks for that offer.

Prof. Amir Attaran: Thank you.

Ladies and gentlemen of the committee, thank you for making it possible to hear from both of us today, despite your considerable differences.

[Translation]

I want to thank you for giving me the opportunity to speak to you today and testify, which I will unfortunately be doing in English.

[English]

The reason I have come to address you on this point will be, I think, fairly obvious from my background. I am a professor and Canada research chair at the University of Ottawa, jointly appointed to the schools of law and medicine. I work in the areas of human rights law, global development, and population health, across that spectrum of issues. I'm trained both as a lawyer in Canada and as a scientist, which was my Ph.D. subject at Oxford University. Prior to coming to the University of Ottawa to take up a faculty position in Canada, my previous two faculty positions were at Harvard and Yale.

The reason I chose to come back to Canada was that, on an ethical plane, I felt very strongly about the preservation of human rights and how this country, which is so exemplary in its rule of law, actually can contribute a great deal to the world in the maintenance of human rights standards. That is very much why I came back to this country and tried to reverse the brain drain.

At the outset of these comments, I'd like to make an observation on the business that has been done in this committee today. There have been a lot of objections—I won't go into any specific ones—about the injustice of parliamentary procedure and the injustice of this motion or that amendment. I'd like us all to remember that the actual injustice is torture, extrajudicial killing, and disappearance in Afghanistan. Those are the human rights issues, and believe me, torture is a greater injustice than any breach of parliamentary procedure, and so is being murdered.

The reason we're here today is because of a report—and I have here the redacted version that was given to me under ATI—about human rights in Afghanistan. It is terribly important—and I say this to all parties—that no time be wasted on wrangling of a filibuster or other nature, and that what this committee must concern itself with is why information in the possession of the Canadian government about torture, extrajudicial execution, and disappearance was concealed. It is obviously the case that only by having that information in the possession of the Canadian government out in the sphere of public debate can the situation be improved. I don't want to put too sharp a point on it, but the longer the document is not public, the less that is known about it, and the less debate that can therefore take place on these issues, the longer the people's lives are in danger. They could be killed or they could be tortured, so it is terribly important for this committee to move ahead.

Having just scolded you in those friendly terms, let me tell you what happened with my access to information request. I'll present this information chronologically. If there are any questions about the chronology, Mr. Chairman, please feel free to interrupt me.

The documents from which I'm taking this chronology have been faxed to the clerk. If I refer to something that is not in his possession, however, I would ask the clerk to note it to me so that I can provide it if I have erred and have not provided it already.

On January 24, 2007, I filed an access to information request with the Department of Foreign Affairs.

● (1430)

The Chair: Mr. Reid, on a point of order.

Mr. Scott Reid: I do sincerely apologize, Professor Attaran. I'm just wondering about something. If the clerk has those, are they in a form that can be distributed to allow us to follow more closely?

The Chair: I can only assume, Mr. Reid, that if you don't have them, they are in a form that is not distributable. They're only in the English language, and I presume that the clerk is in the process of transferring them into the other official language, whereupon we will provide them to all committee members.

Carry on, Professor.

Prof. Amir Attaran: If they are not available to you at the moment and you would like to see them, sir, I'm happy to show you my copies or make some other arrangement. I apologize if they're not before you now. They were provided to the clerk two days ago.

The Chair: Usually we try to work miracles, but in this case it will take us a little while to get things translated.

Go ahead.

Prof. Amir Attaran: On January 24, 2007, I filed a request under the Access to Information Act to the Department of Foreign Affairs and International Trade, requesting copies of the country's human rights reports for Afghanistan and the United States, two countries. I explicitly noted in my request my knowledge that such reports do exist. An example of one report of this kind is contained in the factual background of the commission of inquiry in relation to Maher Arar. On page 237 of that report, it's mentioned and footnoted that DFAIT has a Syria human rights report.

Those of us who work in the human rights field know that these reports exist. It's certainly not controversial that they exist. They're even cited in the Arar commission report.

So I did, on January 24, request the reports for both Afghanistan and the United States. I mentioned in my request that I was aware that the reports would exist, in accordance with the example found in the Arar commission report. This would seem to fly in the face of what Mr. Esau was told: that human rights reports are only prepared by DFAIT on a "situational basis".

On February 5, my information request was acknowledged by Jennifer Nixon of DFAIT. Her acknowledgement letter indicated that I would receive an answer on my request within 30 days of the date that DFAIT received it. I've done a quick job of counting the days, and I believe it was on March 1 that I should have received my information from DFAIT.

On March 1, I had not received the information, contrary to DFAIT's written undertaking to deliver the information within 30 days. DFAIT did not take an extension under the act. It did let its own timeline, the legal timeline, lapse illegally.

On March 29, I filed the second access to information request. This time, and because DFAIT had already illegally failed to deliver information at this stage, I requested the report by its exact title. That title is "Afghanistan—2006: Good Governance, Democratic Development and Human Rights".

My second access request to DFAIT, the one of March 29, did explicitly mention the title of the document that I sought. By inserting the title, I hoped to avoid a situation in which DFAIT would inform me, as it informed Mr. Esau, that no such report existed. I was well aware that Mr. Esau had not been told the truth on this matter.

Also around this time, in late March or early April—I cannot be more precise—I instructed my assistant at the university to phone DFAIT every day, and often more than once a day, to secure an opportunity when I could speak with Ms. Jennifer Nixon, who had corresponded with me on February 5 about my access request. My secretary tried to make this phone call happen for well over a week, and DFAIT refused to take the call.

On April 4, I complained to the Information Commissioner about my January 24 request that was now seriously overdue. As I wrote to the commissioner, “DFAIT has failed to advise me on this file as it promised. DFAIT has failed to divulge the requested information. DFAIT has failed to cite any lawful exemption under the act for refusing access. DFAIT failed to take a lawful extension of time under the act.”

• (1435)

On April 11, after the matter had now been escalated to the level of a complaint with the Information Commissioner, I received a telephone message from Gary Switzer, an employee at DFAIT who is responsible for access to information. I subsequently called him back shortly thereafter—I believe it was a few days—and I asked him what the delivery date for my information would be. He declined to provide one; he said he could not provide one. I pointed out to him that under the access law, he is required to have a delivery date, which, by the way, DFAIT had already breached.

Mr. Switzer again refused to give me a delivery date. He mentioned that the document needed “review” by somebody other than him. He mentioned that the document was on his desk, that he was reviewing it himself, and that he would then have to send it to someone else to be reviewed. I asked him who was going to review the document. He declined to answer me, but it was certainly established in that conversation that the officer for access to information charged with my file at that date, Mr. Gary Switzer, did intend—and in fact later did—submit the document to somebody unknown for review. I asked Mr. Switzer if this was a sign of political interference. He declined to answer.

On April 17, I had a telephone conversation with Jocelyne Sabourin, who is, as I understand it, the top official for access to information in DFAIT. She agreed to take over the file from Mr. Switzer and to manage it herself, and she agreed to deliver the document in a matter of days. In fact, disclosure was made, on April 23, of the 2002, 2003, 2004, 2005, and 2006 Afghanistan reports. This disclosure was given to me as an electronic file on a compact disc. When I looked at it, I found that for the 2006 report—I shall confine my comments from here on in to the 2006 report, but the ones from the earlier years were quite similar—subsection 15(1) of the act was used very heavily to censor the document. Other parts of the act were used, but subsection 15(1) was the one used the most frequently by far.

DFAIT did not and has not indicated which paragraph of subsection 15(1) applies. There are nine paragraphs to that law.

Although DFAIT is required to be exact about which exemption it's applying, it has never indicated, in that precision, which of the nine exemptions it is using.

The Chair: I would just remind you that you're at 13 minutes. I wonder if you could wrap it up. There will be opportunity to add more things.

• (1440)

Prof. Amir Attaran: Can I have three minutes?

The Chair: Sure. It's just a reminder.

Prof. Amir Attaran: The U.S. report was never released—and you will recall that I did ask for the U.S. report, as well as the Afghan report—nor was anything said about why it was not released.

I find it curious that the exemptions were applied so heavily throughout the Afghan document. There's nothing secret here. The sections that have been cut in the first paragraph and which *The Globe and Mail* subsequently published refer to torture being “all too common in Afghanistan”, according to DFAIT. The U.S. Department of State has said there are “credible reports of torture”. The UN High Commissioner for Human Rights, who is none other than Louise Arbour, a former Justice of the Supreme Court in this country, has said torture is “routine”. The Afghanistan Independent Human Rights Commission has said torture is “common”. This is very similar to saying that torture is “all too common”, as the Department of Foreign Affairs has written in the 2006 human rights report. Nothing appears to be secret enough about that revelation to justify using subsection 15(1) of the Access to Information Act to withhold it, except, of course, if that section were being abused, which I believe is the case.

There does seem to be a systematic problem within the Department of Foreign Affairs and International Trade about denying torture, about not confronting it openly. Again I refer to the Arar commission report. A DFAIT employee, Mr. Ambassador Pillarella, at the time Mr. Arar was being tortured, wrote in an e-mail that “a meeting with Arar should help us to rebut the recent charges of torture.”

Ladies and gentlemen, there is a blind spot in the Department of Foreign Affairs about torture, which means they don't want to know. I suspect that cultural reality of the department has something to do with why any reference to torture or other abuses was cut out of this document even though it really isn't a secret that torture goes on in Afghanistan, by those corroborating references I've given you.

It's further curious to me that the title of this document contains the words “Democratic Development”, among other things. That is, of course, a reason for Canada's presence in Afghanistan: to contribute to democratic development. It does seem to me that the information about democratic development that the Government of Canada possesses ought to be laid on the table for all to see.

I have no objection to this committee looking into this matter. In fact, I ask you to please do it. I say that as the person who has complained to the Information Commissioner. I've heard it said by members of the committee that the committee shouldn't act while the commissioner's investigation is under way. I disagree. As the person who brought the matter to the commissioner, I would be very pleased if this committee were to take its business up concomitantly and not wait for the commissioner to conclude.

I also would like to raise the point that there seems to be here, in this set of events as I've just described them, a pattern of concealing the 2006 and earlier Afghan human rights reports, and possibly concealing the U.S. human rights reports. If so, that is a criminal matter under section 67.1 of the Access to Information Act. To conceal a record is a criminal offence. I'm not making an allegation against anyone personally. I do not know who might have been involved in such concealment, although I do believe the circumstances show that it has possibly happened and there is need for a criminal investigation.

I would recommend, as a further step, that the RCMP and the Director of Public Prosecutions be involved at this stage to investigate whether any persons, be they civil servants or political figures, were involved in concealing information arising out of my request. I won't say to include Mr. Esau's request, because that's up to him, but I think the three or four requests together—I've lost count—do show a constellation of facts that indicate concealment went on.

I'll end my comments there, Mr. Chairman, with thanks for giving me the extra few minutes.

The Chair: Thank you, Professor.

We now will have our usual situation of questioning. We'll begin the first round of seven minutes per person with Mr. Dhaliwal, followed by Madame Lavallée.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

I would like to thank Mr. Esau and Professor Attaran. I feel sorry for what they had to go through this morning.

My question is to you, Professor Attaran. When you look at the performance of the Conservative members of this committee, do you think it would be a reasonable deduction for Canadians to draw a direct connection between your ATIP difficulties and the clear reluctance of these members to let us hear from you?

•(1445)

The Chair: I don't think that's an appropriate question, Mr. Dhaliwal. Would you rephrase it, please?

Mr. Sukh Dhaliwal: If that's the case, I'm going to go to the other question on which I should probably comment here.

Mr. Attaran, you are on record as saying this government has been very slow to react to any concerns about Afghanistan detainees. You said it took nearly one year to correct Mr. O'Connor's falsehood that the International Committee of Red Cross, the ICRC, was monitoring the treatment of Canada's detainees while they were in Afghanistan's custody. You have made it clear for Canadians—and I appreciate your work on this—that the ICRC normally keeps the

results of its inspections confidential, except for sharing them with the detaining power. In this case, that would be Afghanistan.

