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Chair

Mr. Paul Szabo

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● (1535)

[*English*]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): I call the meeting to order.

This is the 23rd meeting of the Standing Committee on Access to Information, Privacy and Ethics. Our order of the day is our study on Access to Information Act reform and the 12 so-called "quick fixes" that were presented to us by the commissioner.

Our witnesses are Mr. Robert Marleau, Information Commissioner; Andrea Neill, assistant commissioner, complaints resolution and compliance; and Suzanne Legault, assistant commissioner for policy, communications, and operations.

Welcome back, Mr. Marleau, and welcome to your colleagues.

The committee, as you know, has been working through a similar exercise with the Privacy Commissioner. We think our approach has been useful and probably a good model, and we're going to try to follow that through. At this point, now that we've had witnesses and you have been able to follow the opinions and dialogue at committee, the committee would like to hear from you again, whether there's rebuttal, clarification, or concurrence, as the case may be, to ensure that the committee understands your perspective in the context of the witnesses' and the members' concerns that have been raised.

I understand that you would like to lead us through a little bit of a presentation, and I'm sure the committee members would also like to ask some questions, so please proceed.

Mr. Robert Marleau (Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chairman.

[*Translation*]

Thank you, Mr. Chairman, for inviting me to address you once again on the issue of the Access to Information Act reform.

[*English*]

Since my appearance before you in March to discuss the modernization of the act, you've heard the views of a number of witnesses, as you've just underlined: access to information users and experts, representatives of interest groups and civil society, some of my provincial counterparts, and the Minister of Justice and his representatives.

I found their testimony most interesting and useful. For your convenience, I've prepared and circulated a table with the views of the witnesses on the 12 recommendations. This table, I should say, has not been vetted by the witnesses. We did rely on our own interpretation of their positions.

By way of a quick summary, the green represents agreement with the recommendations or partial agreement with the recommendations; the yellow represents reservations expressed; and the red represents opposition.

I won't comment specifically on the witnesses' positions, but I will certainly be happy to take questions as you get a chance to acquaint yourselves with the document. I will, however, address one fundamental point that I believe requires clarification.

During his appearance before the committee last month, the honourable minister stated in somewhat strong words that the act in its current form is a strong piece of legislation that equals any first-rate access to information legislation around the world. Although I agree, Mr. Chairman, that Canada blazed the trail in the early 1980s with the passage of this statute, I do not agree, with all due respect, that Canada continues to be at the forefront today.

To use a figure of speech, the federal Access to Information Act is, if you wish, the grandmother of access to information laws. She's created a steady system based on sound values and has established a number of governing rules to assist in the release of information. However, she's tenacious and stubborn, and despite advice to keep up with the times, she's failed to adapt to an ever-changing environment and remains anchored in a static, paper-based world. She is somewhat technophobic. She has weakened and slowed down over time, and she has not followed a rigorous exercise regime. She now uses a walker and will soon be in a wheelchair. There's no doubt in the extended family's mind that she's in need of a hip replacement to be fully functional again.

The cold reality is that Canada's regime has not aged well. It lags behind the next generation of laws. The laws include features such as universal access, a wide coverage of public institutions, tight timelines for processing requests, a strong oversight body with binding powers to order the release of information, a public education mandate, and access to cabinet records for review.

The next generation of laws also makes use of modern technologies to proactively disseminate information. These international standards are enshrined in the right-to-know principle drafted by article 19. They are endorsed by the United Nations and the Organization of American States as well as the Atlanta declaration for the advancement of the right of access to information, spearheaded by the Carter Center in the United States.

My 12 recommendations represent an important first step in improving the functioning of the access to information regime and in catching up to more progressive regimes both nationally and internationally.

This list is by no means complete. The recommendations tackle only the most pressing matters.

[*Translation*]

Before I conclude my presentation, Mr. Chairman, I would like to follow-up on my last appearance regarding the 2009-2010 Main Estimates. I indicated at the time that the planned spending did not reflect additional funds requested and included in Supplementary Estimates (A), which were tabled the day following my appearance.

[*English*]

I won't go into the details now, but I understand the committee wishes to have me back next week to discuss the specific issues related to funding, and I'll be happy to do so.

[*Translation*]

Once again, thank you, Mr. Chairman, for inviting me to talk about the reform of the Access to Information Act.

We would be pleased to answer any questions you may have.

[*English*]

The Chair: Thank you, Mr. Marleau.

The spreadsheets you've given us are very helpful. The colour coding tells a story in itself, and we'll find that very useful in our review.

With regard to the supplementary estimates (A), I understand next Wednesday has been tentatively set aside.

We'll move now to our questions.

Mr. Wrzesnewskyj, seven minutes, please.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you, Chair.

Thank you, Commissioner, for appearing before the committee once again.

Commissioner, one of the issues that I would assume your recommendation number 3 would address is what has been called "amber-lighting". I'd like to focus on the concern I have with amber-lighting of member of Parliament requests.

The minister was before us and, as you've mentioned, he provided quite a rosy picture of the current situation. Because the minister left early, I questioned his officials on this specific issue of amber-lighting. Mr. Denis Kratchanov, when I asked him whether he agrees with the policy of amber-lighting, slowing down members' access to information requests, seemed to indicate that your office had conducted an investigation. Let me quote him. He said:

> I think the Information Commissioner conducted quite a lengthy investigation a few years ago. Actually it was completed last summer, I think, because of a complaint of the Canadian Newspaper Association. The commissioner himself recognized that there was nothing wrong....

I'm perplexed. We heard from yourself, from witnesses, that in fact amber-lighting does occur, that it's a problem, and it's a problem that needs to be addressed—and hopefully these recommendations will address it—yet the Minister of Justice's official seemed to indicate that your offices found no such thing going on, that there wasn't a problem.

Towards the end of that same meeting, I once again tried to shake things out on this issue, and I referenced it by saying:

> ...you have the elected representatives of the people, the very representatives that people have elected and have chosen to represent them, being amber-lighted by that same government...

and

> Does this not show a pattern of secrecy that's just unacceptable and is fundamentally undermining the principle of transparency in a democracy?

The response from the official was, "We're not going to comment on that."

I'm very worried about what is going on with this amber-lighting. I'd