We also know the ICRC has a long history of questionable decisions about confidentiality. It did not even publicly denounce the various abuses of Nazi concentration camps, and it did not denounce the use of torture in Guantanamo Bay until these crimes against the Geneva Convention became known through other avenues. You would expect other avenues to include our very own government.

I wonder if you would tell us if you have tried to have a dialogue with the government and about your difficulties, and how cooperative you have found Minister McKay and his department.

Prof. Amir Attaran: The question does take me somewhat out of the subject of the 2006 human rights report, but insofar as your question asks whether I have observed a pattern under which information about Afghanistan and/or detainees is not easily available, my answer would be yes.

I have another access to information request pending with CIDA, about international development projects it's undertaking in Afghanistan. That request has been pending for 11 months and is not completely answered. I have numerous other requests that are out of time as well.

It has certainly been the case that in the last few months the civil servants responsible for access to information have become very much less willing than they were in the past either to discuss the progress of files or to release documents. I can't tell you exactly how many because I don't know off the top of my head, but I have several complaints pending with the Information Commissioner on the subject of Afghanistan right now.

There is a systematic problem getting information out on Afghanistan. It is subject to the most extraordinary delays and, I believe, illegal withholdings.

Mr. Sukh Dhaliwal: Mr. Esau, you have gone through the ATIP issues as well. Why do you think there has been such stonewalling from these departments on the ATIP requests?

Mr. Jeff Esau: I think my experience reveals two things. First of all, anybody in the public service, at any level, who creates documents and reviews them in the course of their work thinks their work is important and that, because it's important, it must be secret. Amongst people who create and hold records, I think there's a tendency to overstate the import of those documents to be released.

What I'm saying is that subsection 15(1), which Professor Attaran was talking about, is a section of the Access to Information Act that's very broad. It allows the government basically to withhold any information that would be, if it were disclosed, "injurious to the conduct of international affairs" or the preservation of national security. When you really think about that, it means that anything withheld under subsection 15(1) has to be virtually a state secret. Otherwise, you are overstating the sensitivity of the information. I think that's the first thing.

The second thing is much more issue specific, if I'm hearing your question correctly. My sources within the government—and I'm speaking as a journalist—say there is a chill going through major departments right now on issues surrounding torture, detainees, and Afghanistan. There is a very obvious reluctance for anybody to talk about it. In some departments, my sources tell me, special teams have been formed in order to deal with certain requests that relate to detainees, and these requests are specially treated.

So those are two things that I think are at work. When you talk about stonewalling, I'm not sure it's a cold-blooded case of their saying they're going to do this. I think it's more that part of it is a human tendency to overstate the importance of the documents that somebody works on, and then, when somebody else asks for them, to say that this second person can't have them because the defence of Canada or our international reputation rides on the e-mails sent to colleagues by the first person.

I looked very quickly at some of the copies of this report that were redacted and that we're talking about. I was astounded at the amount of white space that was actually left. I've asked about the Darfur region, as a totally different topic, and the documents that I get back are page after page of blank documents. For some documents, there's a whole page that just says they're withheld in their entirety under subsection 15(1). You can't even read these documents. They're about Darfur, and it's hard to know that they are e-mails between people working.

I don't think it's specific to Afghanistan, but as I say, I think Afghanistan has caused a chill to go through departments at the working level because of the notoriety it has received.

• (1450)

The Chair: Thank you, Mr. Dhaliwal.

[Translation]

Ms. Lavallée, please.

Mrs. Carole Lavallée: Thank you very much, Mr. Chairman.

First, I want to say that we regret the filibustering that took place this morning. As you will have no doubt have realized, the members on this side are not responsible for the delay.

I have a number of questions to ask. I want to ask my first question to Mr. Esau.

You said that you were an information officer at the Department of National Defence. So you, better than anyone, understand the internal process when people request documents.

Has it ever happened that someone requested a document, that you went to see your colleague who was in charge, and came back saying that there was no such document, when you had in fact found such a document?

Do you understand my question?

[English]

Mr. Jeff Esau: I have to answer that very carefully, because when I was the access to information and privacy training officer at National Defence, we were going through the Somalia inquiry. If you think this stuff that you're dealing with is sensitive, you ain't seen nothing. That was a departmental thing that they actually set up.

The provision of documents during that period of time was done by the Somalia Inquiry Liaison Team that was created at National Defence to provide documents to the inquiry. In our job of going to the record holder and saying these documents had been requested and that they should please send them because we needed to deal with them, we were very much out of that line, for better or for worse. I'm not personally aware of anybody ever denying the existence of a document that they knew existed.

I think lots of things get lost, so one of the points I want to raise is that your ability to get information out of the government is predicated on the government's or the civil service's organization of that information. In other words, when you ask for something, the people who create those documents have to know where that something is stored. That's the bigger problem, in general terms.

Around the Afghanistan issue, I'm not aware of anybody saying point blank that it doesn't exist. I'm going to be very interested in what the Information Commissioner says in answer to my request. I'll give this to the clerk, but I indicated that I think Foreign Affairs falsely responded to my request because of the political sensitivity of the issues contained in the records. That's my sense, and that's what I told them.

• (1455)

[Translation]

Mrs. Carole Lavallée: You have not yet received the departmental report, despite your access to information request? Am I mistaken?

[English]

Mr. Jeff Esau: I still have not gotten the report.

[Translation]

Mrs. Carole Lavallée: Yet, you, Mr. Attaran, you have received the departmental report.

Prof. Amir Attaran: Which one?

Mrs. Carole Lavallée: Did you get the censored report from the department?

Prof. Amir Attaran: I don't know whether the document was prepared by the department, but I did obtain this document. It is in fact censored.

Mrs. Carole Lavallée: Did the department send it to you as a result of your Access to Information Act request?

Prof. Amir Attaran: Ms. Sabourin sent it to me.

Mrs. Carole Lavallée: So you obtained it from a government source following your access to information request?

Prof. Amir Attaran: Yes.

Mrs. Carole Lavallée: Mr. Esau filed a similar access to information request, but he did not receive the report, whereas you did. Yet, you filed your request after he did. You should give him some tips. That's a joke.

Prof. Amir Attaran: I understand.

Mrs. Carole Lavallée: You said that when you spoke to Mr. Gary Switzer... Is that his name? Yes.

You had a number of conversations with him and, finally, you asked him why he had not given you the document when you knew that it existed, etc. At one point, you asked him whether there was any political interference. Is that what happened? Exactly what was his answer to you? How did the conversation unfold?

[*English*]

Prof. Amir Attaran: He said there was absolutely no interference, but he wouldn't answer any particulars on that question. He declined to answer my question about who was reviewing the document after he told me it was going to be reviewed by somebody other than him. When I put it to him about whether there was political interference going on, he simply reiterated that the document would have to be reviewed.

So I suppose I can put it this way. He responded to the question, but he didn't answer it.

[*Translation*]

Mrs. Carole Lavallée: Fine.

Both of you are well versed in access to information requests. One of you told me earlier that it wasn't normal for the person responsible for the access to information requests not to indicate, next to the censored passage, the corresponding clause. Subsection 15(1) of the Access to Information Act has nine paragraphs, from (a) to (i). That subsection reads as follows:

15. (1) The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including:

Then we find the paragraphs. The first begins as follows:

(a) relating to military tactics or strategy [...]

Whereas, visibly, if we think of what you did see, meaning the uncensored passages, this wasn't the case.

The second paragraph begins as follows:

(b) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment [...]

That does not seem to be it, either.

The third paragraph includes the following:

[...] any defence establishment, of any military force, unit or personnel or of any organization or person responsible for the detection, prevention or suppression of subversive or hostile activities;

This does not appear to apply either. At issue is the torture of Afghan prisoners.

The fourth paragraph begins as follows:

(d) obtained or prepared for the purpose of intelligence [...]

That's not it.

Next, we read:

[...] the detection, prevention or suppression of subversive or hostile activities;

That's not it.

Paragraph 15(1)(e) reads:

[...] in the process of deliberation and consultation or in the conduct of international affairs;

That is not it.

Paragraph 15(1)(f) reads:

(f) on methods of, and scientific or technical equipment for, [...]

That is not it.

Paragraph 15(1)(g) reads:

[...] for the purpose of present or future international negotiations;

That's not it.

Paragraph 15(1)(h) reads:

[...] diplomatic correspondence exchanged with foreign states [...]

That is not it.

Paragraph 15(1)(i) reads:

[...] cryptographic systems of Canada [...]

That is not it.

In what provision would you place the torture of Afghan prisoners, if you were the one responsible for censoring documents?

● (1500)

[*English*]

Prof. Amir Attaran: I do not think any of the various heads of subsection 15(1) apply to the withholdings in this document. I think that in resorting to subsection 15 (1), no matter which paragraph is relied upon—and as I mentioned earlier, DFAIT has never been precise about that—absolutely none of the text within subsection 15 (1) could be relied on legally. I think their resorting to it has been illegal.

It is relevant that the document is marked “Confidential–CEO”. Here, “CEO” means “Canadian eyes only”. This document was intended for Canadian eyes only. As such, it isn't any material that would have been provided by another government, such as that of Afghanistan, and that we would be obliged, out of diplomatic undertaking, not to disclose to our own citizens. This is something—

Mr. Jeff Esau: If I could intercede here as well, there's a separate section of the Access to Information Act that allows a department or the government to withhold information that it has obtained from foreign governments. That's subsection 13(1), which I've never seen in any of these. It's always subsection 15(1).

Prof. Amir Attaran: Mr. Esau is exactly right, and he says it better than I do. There is subsection 13(1), which would have dealt with information provided in confidence to Canada by another government, but that's not the section that was used here. That's the only section I would have thought might be used. For instance, if Afghanistan had said yes, they torture over there in Afghanistan, then perhaps Canada would have an obligation not to divulge that. However, a section of the act other than subsection 15(1) would then have had to be used.

The Department of Foreign Affairs and International Trade clearly does not believe this is information received as a diplomatic confidence. That's not the section of the act they relied on.

The Chair: Thank you.

Mr. Martin.

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

My thanks to both our witnesses. Let me say at the beginning that I can't imagine two more credible witnesses, both for their experience and their commitment to this issue of freedom of information. I thank them both for being here, and for their patience.

I'm not going to repeat some of the very good questions I've heard already. I'll jump right to the complaint that has been filed, because I think it's pluralistic and speaks to the whole issue.

Professor Attaran, your complaint says you believe DFAIT knowingly and improperly withheld documents that they knew to exist. Is that an accurate quote from the complaint that you filed?

Prof. Amir Attaran: I believe so.

Mr. Pat Martin: Do you believe there was political interference in denying the existence of those documents?

Prof. Amir Attaran: I do believe there was political interference. Let me be unambiguous about that.

Mr. Pat Martin: Holy shit.

Excuse me. That wasn't parliamentary.

Prof. Amir Attaran: Mr. Esau was told—and I don't know the date, but perhaps he can mention it—that human rights reports for other countries were not compiled by DFAIT.

Mr. Jeff Esau: Yes, that was in my response.

Prof. Amir Attaran: That was in the response you received...?

Mr. Jeff Esau: On March 22.

Prof. Amir Attaran: On March 22 Mr. Esau received that. That is flagrantly a lie. It is absolutely clear that the Department of Foreign Affairs and International Trade has and still does produce human rights reports for specific countries. I mentioned the Syria report, which is even cited in the Arar commission report, which was, of course, public before the date that Mr. Esau was told that, no, DFAIT doesn't actually produce such reports.

It is also clear to me that before I was given the Afghanistan 2006 report, along with those reports going back to 2002, it was reviewed by people in the department. It would seem that somebody reviewed it after the access coordinator responsible for the file, Mr. Gary Switzer, already had it.

• (1505)

Mr. Pat Martin: This is shocking. It really is shocking.

You say there seems to be a blind spot in DFAIT about torture. I'm not sure which of you witnesses jotted that note down, but there seems to be a wilful blindness, perhaps because it seems that we exported torture in the case of Maher Arar, or exported the dirty work to places where we had reason to believe torture may take place. Now that we finally have the floor and now that we finally have you as witnesses to question, my jaw is dropping at what you have to tell us.

On the criminal investigation, my colleagues from the Conservative Party are saying the first witness should be the Information Commissioner. We had the Information Commissioner here, speaking about this very issue, and the deputy commissioner answered a question from me about what the offence is in regard to denying the

existence of a document. He said it's a criminal offence. He didn't cite section 67.1, but we did have him here to ask him about that.

It's your testimony that you believe there should be a criminal investigation, and you referenced that perhaps this is an appropriate task for the new Director of Public Prosecutions, whose office was just created by the new government in their Federal Accountability Act. Can you expand on how you might see that unfolding and how we initiate a request for such a prosecution by the new Director of Public Prosecutions?

Prof. Amir Attaran: I have already indicated my wish to the Information Commissioner that the Information Commissioner work alongside the RCMP to investigate any possible criminality in this matter. I would also encourage this committee to work alongside the RCMP and, if appropriate, the DPP. I'm not certain what the order of precedence among these various investigations might be, but I am certain that an investigation by the Information Commissioner, by this committee, and by the RCMP—all three of those—would be welcome and, I believe, necessary, given the facts of what has happened.

Mr. Pat Martin: Mr. Esau, do you believe your experience to date warrants an investigation by the RCMP or the DPP?

Mr. Jeff Esau: I wouldn't go that far about this particular issue at this point. I think a different issue that has to do with Afghanistan and access to information requests should probably be followed up. It's not particular to the matter you're talking about here, so I don't know if the chair wants me to go into what that might be.

I'm going to be very interested in getting the Information Commissioner's results from the investigation. The unfortunate thing about the federal Information Commissioner is that he cannot compel documents to be produced. You get a nice letter at the end of an investigation, saying that your complaint is well founded, that there were things withheld, and that they've told the department. But that still doesn't give you the documents.

The Office of the Information and Privacy Commissioner of Ontario, at the provincial level, can compel a department to produce documents. They have the legal authority to say they have investigated this complaint and have found the department was right in withholding some of this, but that it must produce this other stuff. And the Ontario office gives you a timeline.

I'm just going through that on another issue, so I'm going to be interested to see what happens. I want to take this one step at a time. The other issue that I'm dealing with, with National Defence, is much more serious.

• (1510)

The Chair: You have 15 seconds. That's time for one more question.

Mr. Pat Martin: Very briefly, how does the experience of either of you, in dealing with DFAIT, compare with dealing with other countries when it comes to freedom of information and access to information? Perhaps your answer about Ontario gives us a partial answer on jurisdictions. Are there any experiences you can share?

Mr. Jeff Esau: I don't. I haven't been involved in those.

Prof. Amir Attaran: I have used the Access to Information Act and its provincial equivalents in this country, and I've also used its equivalents in the United States, Britain, and South Africa. I would say our federal Access to Information Act is the one that I find the most frustrating and frequently barren to exercise. I have had better luck requesting information from the United States and South Africa—even from Africa—and very much better luck requesting it from Britain.

The Chair: Thank you, Mr. Martin.

I think it's fair to say that this committee, in a previous Parliament, expressed its frustration with the Access to Information Act in a very direct way. It's one of the items of business that we're attempting to pursue in our committee this time.

We now go to Mr. Reid, for seven minutes.

Mr. Scott Reid: Thank you, Mr. Chairman, and my thanks to our witnesses for their patience.

As well, Mr. Chairman, I thought it was entirely appropriate for you to give Professor Attaran a little extra time, because we didn't have all the contextual information. He was very helpful in providing it in his opening remarks. That did take some time, but it allows us to be a little more fulsome in our questions.

Mr. Esau, I just wanted to say that I used to be a freelance journalist myself, so you have my empathy. I also used to be a Greeley resident as well. My dad still lives there.

You had to listen to everything that went on this morning. There's one thing I have been trying to figure out, leaving aside the issue of what other laws might be appropriate and whether it might be appropriate to have other kinds of investigations, as Professor Attaran has suggested.

Just as it's written, our mandate deals with the access to information law and breaches of the access to information law. I wonder if either of you could assist me by pointing to aspects of this particular law that might have been violated.

I wrote down a couple of things that occurred to me as I was preparing here. I'm not sure if simply denying the existence of a document represents a violation. It may, particularly if it's done with knowledge that the document exists, although it does occur to me that it's conceivable—maybe it's not conceivable, so you could set me straight on this—that a person can just not be very well informed or very competent. That kind of thing could occur. But maybe that can't happen in this case. Anyway, denial of existence of a document could be one possible violation. I don't know if it is or not, but if it is, that would be a source for us to pursue.

There's citation of an inappropriate section of the law in dealing with this. Professor Attaran mentioned that subsection 15(1) is mentioned over and over again. Even if that's inappropriate, I don't know that it constitutes a violation.

There's the failure to be very specific. I can imagine. I have the law in front of me, and Professor Attaran is quite right, there are numerous paragraphs, ranging from (a) through (i), under subsection 15(1). That would be about eight or nine. In answering that, Professor, I'd be particularly interested in knowing if you normally

get more detailed points, like paragraph 15(1)-whatever, and if this is a variation from that pattern that arose in this case.

And then, of course, I'm throwing it open to you as well to point out any other violations that you can point to. Obviously I'm referring to the Access to Information Act itself, because that is the document that our mandate allows us to act on.

Thank you.

Mr. Jeff Esau: What the Access to Information Act says is that the government is lawfully able to withhold information, but that such exemptions must be "limited and specific". In other words, the law does not contemplate being able to throw blanket exemptions over certain documents.

Section 25 of the act is what is called the severability principle. That basically means that if there is any portion of a record—and we talk about paper all the time, but it also applies to audiotapes and all the rest of it—that can be released without doing the injury test that would allow you to withhold it, that must be released.

The law affords a right of access. That's the first section of the act. The fundamental import of the act is to make that access affordable. Anything that restricts it has to be very specific, and for very good reason.

There are also time limits there. In other words, something that is secret and withholdable today might not be in a week's time. It has to be revisited every time.

There is one thing that I'm going to be very interested in. I'm going to get a copy of what was released to the professor, because that's the redacted version of it. Apparently the phone call I got from DFAIT yesterday was that my copy has come in. I'm going to be very interested to see if, in light of some of the controversy, they've changed some of it and have reconsidered.

Nobody's perfect. The Information Commissioner will go in and discuss with the people who know what is injurious and what isn't, and will come up with a workable rationale of what should be withheld and what shouldn't be. We can't take the human element out of it, but the specificity is absolutely fundamental to the right of access.

That's my shot at it.

• (1515)

The Chair: Go ahead, Professor Attaran.

Prof. Amir Attaran: I believe the fundamental illegality here lies at the interface between section 15 and its various subheadings, which were not indicated precisely, and as Mr. Esau said, the law says they should be indicated precisely when they're used. The violation lies at the intersection between section 15 and section 67.1, which is the criminal law part of the act. Subsection 67.1(1) reads: "No person shall, with intent to deny a right of access under this Act," and continues in paragraph 67.1(1)(c), "conceal a record". I believe records were concealed.

I did not mention in my chronology a detail that is probably relevant at this point. On April 23 Madame Sabourin gave the CD to me containing the various Afghan human rights reports—not the U. S. one, which is still not answered. On the night of April 23 I reviewed those documents that had been given to me earlier in the day, and I found the excisions very heavy-handed. I wrote to her on the night of April 23, saying that I would like her to reconsider the excisions that were made and that I did not believe them to be lawful exercises of the act. In other words, I put her on notice that I believed an illegality had taken place. I offered to her to re-evaluate those excisions and get back to me within 24 hours. She got back to me on April 24, saying that the excisions would be maintained.

Why is that important? To the extent that you could say an accident occurred, that something was excised that shouldn't have been, and that it would have been an illegal concealment under section 67.1, I expressly asked for a reconsideration. The reconsideration was that we will withhold exactly what we've withheld. Therefore, it was not accidental.

The Chair: Thank you.

On the plus side, I suppose, she did answer you within 24 hours.

Prof. Amir Attaran: Yes, she did answer within 24 hours.

The Chair: Thank you.

We now go to Mr. Pearson.

Mr. Glen Pearson: Thank you, Mr. Chair.

Let me say at the outset that I'm glad we waited for this.

I've done a lot of human rights work in Africa over the last couple of decades, and in the last decade in Darfur especially. I find it troubling—and I thank you for driving home the fact, Professor—that while we spend all these hours, and often we're here.... I'm the newest member of Parliament in this group. We talk about policy and ideas and everything else, but in the end it is about these very people, and in the hours we have been doing this I can't envision what's been going on in the lives of these people who have been detained, perhaps improperly, or perhaps even tortured. I thank you for driving that home to us.

I have a question about the troops. I come from London, Ontario, and this last weekend all the Royal Canadian Legions from Ontario gathered for their biannual conference in London. I was asked to speak at it. The deputy minister for Veterans Affairs was also there. In meeting with many of the troops afterwards who have come back from Afghanistan, I found there was a general disillusionment among these troops in that they were not aware, although they have been made aware since they came home, of the U.S. report of human rights, the Afghan Independent Human Rights Commission, and the U.K. human rights reports that actually pointed to torture, sometimes killings, and other things.

We're talking about information here, and that's what we're about. It's important that we all support our troops, and all of us here want to do that.

But Mr. Esau, from your travels or discussions, what knowledge might our own troops have in that area of the world about these very things that we're discussing so much here?

• (1520)

Mr. Jeff Esau: I think it depends on the level of the individual. We talk about troops as being a homogeneous group, but actually there's a very strict hierarchy and there's a need-to-know aspect. You don't want the master corporal who is riding in a convoy on a Coyote to be concerned about these other issues; you want him to be trained, to be knowledgeable that there are going to be bombs on the side of the road that'll go off remotely, or whatever, and that's what you want focused on.

The answer to that question is in the rules of engagement that are issued by the Chief of the Defence Staff on behalf of the government. They describe the situation you are going into and the levels of force, the escalation of force, and the parameters on the use of force for you. In fact, soldiers carry around a little card that tells them that's their authority to shoot or not shoot, or whatever.

The results of the information requests that I've got back from DND about what their level of knowledge is led me to understand that there were basically two briefings given to people who were deployed. They were on the rule of law, international law, and the laws of war in general terms.

Mr. Glen Pearson: In fact, a lot of them don't have what's happening on the ground and what these human rights groups have reported—including the State Department in the United States—about these killings and tortures. Am I right to assume that Canada does not produce an annual human rights report?

Maybe, Professor, you would know. I know you talked about DFAIT doing its own, but do we do that in Canada? Does the Government of Canada—

Prof. Amir Attaran: I think we do produce human rights reports. This is an example of one, this “Afghanistan 2006: Good Governance, Democratic Development and Human Rights”.

If what you're asking is whether we produce a report that draws together all countries between two covers, we don't, but that's hardly necessary. What is necessary is timely, accurate information about human rights, whether it's between two covers or not.

In the United States, the U.S. State Department does produce annual human rights reports for most countries, if not all, and those are freely available on its website. In fact, the U.S. State Department report reads quite similarly to the Canadian one on Afghanistan. I don't mean to be flippant, but if you were looking into other offences that might have taken place, plagiarism might be one.

It's very clear that the Canadian report is patterned on the U.S. version. Nothing is wrong with that, despite my joke; it's actually perfectly appropriate. If the U.S. version represents accurate observations of torture, why shouldn't the Canadian version? It is a sign of the Department of Foreign Affairs' head-in-sand mentality on torture and other human rights abuses that the reports the U.S. puts freely on the website are the ones our bureaucrats keep secret.

I can add one other thing to that—

• (1525)

The Chair: Could you be very brief, Professor? We're beyond the time.

Prof. Amir Attaran: Very briefly, this cultural difficulty in DFAIT really does need to be addressed. If we ask ourselves how the Maher Arar situation arose, how the Zahra Kazemi situation arose, the Mohammed Alatar situation, the William Sampson situation, the Huseyin Celil situation—all of these are instances in which torture or killing took place, or are very strongly believed to have taken place, on Canadian citizens, and DFAIT has maintained a pusillanimous attitude on disclosure of information.

The Chair: Thank you. We'll go—

Mr. Jeff Esau: If I can add to my earlier comments about supporting the troops—and I hear what you're saying, and people can be disillusioned and stuff—I think there's very much a danger of compartmentalization of some of this knowledge, and I'll give you an example.

With reference to the report we're all talking about today, while I put a request in and I got the response, actually, on May 14, my request was to the Privy Council Office. I asked for any annual assessments for 2006 held or generated by PCO concerning Afghanistan's human rights records or performance, and the response I got back was, "A thorough search of our records under the control of the Privy Council Office was carried out on your behalf; however, no records relevant to your request were found".

What it's saying is that it never got that report, so in developing rules of engagement and how troops and other people who are going to these places are dealing with the highest level of government, the committee that supports the cabinet has not seen that report, if I read this correctly. This is May 14; the clerk can have this too.

The Chair: This is fascinating. But I do want to give the members an opportunity to ask their questions. You could perhaps piggyback a response to whatever questions are asked.

I'll go to Mr. Stanton now.

Mr. Bruce Stanton: Thank you, Mr. Chair.

Professor, you may have said this in your presentation, but what is your specific purpose or motivation behind making these requests?

Prof. Amir Attaran: I am a professor, and my job is research, particularly as I hold a Canada research chair. I am a law professor, as I mentioned, and also duly appointed to the faculty of medicine. My interests are human rights and democratic development. Afghanistan is obviously a situation that implicates both those concerns.

Mr. Bruce Stanton: Do you mean you're using it at the academic level, at the university and so on?

Prof. Amir Attaran: I'm sorry?

Mr. Bruce Stanton: It's at the academic level, at the university—for reports or research, as you say.

Prof. Amir Attaran: That is among other things, yes.

Mr. Bruce Stanton: You alleged that you believe there was political interference in respect of your applications. What specific evidence do you have to show that is the case?

Prof. Amir Attaran: I've been over that in my testimony already, and I don't think it's necessary to rehash it.

Mr. Bruce Stanton: Maybe I missed it on the way through.

The Chair: Professor, if the member doesn't remember, it would be helpful if you would tell us again.

Prof. Amir Attaran: Very well.

With respect to the Access to Information Act request I filed on January 24 and re-filed in somewhat different terms on March 29, both of which sought disclosure of the Afghanistan human rights report for 2006, and the earlier one of which sought previous years too, it was explained to me by the responsible employee for access to information in DFAIT, Mr. Gary Switzer, that he would have to send the documents he intended to disclose to me to somebody else for review before they could be disclosed. He was at the time in possession of the documents and had already decided on excisions to the documents, and he would have had to send them to somebody else. He did not tell me who it was—

Mr. Bruce Stanton: Okay, so why would—

Prof. Amir Attaran: Further, if I may finish—

Mr. Bruce Stanton: Just a moment. Why—

The Chair: Professor, let him ask the question, so he can direct you where he wants.

Mr. Bruce Stanton: I do remember hearing that part. Thank you.

Why do you conclude that it was political for this additional person to be required to review the document further?

Prof. Amir Attaran: What I was saying before you posed the second question—and I'll return to answering in the sequence I had in mind—is that the further evidence is the nature of the excisions that have been made.

To take an example, the very first sentence of paragraph one of this document—which has been excised, ostensibly on the legal authority of subsection 15(1)—reads: "Despite some positive developments, the overall human rights situation in Afghanistan deteriorated in 2006."

That sentence cannot possibly, in my opinion as a professor of law and from reading the law, be justified under subsection 15(1).

I'll give you another example. The next excision, later in the same paragraph, is cut. This is what it said before it was cut: "Extra judicial executions, disappearances, torture and detention without trial are all too common. Freedom of expression still faces serious obstacles, there are serious deficiencies in adherence to the rule of law and due process by police and judicial officials. Impunity remains a problem in the aftermath of three decades of war and much needed reforms of the judiciary systems remain to be implemented."

Nothing, sir, about that passage possibly falls within the ambit of subsection 15(1)—

• (1530)

Mr. Bruce Stanton: Professor, with the greatest of respect, this is only a difference of opinion.

Prof. Amir Attaran:—and it would only have been cut for political reasons, I believe.

Mr. Bruce Stanton: Well, that's your conclusion. I still don't see that there's evidence of it. What we have here is a difference of opinion as to how the provisions of the Access to Information Act have been applied in terms of redacting the document. I think that's a matter to be brought before the Information Commissioner, as you rightly have done.

Do I have a bit more time, Mr. Chair?

The Chair: Yes.

Mr. Bruce Stanton: In respect of the Information Commissioner, in the past you've had some experience with bringing a complaint before the Office of the Information Commissioner. I recall you mentioned, for example, that they can't order papers to be produced, and so on. I'm sure you're familiar with the fact that the commissioner does have the power to use the Federal Court, and has been successful in doing that; I think 90% of the time they are successful in compelling, in fact, those documents.

In your experience with this, how have you found the Office of the Information Commissioner to be, in terms of being able to reconcile these issues? When a complaint is brought and there's a difference of opinion and it's an ombudsman approach to resolving these, have you seen that in fact the commissioner has served the purposes of access in that regard?

Prof. Amir Attaran: I'm glad you mentioned the Federal Court.

This same document, the Afghanistan 2006 report, has been requested by plaintiffs Amnesty International and the B.C. Civil Liberties Association in their judicial review now before the Federal Court.

Amnesty International and the BCCLA requested that the document be produced in accordance with the rules of the Federal Court. The Attorney General for this government—for the respondents in that matter, who are General Hillier and Defence Minister Gordon O'Connor—objected to the disclosure of the report even to the Federal Court, citing national security exemptions.

That exception to national security—and this will tell you how confident I am in these procedures—I do not believe is a legitimate one. I believe it is simply being employed to withhold from the court this evidence. Where I assume the status of the matter is now—because in fact the judicial proceedings, according to section 38 of the Canada Evidence Act, are secret—

Mr. Bruce Stanton: Could you speak to my question about the Information Commissioner, though, please?

Prof. Amir Attaran: Yes, I will, because these both involve the Federal Court.

The Chair: You're going to have to move it along, though, Professor.

Prof. Amir Attaran: Once the Attorney General does mention a document he believes is privileged under national security, the Attorney General will make a secret application to the Federal Court to maintain it as secret—the document, that is—so it would seem to me that although we've had difficulty getting the document out of DFAIT, we are having additional difficulty, in the context of the Amnesty International and BCCLA matter, in getting it before the Federal Court.

In view of this, in view of the government's unwillingness to cooperate with both ATI requesters and Federal Court processes, I am not sanguine that the Information Commissioner will get all the cooperation he is due under the act in this investigation.

Mr. Bruce Stanton: Okay. The question really was how you feel the commissioner has been able to perform in resolving these issues, because what we've seen is, frankly, that they have been able to.

• (1535)

Prof. Amir Attaran: My answer has been that I'm not sanguine with the process.

Mr. Bruce Stanton: Okay.

The Chair: Thank you.

We now go to Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: Thank you, Mr. Chairman.

I would like to give my last two minutes to my colleague, please.

I want to thank you for coming here today. May I ask each of you to provide in writing the chronology of events surrounding the request of this report? Some events occurred in March, May and February. I would like to have the chronology of events to see how you went about obtaining the report.

Second, if subsection 15(1) of the act in no way applies to this report, who would benefit from censoring such information and why was this done?

[*English*]

The Chair: Is that question for a particular person, Monsieur Vincent, or for both witnesses?

[*Translation*]

Mr. Robert Vincent: It's for both witnesses.

[*English*]

The Chair: Okay.

Go ahead, Professor Attaran.

Prof. Amir Attaran: The document was disclosed to me, censored, in the process that I described, the timeline that I gave. Do you have a specific question on that timeline?

[*Translation*]

Mr. Robert Vincent: Who benefited from censoring this document? If subsection 15(1) in no way applies to this report, as you say, who would have benefited from hiding all this information? For what reason would such information be kept from the public or the committee?

[English]

Prof. Amir Attaran: I believe I'm not saying anything surprising in saying that the topic of detainees and their treatment in Afghanistan has been an oft-discussed one lately, certainly within the last couple of months, and one that has generated a great deal of public attention. I would also not be saying anything surprising in that much of that discussion has been embarrassing to the government. It is entirely possible that a political motivation exists to prevent the disclosure of a statement by Canada's own diplomats that torture is all too common in Afghanistan at the same time as Canada is transferring detainees to Afghanistan. I believe that would be the political motivation.

I do not have specific proof that it is occurring. That is the work of this committee to discover, and possibly the Information Commissioner as well, and I look forward to seeing what the results are.

[Translation]

Mr. Robert Vincent: The Information Commissioner told us that it wasn't him but rather the minister or the Prime Minister who had the final say on what was blacked out. If there was, in the minister's mind, a paragraph to which subsection 15(1) should not apply and the minister decided that it did apply, it was automatically blacked out and there was nothing else to be said. What do you think?

[English]

Prof. Amir Attaran: That could well be the case. I'm not aware of what happened. Obviously a requester is never aware of the deliberations that take place within government about what shall and what shall not be released under the Access to Information Act. From the requester's perspective, it's a black box; we insert the request at one end, and documents—in this case very heavily and, I think, inappropriately censored documents—emerge at the other end. What goes on in the black box is not something I am privy to, but I trust this committee can inquire into that capably.

[Translation]

Mrs. Carole Lavallée: I have two minutes left. So I want to quickly ask some questions.

First, when we see the dedication, resources, time and energy invested by the Conservatives today and previously to prevent us from doing this, it is clear they have something to hide.

The fact that the clause was not indicated next to the censored passages and that subsection 15(1) was invoked, clearly shows that it doesn't apply.

I would like a quick answer, because I have three or four other questions to ask. My question is for each of you. Are you convinced, yes or no, that illegal actions were taken?

[English]

Mr. Jeff Esau: I don't know.

[Translation]

Mrs. Carole Lavallée: Fine.

What do you think, Mr. Attaran?

[English]

Prof. Amir Attaran: Whether illegal actions were committed or not is appropriately the subject of a criminal investigation and, if the investigation reveals serious allegations, in turn, a prosecution.

Doing those things is obviously the work of others, but what I can say is that I strongly believe that some of the actions taken by persons—and I do not know who—who processed both my request and Mr. Esau's request amount to the criminal concealment of information under section 67.1 of the act. It will require a criminal investigation to bear out whether my hypothesis is correct or wrong. I do not know, but I do believe an investigation is merited based on what we know at the moment.

● (1540)

The Chair: *Merci, madame.*

We'll have Mr. Van Kesteren, followed by Mr. Martin.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

And thank you, witnesses. Thanks for waiting so long. We apologize for keeping you that long.

Professor, we're glad you heard the call to the brain drain. We just hope we get some more technical people, which is not to minimize what you're doing. We certainly are glad when people of your position and your record make it their goal to come back home and live amongst us and help us. I know that your work is very important.

I think both of you wrapped up in the last minute, and I don't have a whole lot of questions.

Mr. Esau, if I understand this correctly, we have a culture...and you've been at this an awfully long time. You mentioned Somalia. Would it be safe to assume that when somebody from the press sends somebody an access to information request, especially on something sensitive like that, there is someone just going a little squirrely on the other end? Is that safe to assume?

Mr. Jeff Esau: Gotcha.

Mr. Dave Van Kesteren: Is it reasonable to expect then that you might just get somebody who is just going overboard and being a little bit too...?

Mr. Jeff Esau: Well, it depends on the direction that they've received. In circumstances in which an issue is big enough and sensitive enough, teams are often formed, and there's an agreement amongst the teams as to what constitutes something to be withheld and what does not. So in other words, the sections of the act get reinterpreted for application at that time and place by those people. Those teams can either be overly officious, if you will, or they can be very much wanting people to see this, wanting this to have absolutely maximum openness and transparency.

But those teams are not built from the bottom. Those teams are given their marching orders from higher up the food chain, if you follow what I'm saying. You can see from the sheer volume that the patterns and the identification of a whole bunch of requests coming in, say, to National Defence about detainees will need to be dealt with in a concerted way. The concerting happens at a higher level—and perhaps with it, directions on what is to be held and what is not. I don't know.

Mr. Dave Van Kesteren: Is it the same old, same old? You said that you were involved with ATIP for a long time with the military. Is it the same old, same old—the same kind of culture that exists there? From the other end, do you find not much has changed?

Mr. Jeff Esau: I think that DND has undergone an incredible change at levels that make a difference. I think it's possible to have relapses. I think we're seeing one. I think the detainee issue has precipitated a falling back into some old ways. I can see that from the people I talk to, from the requests I make, from the answers I get, from what I'm seeing coming out of the department.

I don't have as much experience with Foreign Affairs. I suppose I've submitted about a score—15 or 20—requests to DFAIT recently, and what I'm seeing is what I would consider a very liberal use of subsection 15(1). Whether or not that is motivated by something nefarious or whether it's just people being really anal retentive or what, I don't know, but that's the pattern I've been seeing.

This document on Darfur is unreadable.

•(1545)

Mr. Dave Van Kesteren: Yes. Somalia was kind of a black eye, I think, for our military.

Mr. Jeff Esau: The bad old days.

Mr. Dave Van Kesteren: Have we made some great improvement—or should I just say improvement, you can tell me whether it's great improvement—in the military in that respect? The mistakes we made, have we learned from those?

Mr. Jeff Esau: Absolutely. For National Defence, there are a lot of really good news stories.

I look at the way things were conducted at all different levels in missions like Somalia, and some of the missions in Bosnia, in the early nineties and mid-nineties, and the support that the soldiers got, and then I look at today, and there's a big difference. But I'm not sure the difference is at the higher level—I don't mean within the military, I mean within the governing elite—as to how we want to....

The DND public affairs people are driving people nuts over in Afghanistan because they're letting the reporters go everywhere. I've written stories about just how open they're trying to be over there. I don't want to be seen to be trying to kick something that's down. I think there's a good news story, and I want to help tell it.

The Chair: Thank you.

While this is all very interesting, this is the access to information committee, not the defence committee. I'd like members to confine their questions to access to information issues, and the witnesses to confine their answers to those, except insofar as an example might be raised to discuss access to information evidence.

We now go to Mr. Martin.

Mr. Pat Martin: Mr. Chairman, let me say I recognize the pattern of denial that Mr. Van Kesteren was trying to establish here. He was going for the rogue bureaucrat theory that the Liberals used to try in the sponsorship scandal, saying, isn't it possible that the ATIP coordinator was just a little bit over-zealous or used an abundance of caution? However, the testimony we've heard is that these expert witnesses, at least one of them, believe there was political interference, which is a much different thing.

Mr. Esau—

The Chair: No, no, Mr. Martin, does the experts' opinion make it so? It is for us to decide that.

Mr. Pat Martin: Mr. Esau, you mentioned that you got a letter from the PCO saying that they had never seen the DFAIT report. This is the organization that supports the cabinet.

Now, I guess I should ask you this. Do you think it's plausible that these reports have been published year after year, and ministers have stood up and denied any knowledge of the adverse treatment of detainees, at least since April of last year, when our member Dawn Black asked these questions? Do you think it's plausible that PCO has never heard of these reports, never mind never read them?

Mr. Jeff Esau: Well, they said they haven't found any records under their control that are relevant to my request.

My belief is that there's a division within PCO that I think would very logically be the recipient of the type of report that has been released. They have an international assessment directorate that does these kinds of analyses for the government, and I have copies of them. They're heavily redacted, but they include commentary on human rights.

Mr. Pat Martin: And then ministers would be briefed as to—

Mr. Jeff Esau: I don't know.

Mr. Pat Martin: Ministers have stood up and said they've never heard of the idea that detainees may be being tortured in Afghanistan. Could it be that the PCO is keeping ministers on a need-to-know basis? Maybe the PCO reads these things and says they'd better not tell the minister about this because if the minister knew detainees were being tortured and he got asked if detainees were being tortured.... It goes from blindness to wilful blindness.

Mr. Jeff Esau: As I mentioned, this is dated May 14, so I got this yesterday, and I have not finished with this. I will be following this up, because it strikes me as so strange to get that kind of response in light of everything that's been going on with respect to the DFAIT report.

Mr. Pat Martin: It certainly strikes me that way too.

Professor Attaran, do you have anything to add?

Prof. Amir Attaran: I'd like to comment on the rogue bureaucrat hypothesis you mentioned—I believe those were your words—that one official just did not know about the report or didn't apply the act correctly.

It's important to note that the Afghanistan 2006 report, first, is not a top secret document; it's not even a secret document. It's only marked "confidential", and that's a fairly low-level classification. Since it appeared on page 1 of *The Globe and Mail* in its partial glory, three colleagues of mine in three separate government departments have told me casually that they've seen that report. So it's not simply within DFAIT; other departments have this report as well.

It's curious, though, that within DFAIT some people who ought to have seen it have not. I won't go into that before this committee, because that's a different subject. But there is some evidence from the Amnesty International matter before the Federal Court that an assistant deputy minister of DFAIT, responsible for defence and international security, on oath said she had never seen the report, which is curious. It also strikes me as unusual, to say the least, that PCO would not have records of it.

The title of the document is not simply about human rights. It's "Good Governance, Democratic Development and Human Rights". As I understand it, this year the government is spending \$200 million on development in Afghanistan, so presumably some feedback on democratic development would be warranted from the embassy in Kabul and would be relevant to be seen.

I won't get into it here because, frankly, I don't know what PCO has or has not read.

• (1550)

Mr. Pat Martin: You were given a disk with the reports from 2002, 2003, 2004, 2005, and 2006. Excerpts have been picked up elsewhere and published in the media, and you can actually see through the censored sections. You can read what was censored. Do you have any information how that may have come about? It's a rare thing to be able to read the uncensored version of a censored document when it's censored by the federal government. It's really quite amazing.

The Chair: Before the witnesses answer that, professor, in the document that you have, is that a fact? Can you in fact read sentences under what appears to be blackout or whatever you want to call it?

Prof. Amir Attaran: I'm holding a faithful copy, a faithful printout of the document that was provided to me on CD, and you see these grey boxes here, Mr. Chairman, they are opaque. They were opaque when I viewed them on my computer screen; they were opaque when I printed them. I cannot make out the words underneath there, but I have seen another copy, which was provided to *La Presse*, in which the grey is not opaque and the words bleed through and can be read. That is, however, not the copy I was given under ATI.

The Chair: Thank you. That's what I was trying to get at.

The next questioner is Mr. Dhaliwal, followed by Mr. Tilson.

Mr. Sukh Dhaliwal: Thank you.

I would like to follow up on Mr. Pearson's comments. This in no way is a comment on our troops, who are serving us proudly and in heroic circumstances, who, like us, have not been given accurate information either. So perhaps it is more a comment on this

Conservative government shielding themselves, leaving our troops to hide their own mistakes.

I'm going to get down to the question, sir, that you get all the time. You mentioned section 31, why do you think section 31 was not invoked?

The Chair: Subsection 13(1) is what I believe the witness referenced.

Mr. Jeff Esau: You're asking why it wasn't used?

Mr. Sukh Dhaliwal: Yes.

Mr. Jeff Esau: I don't know. It's certainly used by other institutions to withhold information obtained in confidence from other governments. I haven't even seen the documents, so I don't know why one section was used. I'm hoping the Information Commissioner can shed some light on that.

Mr. Sukh Dhaliwal: Professor Attaran talked about the possibility of criminal acts of withholding information being involved here. I wonder if you can explain this. I'm not very clear on this.

• (1555)

Prof. Amir Attaran: Let me approach it in a lay sense rather than an overly legalistic one.

It's something each of you can answer in your own thoughts, without necessarily speaking up on it. But if you believe that records were concealed, based on what Mr. Esau and I have said, then that's a prima facie violation of paragraph 67.1(1)(c) of the Access to Information Act, which is punishable by imprisonment or a fine. It's as simple as that.

If, hearing the story, you think that nothing was concealed, then you would have to possess the opinion that there has been no possible criminality. If you believe it is possible that documents and records were concealed, then prima facie you must believe there could be criminality.

Mr. Sukh Dhaliwal: The way I see it is that it's a very serious matter. Would you agree that we should have a first-class public inquiry into this situation?

Prof. Amir Attaran: I am in favour of any process that will ascertain why evidence in Canada's possession about how human beings were being tortured and killed by a regime to whom we were delivering human beings.... I'm interested in any inquiry that can establish why that evidence was not readily shared in response to several access to information requests, and why it is not being shared with the Federal Court in the Amnesty International and B.C. Civil Liberties Association judicial review.

That seems to be the sort of information where the stakes—human lives—are so overwhelmingly important that there is no ethical scope for paltering about what the act means. The ethics of the civil service must be to disclose information that isn't within one of the stated exemptions of the act and also has a profound public interest to be free. Evidence of torture fits that category. It should be free where it does not, as in this case, legitimately become exempt under the act.

Mr. Sukh Dhaliwal: Thank you.

Sir, do you have anything to add?

Mr. Jeff Esau: No. He's the lawyer.

Mr. Sukh Dhaliwal: Basically that's all. I think I've taken four and a half minutes.

The Chair: You have a good sense of timing.

I'm going to call on Mr. Tilson and give him a full five minutes.

I want to remind the committee that we're coming up to the two-hour mark, as we talked about with Mr. Martin. This is very interesting testimony. If either witness can stay longer and it is the will of the committee, we could proceed or simply call it a day, bearing in mind that we've been going at it non-stop for seven hours. Given the testimony, I'm willing to put that question after I hear from Mr. Tilson and give him his full five minutes.

If there are no points of order, I'd like to go to Mr. Tilson, and then we'll deal with what I've just said.

Mr. Tilson.

Mr. David Tilson: Thank you.

Professor Attaran, can you tell us the date that you requested, under the Access to Information Act, the report that's before us, which is the Foreign Affairs report entitled "Afghanistan 2006: Good Governance, Democratic Development and Human Rights"?

Prof. Amir Attaran: That was in the chronology I gave in my main testimony. Just to reiterate, I requested it first on January 24 and—bear with me, please—March 29 was the second request, yes.

Mr. David Tilson: Can you give us the precise wording? Do you have your application with you? Can you give us the exact wording that you gave? On both those dates.

Prof. Amir Attaran: Yes, all that correspondence has been given to the clerk.

Mr. David Tilson: Could you tell me, sir? I don't have that.

• (1600)

Prof. Amir Attaran: Yes. Bear with me, please.

Why don't I read my January 24 letter to you?

Mr. David Tilson: I'm interested as to what your report says you asked for, sir.

Prof. Amir Attaran: Yes, that's in it.

Mr. David Tilson: I don't need a whole letter.

The Chair: Go ahead.

Prof. Amir Attaran: Yes?

The Chair: Yes. It's short.

Prof. Amir Attaran: This is a letter to Jocelyne Sabourin:

Dear Madam:

Pursuant to the Access to Information Act, I enclose five dollars and request the following:

Please provide copies of DFAIT's annual human rights reports from 2001 to the most recent for these countries: 1) Afghanistan, and 2) the United States of America. I am aware from the report of the Arar Commission

—and I cite a specific page—

that DFAIT has released such annual human rights reports in the past to the Canadian NGO community and request that consideration.

With thanks for your kind assistance,

And it's signed by me.

The Chair: We do have that, Mr. Tilson. It will be duly translated.

Prof. Amir Attaran: That was the first request.

Mr. David Tilson: Yes.

Prof. Amir Attaran: The second request of March 29 I don't have the original request with me here, so I'm going to read from the confirmation I got back from DFAIT. And I trust their confirmation is verbatim accurate, but if it is not, that would be the reason. On that occasion, I requested as follows: "Please furnish the DFAIT human rights report on Afghanistan entitled 'Afghanistan 2006: Good Governance, Democratic Development and Human Rights'".

Mr. David Tilson: That was March 29.

Mr. Esau, can you give me the same information?

Mr. Jeff Esau: Again?

Mr. David Tilson: Yes.

Mr. Jeff Esau: Sure. On March 14, they received my request that was worded: "A copy of DFAIT's 2005-2006 annual or semi-annual report or the 2006-2007, if it has been drafted, on human rights performances in countries around the world."

Mr. David Tilson: Did you request a report on March 7?

Mr. Jeff Esau: No.

Mr. David Tilson: Okay. My final question is to Mr. Attaran.

You indicated that certain individuals in departments told you they saw the report. Is that the clean report or is that the report with blacked-out portions?

Prof. Amir Attaran: The access to information staff will, in my understanding of the ordinary course of things—but I suggest you ask Mr. Esau because of his great experience in the matter—

Mr. David Tilson: Well, I'm asking you.

Prof. Amir Attaran: In my understanding, they will see the unredacted copy and make decisions, in collaboration with others in the department, about what to withhold and what not to withhold.

Mr. David Tilson: I'm just commenting, sir—

Prof. Amir Attaran: I do not know what they saw, obviously, because I'm not entitled to see the document at that stage.

Mr. David Tilson: Sir, you made a statement that there were certain individuals in departments who told you they had seen the report, and I'm just trying to determine what report that was. Was that the clean report or the blacked-out report?

Prof. Amir Attaran: As far as I understand the process, the report begins clean and the access to information staff choose what to redact. So you will see it clean, and then they will see it as they redact it, and then they will see it last of all in the form that is provided to requests.

Mr. David Tilson: Can you tell us the names and departments that you referred to, the people who saw that report?

Prof. Amir Attaran: I have given you the names of the people who handled my file. Jennifer Nixon—

Mr. David Tilson: So that's what you meant when you said names of individuals. It was the people in the ministry or the access to information people or the foreign affairs department, whoever. Those are the people you are referring to.

Prof. Amir Attaran: Jennifer Nixon, Gary Switzer, Jocelyne Sabourin were, at the material times, employed in the access to information section at DFAIT.

The Chair: You're over time, but just to be clear—
• (1605)

Mr. David Tilson: He didn't answer my question.

The Chair: Excuse me. I'm going to get to that.

I thought, Professor, you had said that you had had discussions with people. I took it—and perhaps I'm wrong—that these were acquaintances of yours and that they had told you they had seen the report. I think possibly Mr. Tilson took it the same way. And if they were acquaintances of yours, he wanted to know whether they saw the full report or the censored report, if you know.

Now, if we've misunderstood your evidence, then I'd appreciate it if you would correct that for us.

Prof. Amir Attaran: These were acquaintances. This was not official business. What they said was, in essence—I paraphrase—"I saw the report that was on page 1 of the *Globe*", which is the redacted one.

The Chair: Sorry, Mr. Tilson, I'm just asking this.

The question then has to be, when they told this to you, what was your understanding of what they meant by "report"?

Prof. Amir Attaran: My understanding was that the report was not confined to DFAIT, that people outside DFAIT—

The Chair: Understood, but when they referred to the report, what was your understanding—the censored version or the clean version?

Prof. Amir Attaran: I do not know.

The Chair: You don't know.

Thank you.

Colleagues, we have an opportunity to go on if the witnesses are interested in staying, or we can leave. It is entirely up to the committee.

I'll ask the witnesses. Would the witnesses, or either of them, be prepared to stay a little longer if the committee wants to?

I know you want to go home for supper, Mr. Esau.

Professor?

Mr. Jeff Esau: I'm good.

The Chair: Are you okay to stay if the committee wants to stay? Is that okay with you, Professor?

Prof. Amir Attaran: Yes.

The Chair: I'd like to know, would the committee like to stay a little bit longer? In that case, I would like to limit it at this point to half an hour and then ask again.

Madam Lavallée, you have a question.

[Translation]

Mrs. Carole Lavallée: I have a question, Mr. Chairman.

What are we doing with the third item on the agenda?

[English]

The Chair: We're out of time. If we want to continue with these witnesses, we can continue for a half hour. I'm thinking that we can deal with the third item on the agenda on another day.

[Translation]

Mrs. Carole Lavallée: I do not disagree.

[English]

The Chair: He will do that only if there is consensus among the committee members to continue. If there is consensus among the committee members to continue, we'll continue for a half hour, and I'll recognize Mr. Alghabra. At the end of the half hour, I'll ask again. If we run out of questions, I'm afraid the meeting is over.

Madame Lavallée.

[Translation]

Mrs. Carole Lavallée: I would like to move a motion asking that the next meeting be televised. In order to comply with procedure, I wonder at what time I should move this motion.

[English]

The Chair: You can ask us to do that now. We'll ask the clerk to take a look to see if there's a room that has television available on our usual Tuesday slot.

Do I hear a consensus to proceed for half an hour?

Some hon. members: Agreed.

The Chair: We'll break for five minutes for a refreshment break, then we'll proceed for one half hour after that, at which time we'll see how we're going.

Five minutes, please. That will be just slightly after 4:10.

• (1605)

_____ (Pause) _____

• (1610)

The Chair: We'll call the meeting to order.

At this point I only have Mr. Alghabra on the list. If there's anyone who wishes to ask any questions, please get the clerk's attention.

I now have Mr. Stanton, Mr. Tilson, and Mr. Dhaliwal.

We are in round three, and I'll follow the list as we normally follow it, with the time. I'll try to be slightly stricter on the time so we get everybody who wants to ask a question in.

Mr. Martin, do you have a question?

Mr. Pat Martin: My recommendation, Mr. Chairman, is that we just do one complete round, which should take 25 minutes.

The Chair: Well, that's the general idea. We'll try to do that.

Mr. Pat Martin: It's just that I noticed you mentioned everyone's name but mine in terms of the list.

The Chair: Well, you're the only NDPer, and the NDP have a spot on the list, so you don't have to worry about yourself there.

Mr. Alghabra, away you go. You have five minutes, and I'm going to be very strict on time.

Mr. Omar Alghabra (Mississauga—Erindale, Lib.): Thank you very much, Mr. Chair. I'm happy to be here today.

Thank you to both witnesses.

Professor, I've been watching the questions, especially coming from the Conservative side, and all that appears to be coming forward is their just trying to create some distraction or diversion from the real issue here. It doesn't matter, really, what technicalities we're talking about; the issue here is that we have a human rights report that was blacked out, or parts of it were blacked out, and once we saw what was underneath that blacked-out section, we didn't really see any reason for it to be blacked out. That is really the gist of the matter here, and we're trying to understand why that happened. Having you both here has been very helpful for us to understand that. Regardless of all the noise, the bottom line is that we're still not sure, and we're trying to figure out why they were blacked out.

I really think this has to do with a lot more than just the detainee issue, for political reasons. There's the issue of the handling of the Afghanistan mission. Especially over the last year or so, things appear to be worsening.

So do you think, in your opinion, from what you've been observing...? I know you've alluded to it, but I want you to tell me your opinion about political interference, or the Conservatives' attempt to deny Canadians access to information that tells the whole story about what's going on Afghanistan.

• (1615)

Prof. Amir Attaran: I think there is certainly a pattern of concealing evidence about detainees and their treatment that runs up to concealing torture. It is true outside the access to information context. I don't want to get into it at length, because of the legitimate restraint that our chair has.

But outside this context, it is true that in the Federal Court judicial review filed by Amnesty International and the B.C. Civil Liberties Association, I have seen the government assert more national security exemptions than in any other litigation I have ever been close to. It is unparalleled, in my experience. And that is certainly true because a lot of what is being called national security before the courts process isn't at all national security; it's national embarrassment, for which section 38 of the Canada Evidence Act is being pressed into rough and inappropriate service.

So there is a pattern of concealment, I think, that goes beyond the access to information context.

Mr. Dave Van Kesteren: On a point of order—

The Chair: Excuse me, Professor, a point of order.

Mr. Dave Van Kesteren: I don't know if this is a point of order, but....

The Chair: Well, give it a shot.

Mr. Dave Van Kesteren: Okay. We're hearing testimony—and we appreciate these people being here—but shouldn't testimony be just that: testimony? When we get “I think”, isn't it no longer testimony but just opinion?

The Chair: Thank you for the query. The questioner did ask for the professor's opinion, and the professor is giving an opinion. It's for anyone to listen to that opinion to accept it or reject it or challenge it or whatever the case may be. The questioner specifically asked for an opinion, and the question, I think, is in order. The witness today can give an answer to that question.

Go ahead.

Prof. Amir Attaran: I appreciate the point of order that was raised. Let me be clear that I am giving an opinion, but to put the opinion in a bright light, the sort of thing that has been claimed to fall within a national security exemption, whether under section 15 of the access act or section 38 of the Canada Evidence Act, for the purposes of the Amnesty lawsuit, is something like this: despite positive developments, the overall human rights situation in Afghanistan deteriorated in 2006.

I don't for the life of me see how words like those could possibly implicate the national security of Canada. It is obvious that the national security exemption—whether out of the Access to Information Act or the Canada Evidence Act, whether before the Information Commissioner or the Federal Court—is being utterly abused to construe a sentence like that one as a national security matter.

The Chair: Mr. Alghabra.

Mr. Omar Alghabra: Professor, I'm sure you've heard this before, and there was evidence of it here today. We want to give you the opportunity to respond to people who accuse you, by raising these questions, of attempting to undermine the work of our troops. How do you respond to these ridiculous accusations?

Prof. Amir Attaran: I'd rather say less rather than more on that point. I think the accusations are so totally lacking in dignity that I don't actually want to credit them.

I will say that the Canadian Forces are professionals. We all know that. I know that. My soldiers representing my country are professionals. Professionals obey human rights law. They do not break human rights law. Part of professionalism is to obey human rights law and to show appropriate concern for incidents like torture.

When civil servants in the Department of Foreign Affairs and International Trade, without—in my opinion—legal excuse and possibly in contravention of the criminal law, withhold evidence they have of torture, they are not behaving professionally. They are behaving beneath the standard appropriate to the ethics of the public service.

• (1620)

The Chair: Thank you.

Next is Mr. Reid, followed by Madame Lavallée.

Mr. Scott Reid: Thank you, Mr. Chairman.

Thank you to our witnesses for agreeing to stay a bit longer.

In the course of our discussions today I have got copies of what I think must be.... I'm going to ask for Professor Attaran's help in figuring out these documents correctly. Good governance, democratic development, and human rights reports from previous years are very similar in format to the 2006 document, the first page of which we all saw in *The Globe and Mail*. I don't think what I have is a copy of what Professor Attaran was sent on that disk. It's blacked out, but I can read what's underneath the blacked-out sections. So I suspect it's not the copy he has and it comes from another source.

The Chair: It has to be, because he testified that he could not read underneath the blacked-out portion from his CD.

Mr. Scott Reid: That's right. So it's a separate one. I'm just going through it. I have several questions that relate to it, because I am able to see under the parts that are blacked out.

I would like to have had the help of one of our legal experts, but is the stuff that's blacked out that I can read still technically considered to be secret? This is from the 2004 and 2005 reports. Is this now actually open information? I got it from Mr. Peterson.

Prof. Amir Attaran: Is it still technically a secret?

Mr. Scott Reid: Yes, or is it now something that is actually out there? Do you know?

Prof. Amir Attaran: I don't believe that it was ever appropriately a secret.

Mr. Scott Reid: I accept your argument, Professor. But is it still technically confidential—whatever level it is?

Prof. Amir Attaran: The government, the bureaucracy, set the level of protection for documents, I don't, so that question would really have to be directed towards them. You must ask them for a definitive answer. But I think they would construe those words that are not blacked out but greyed out—they're legible under the text you have, and I don't have a copy in front of me—to still be secret. If they did not, as a courtesy to me they probably would have sent me a copy, since I requested it under ATI not long ago. They haven't sent me a copy.

Mr. Scott Reid: Okay.

That helps me, actually. Now I know how to phrase the question I really wanted to ask you without making specific references and thereby revealing something I ought not to. We are in an open session.

I'm looking at subsection 15(1). That is referred to everywhere without any additional subsections, so I get the impression that the problem you're referring to, of not zeroing in on the relevant subsection of section 15, is a long-standing pattern of behaviour with these reports. But I don't know if that's correct.

Prof. Amir Attaran: And I don't know if it's correct, because the document you have in your hand is not one that was disclosed to me. I don't know what the practice is in that document. I can only speak to the documents I've been given.

Mr. Scott Reid: Right. But the greyed-out documents you were given would have had something beside them, I think. You were holding it up, and it looked to me like it had "15(1)" or something written there. I'm just wondering if this is a long-standing pattern of behaviour.

I think we had a suggestion earlier from Mr. Esau that there's a need to go in and deal with having legislation that is a little more assertive on this. I'm just trying to get my head around this problem. That's why I asked about this subsection 15(1).

You talked about culture, and I'm wondering if this is a long-standing culture. I'm trying to get a sense of that, thus the question I'm asking you.

But I recognize the limits under which you're able to answer.

• (1625)

The Chair: I believe Mr. Esau pointed out that the Somali report, which goes back quite a ways, referenced subsection 15(1).

Or did I misunderstand your evidence? Was it more specific than subsection 15(1)?

Mr. Jeff Esau: I don't recall whether the Somali report.... I know that the exemptions were made under subsection 15(1), but we weren't the ones who were making them. So I don't know how....

Again, I get back to the idea that exemptions must be limited and specific. As to whether or not the designation "15(1)" is sufficiently specific, the view of the Information Commissioner is the first opinion I look at. I know that in other documents I have from DFAIT, as I mentioned before, it's just written as 15(1). This may be a stamp they have. Maybe they have to get their stamp fixed, I don't know; maybe it should be more than that.

So I've seen it more specific, but I've also seen it as simply 15(1). I'm just going by my own experience.

The Chair: Thank you.

Go ahead, Mr. Reid. We'll start the clock again.

Mr. Scott Reid: Thank you.

That gives me a pretty good idea, but I can't really pursue the questioning further. I'd have to go into actual blacked-out areas.

I'd like to thank both Mr. Esau and Professor Attaran. I want to say also that I recognize it was very hard for the professor in particular to respond to a question that was as fuzzy as this one was. I appreciate his efforts.

The Chair: Thank you.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: Thank you, Mr. Chairman.

Mr. Vincent will be using the last two minutes of my allocated time.

Mr. Attaran, you said earlier that you strongly believed that an inquiry was needed. There is no doubt that an inquiry is called for, but it remains to be seen whether the RCMP will act. By defeating, on a majority vote, all of the subamendments seeking to hold the inquiry in camera, this committee today voted to hold a public inquiry.

If it becomes an RCMP inquiry, we will never know what really happened. As I am sure you will appreciate, what we are doing here today is very important for how this will all play out.

I would like to come back to the fact that some people have something to hide, some people have a guilty conscience. Our Conservative colleagues, amongst others, have done their best to prevent us from speaking with you. Then there is the fact that it was never made clear which paragraphs of subsection 15(1) were being relied upon—that is another anomaly.

When this report was circulated, somebody somewhere must have read it and been shocked by it. There is at least reason to criticize the government, because the report contains information on the torture of Afghan prisoners, a violation of the Geneva Convention. Why did nobody in the department sound the alarm? Why did nobody act when the alarm was raised?

Somebody somewhere—a politico or otherwise—failed to make this information public and failed to remedy the situation that we are now examining in the House.

Could it be that there was an attempt to keep this report secret? Could it be that it was outrageously censored? Does this government have something, someone or some other country to protect? Perhaps it has plagiarized reports produced by another person or country. Perhaps the government wants to protect people in Afghanistan who did not do their job properly and thus avoid blame.

[English]

The Chair: Those are highly speculative questions. Does either of the witnesses want to go there, and if so, which one?

You don't have to answer the question.

Mr. Jeff Esau: I don't think I can give an answer as to why somebody would do something or not do something.

To go back to the earlier part of your question—and I don't know if you've ever worked in government or not—when you're working in the federal civil service, either in uniform or as a civil servant, and you see your minister being zeroed in on day after day about a certain issue, then it tweaks an extra level of sensitivity and caution around that. I said earlier in my testimony that, according to people I have spoken to within government, within several institutions, there is a chill that goes through when this kind of thing happens. How do people react to a chill? You should have people in here and ask them those questions.

• (1630)

[Translation]

The Chair: Mr. Vincent.

Mr. Robert Vincent: Please carry on, you were on a roll.

Who would want to hide things to protect the minister, and why?

[English]

Mr. Jeff Esau: I think everybody has a level of professionalism and ethics, and they want to do a good job. They want to do the things that they're asked to do. In the military it's perhaps even more pronounced, because everyone wears a rank, and you want to be seen to be carrying out orders efficiently and effectively, solving problems, and all the rest of it.

Quite apart from getting into any speculation about any nefarious motives, which I'm not convinced exist here, I think it's just—and somebody used the word earlier—an abundance of caution. I think

people freeze up a bit when these things happen, and they may start acting in ways in which they wouldn't normally, and you can see that in the nature of the documents that are released. Documents on detainees that I received in June are much less redacted than detainee-related documents that I'm getting now. In fact, sometimes I get two versions of the same document—a version that was released in June, and a version that's released now, and one you almost can't read because it's been so redacted.

Part of my job as a researcher is to go through and compare, and to keep track of changes. That's why I said I'll be interested to see what's waiting in my mailbox at home, and, if they sent me a copy of the redacted report we're discussing today, whether or not the redactions are going to be the same as the ones that were given to the professor.

The Chair: Could we have a very brief response, please?

Prof. Amir Attaran: I agree with Mr. Esau. I cannot say what actual motivations are. I cannot crawl into somebody's head and say, oh, that was the motivation they had at the moment they didn't act. I can give possible, hypothetical motivations.

One that has not been discussed, which I think you need to consider, is that of two of my colleagues, Professor Michael Byers and Professor Bill Schabas. They have expressed the opinion that Canada's transferring detainees when it was known that they would possibly be tortured is highly suggestive of war crimes, and those would be war crimes committed by Canadians. It is a war crime even if you're not the torturer, according to Professor Byers and Professor Schabas. It's a war crime if you're aiding and abetting the torture, i.e., by transferring.

It is possible that some information is being withheld because it is now understood that the consequences of the transfers, perhaps, are very much more troubling than was the case when the transfers initially started. The piece of evidence that—

The Chair: We'll leave it at that, then. Thank you.

We have Mr. Tilson, followed by Mr. Martin.

Mr. David Tilson: Mr. Attaran, I'd like to again ask you the question. You indicated that Ms. Nixon, Mr. Switzer, and Ms. Sabourin told you that they saw the report, and they work for the system. But then you indicated that there were some acquaintances, plus departments. Can you tell us who those people are?

Prof. Amir Attaran: No, I can't.

Mr. David Tilson: Why is that?

Prof. Amir Attaran: That was not an official function they were performing. They were commenting on *The Globe and Mail*, not commenting on an access request.

Mr. David Tilson: Sir, you told me these people have seen the report. I'd like to know who they are. That's your testimony. You said these people have seen the report, and I believe the committee is entitled to know who they are.

Prof. Amir Attaran: I don't believe.

Mr. David Tilson: So you're not going to tell me?

Prof. Amir Attaran: I'm not going to tell you. They're not people I know well and they're federal civil servants, and I will not be implicating them in a way that would be harmful to their careers.

Mr. David Tilson: Which ministry do they work with, sir?

Prof. Amir Attaran: They work with, I mentioned—

Mr. Sukh Dhaliwal: This is the wrong thing.

• (1635)

The Chair: [*Inaudible—Editor*]...questioning.

Mr. David Tilson: Which minister do they work for, sir?

Prof. Amir Attaran: I don't know.

Mr. David Tilson: Do you know they work for the government?

Prof. Amir Attaran: They claim so, and in front of the committee I'm not going to get into cocktail conversation of people I do not know well. I have no way of knowing if they were even telling me the truth.

Mr. David Tilson: But you know their names?

Prof. Amir Attaran: Not even first and last.

Mr. David Tilson: Okay, so you don't know people who have seen the report?

Prof. Amir Attaran: I have met people.

Mr. David Tilson: You have met people, so could you tell me who they are?

Prof. Amir Attaran: I've told you no.

Mr. David Tilson: You're not going to tell me?

Prof. Amir Attaran: What part of that don't you understand?

The Chair: Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: I have a point of order, Mr. Chairman.

The member is harassing the witness. The witness does not remember. He has answered the question. There is no point in going over and over ground that has already been covered and asking for additional information.

[*English*]

The Chair: That's not a point of order. He's entirely in order in asking. If the witness chooses not to reveal or answer the question, then it's up to the committee at a later time to decide what, if any, action the committee chooses to take with respect to that refusal. Just because you, on that side, feel the witness is a little uncomfortable doesn't mean the question is out of order.

Carry on, please.

Mr. David Tilson: Sir, I'm going to ask you one more time to give me the names of the people. This is very serious. You and Mr. Esau have come to us and said there has been a breach of the law, and this committee is trying to determine if the government broke the law, if certain bureaucratic figures broke the law, if members of the public broke the law. That's what we're looking for. Part of this investigation is to determine if anyone broke the law.

You've told us you've talked to certain people who saw this report, and I'm going to ask you one more time, will you be prepared to give us the names of those people who have told you they have seen this report?

Prof. Amir Attaran: Do not, sir, make a silk purse out of a sow's ear. What I was told in a dinner setting, in a cocktail setting, in a

social setting unrelated to work, by people whom I do not know well enough to assess their credibility, was that they had seen a document in *The Globe and Mail*, and it was a document they thought they had seen at work. I have no way of knowing whether they were truthful, and—

Mr. David Tilson: I'm going to ask you—

Prof. Amir Attaran: Let me finish, if I may, sir. If I may finish—

Mr. David Tilson: —just so you understand my—

Prof. Amir Attaran: Mr. Chairman, may I finish my response?

The Chair: I think you've given your answer, and we'll let Mr. Tilson make his point.

What is it?

Mr. David Tilson: My point is that the witness appears not to be prepared to give me this information, and we'll let the record show that.

Prof. Amir Attaran: The witness is not in possession of the information. If you asked me, for instance, to provide a first and last name of one man who I recall being five-foot-eight, perhaps, in height, I wouldn't be able to give you—

The Chair: The answer was no, I believe. I believe that's what you said, was it not? You were asked if you could provide the name, and the answer was no.

Prof. Amir Attaran: Yes.

Mr. David Tilson: I can bet you anything that—

The Chair: Mr. Tilson, you still have some time.

Mr. David Tilson: No, that's all I want to know. The record shows he's not prepared to give me that information, and well, the record shows that. That's fine.

The Chair: Mr. Martin.

Mr. David Tilson: He can take my time, sir.

The Chair: Oh yes, sure. Mr. Stanton, by all means. We have two minutes left.

Mr. Bruce Stanton: Okay, I have just one quick one here.

Professor, you referenced section 67 a couple of times. You used a couple of terms: “concealing records” and “concealing documents”. You referenced the fact that certain excerpts or excisions, I think is the word you used, were taken out of certain documents. Is section 67 concealing an entire document, or even specific segments of it, or both?

Prof. Amir Attaran: Let me be exact. Section 67 uses the word “records”, not “documents”, so that is the proper language of the act.

Mr. Bruce Stanton: So how does that square with—and we're getting into a legal question here, I understand—sections 13, 15, 21, all of which enable, under law, the withholding of certain components of the reports that are provided under access to information?

Prof. Amir Attaran: I'm going to pass that to Mr. Esau since he knows that area better, but I will say this. In the constellation of what happened overall, at one time the entire document was concealed when Mr. Esau was told that it didn't exist, that Canada didn't produce human rights reports. At another time, the entire document was concealed from me when the department went into what's called the "deemed refusal" and elapsed the timeline without taking an extension. At a later time, only excerpts were withheld. So at different times, either the whole document or only excerpts have been concealed.

As to the fine points of the operation of the act, I'll pass to Mr. Esau.

• (1640)

Mr. Jeff Esau: Yes, I think that has to be adjudicated. That's a legal question. I think any institution that withholds information has to have a reason, and the Information Commissioner will come in and ask for the rationale. It's the injury test, where if you can make a reasonable argument—I say reasonable and acceptable to a legal mind—that revealing such and such information could be injurious to the ability to conduct international affairs or international security, or whatever, then that determines whether or not there's criminality.

I'm not a lawyer, but I suspect that "wilfulness" and "gross misconduct" are terms...then you start getting into criminality as opposed to administrative inefficiencies.

The Chair: Just to be clear, Professor, we're talking about paragraph 67.1(1)(c), I think. I think you had referred to that. I just want the committee to know there are two sections 67—one is subsection 67(1), the other one is subsection 67.1(1), etc.—and I think you were referring to the latter.

I just want the record to be clear that it's section 67.1 that you were referring to, Mr. Stanton. And I know that you were, because you made that specific point earlier.

Thank you.

Mr. Martin.

Mr. Pat Martin: Thank you, Chair.

I'm interested in comments and testimony where both of you, I believe, said it was your testimony that subsection 15(1) is being abused or overused, or used in areas that weren't appropriate. That's where I find the document that was made available to us very helpful, where you can actually see what's blacked out and what excuse they use.

Subsection 13(1) is used three or four times that I can find, and maybe appropriately, because it talks about information given to this government by the Afghanistan human rights commission—in other words, from another government. So that would make sense.

But it also uses paragraphs 21(1)(a) and 21(1)(b) in whole sections. Now, I understand that is advice to ministers or cabinet confidences. What are paragraphs 21(1)(a) and 21(1)(b) for?

Mr. Jeff Esau: There are some very fine points. This is a very controversial exemption that allows, on a discretionary basis, for institutions to withhold information that is deemed to be considered

advice to the minister. So this is not to be confused with a cabinet confidence, which is an entirely separate issue.

Advise to the minister can be interpreted very broadly or it can be interpreted very narrowly. There are provisions within section 21 that basically say if you are talking about a program or a policy that has not yet taken effect, you can withhold information pertaining to the advisability of doing so. It drives people crazy to see a section 21 exemption because the latitude for interpretation is so incredibly great.

Mr. Pat Martin: That's worrisome.

The Chair: Excuse me for a moment.

Colleagues, I had said we would go for another half an hour. Mr. Martin has two and a half minutes left in his questioning and we've done the half hour. I also have Mr. Dhaliwal and Mr. Stanton. I propose that would be the end of the list. Is it the will of the committee to allow those three people to ask their questions?

Some hon. members: Agreed.

The Chair: I'm sorry to interrupt. Go ahead, Mr. Martin.

Mr. Pat Martin: I'm concerned when you say that subsection 15(1) is being abused. It seems to be the default exemption—

Mr. Jeff Esau: Mr. Chairman, I said it was being liberally used, like "overly", like "very freely", not—

Mr. Pat Martin: Perhaps it was Professor Attaran who used the term "abused", but I'm inclined to use the word "abused" in my own.... I can take a little more latitude from my seat perhaps than you can.

In the last minute I have, I'll ask a point of clarification.

One of the excuses the government side members used as to why we should not hear your testimony today is they felt that by interviewing you it may somehow interfere with the ability of the Information Commissioner to investigate the complaints. In other words, by having these two studies running at the same time, there may be tainted evidence, etc.

There is the rule that what you say here is privileged and it can't be used against you, first of all, but if a person first learns of an offence through privileged testimony, it's tainted evidence in terms of pressing charges. Do you have any views on whether or not your testimony here today will interfere or jeopardize the investigation by the Information Commissioner or any subsequent investigation by the RCMP, if that's necessary later on?

• (1645)

Mr. Jeff Esau: Do I think it will? No, I don't. I don't think we're talking about anything that due process in other forums wouldn't uncover or question. I'm giving the very best evidence I can based on my experience and my activities. I'm not being really subject to cross-examination. There may be higher levels of credibility that other people in decision-making areas would like.

So I don't think what you're doing here is interfering with the Information Commissioner. The Information Commissioner has a representative here who's keeping track of what's going on, and I'm sure that our discussions will inform the decision on how to proceed.

The Chair: It's interesting information, isn't it, Mr. Martin? You're out of time, though.

We'll have Mr. Dhaliwal, followed by Mr. Stanton. Try to keep it to five minutes, both for the questions and the answers.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

Mr. Tilson was asking Mr. Attaran for the names. I can bet you that none of the members of Parliament in this room, never mind people around the dinner table, would be able to remember the names of all 308 MPs. But that's besides the point. I'm not going to go there.

I'm coming back to Mr. Attaran. You mentioned Amnesty International last week. Do you feel that the government was obstructing by not disclosing the information on this Amnesty International lawsuit?

Prof. Amir Attaran: The Amnesty International and B.C. Civil Liberties judicial review that is pending before the Federal Court is a matter of national importance. That lawsuit seeks to prohibit the transfer of detainees to Afghanistan or any other country where there is a substantial risk of torture.

The fact that the Attorney General has been instructed by this government to employ the national security exemption of section 38 of the Canada Evidence Act— actually, I believe it's section 38.01— and has instructed witnesses on cross-examination to not answer very basic questions on their affidavits, citing national security, is undeniably an obstruction of that lawsuit.

I repeat what I said before. In all the cases I have either participated in or watched closely, I have never seen the national security exemptions being used more heavily than in this case.

This is not a frivolous case. Amnesty International has a Nobel Peace Prize. They probably do have a legitimate interest in human rights around the world, I would say. That they are being obstructed in their legal proceedings by the Attorney General, acting at the instruction of this government, is absolutely unconscionable.

Mr. Sukh Dhaliwal: You also mentioned Madam Jocelyne Sabourin of DFAIT. What was your conversation with her when you asked her to reconsider the exemptions?

Prof. Amir Attaran: As I said in my main testimony on April 23, Ms. Sabourin disclosed the Afghanistan 2002 through 2006 reports to me, and that evening I did ask her to reconsider the exemptions, including the section 15 exemptions we've been talking about today.

I indicated that I thought the exemptions were heavy-handed, and I asked her to reconsider and to do so within a day, which she did. And she made absolutely no change, none whatsoever, to the exemptions. I told her that if she could not make a change to the exemptions, if she could not consider disclosing more information, as I was certain would make sense for a document of this kind, I would complain to the Information Commissioner, first, and second, I would inform *The Globe and Mail*.

In response, Ms. Sabourin said that I was “threatening” her, which was a very curious response, I thought. If a citizen using the Access to Information Act says either give me information or I will complain to the Information Commissioner and I will go to *The Globe and Mail*, that, to me, is not a threat. Yet her response was that

I had threatened her and that she was going to keep a note of that on the file.

I pointed out to her that actually a citizen thwarted in an access request going to the Information Commissioner and going to the press is not called a threat, it's called democracy, and she ought to get used to the fact that democracy works, with the commissioner as a tool and with journalists as a tool.

But the reason I recount the story is that when you do have Ms. Sabourin in front of this committee, you may wish to ask her, in order to have a glimpse into her mindset on access, why she would construe a promise to go to *The Globe and Mail* and a promise to go to the Information Commissioner as a threat.

• (1650)

The Chair: The final questioner is Mr. Stanton, for five minutes.

Mr. Bruce Stanton: Thank you, Mr. Chair.

I'll go first to the professor, and I have a final question for Mr. Esau, thankfully enough.

One thing you said caught my interest. In the course of your statements about Amnesty International and the B.C. Civil Liberties Association going to court on this question, you said that the Attorney General had been instructed by this government to contest and/or obstruct or appeal the court proceeding. That came as a bit of a surprise to me. The government doesn't typically instruct the Attorney General. Those decisions at the judicial level are handled, as I understand, independently. The Attorney General makes a decision to proceed.

Is there something incorrect about that statement?

Prof. Amir Attaran: The Attorney General is the Crown's lawyer and, as with any lawyer, is instructed by his or her clients. The respondents in the Amnesty International and BCCLA judicial review at Federal Court are the Minister of National Defence—i.e., the government—and General Rick Hillier, Chief of the Defence Staff. So it will be they who are instructing the Attorney General.

Mr. Bruce Stanton: You're assuming the logical order of that action.

Prof. Amir Attaran: That's right, and one of them, of course, is a minister of the Crown.

Mr. Bruce Stanton: Okay, I appreciate that.

Mr. Esau, I didn't get your initial chronology. You outlined your background, and so on, and your distinguished career in the Canadian Forces, which we're all very proud of.

How long have you been on this access to information beat?

Mr. Jeff Esau: That's a good question.

I started doing it after I got out of the military in 2000. I was medically released due to a service injury. One of the things they want you to do in your transition to civilian life is something within your skill set and capabilities. This prevents somebody who may be a pipefitter in the military and who wants to go out and be a brain surgeon from saying, “You need to pay for all my education.”

So this was something that was very marketable for me.

Mr. Bruce Stanton: I'm sorry, I don't want to rush you along, but I only have five minutes and I want to get to my question.

So for about the last seven years, you've been working this. You described a culture that exists within certain departments. You said, for example, that some departments are quite willing, but sometimes there's some resistance, so that when the ATI coordinator actually goes to get the documents there can be a problem.

In your estimation, in the last seven years, have you seen a substantial change in the way that culture has evolved? Has there been anything, for example, in the last year or so that has changed as compared with, say, the early years in which you began to work in this field?

• (1655)

Mr. Jeff Esau: I think the things I've been asking for under ATI over the last six months to a year have been much more politically sensitive than anything I had been doing up to that point. So it's difficult to know the baseline. When you're asking about stuff that's fairly innocuous, then the information flows more easily; the requests are answered faster, and they tend to have fewer exemptions. But when you're dealing with something that is more obviously—

Mr. Bruce Stanton: So the sensitivity of the subject perhaps might drive a different type of response?

Mr. Jeff Esau: Absolutely, in my opinion.

Mr. Bruce Stanton: That's all I have, Mr. Chair.

The Chair: Thank you so much, Mr. Stanton.

Witnesses, on behalf of the committee, this has been a very long and challenging day for us all. We appreciate your patience in waiting for us to deal with the procedural matters. We appreciate your giving us your evidence and staying, in fact, a quite a bit longer.

Some hon. members: Hear, hear!

The Chair: I want to congratulate the committee in its entirety for its stamina, given that we've been at it since 9 a.m., so it's been a full work day. I think the taxpayers got their money's worth today.

I want to wish everybody a happy and safe long weekend—and break, working in the riding. We will see you after the break week.

Once again, witnesses, thank you so much.

We're adjourned.

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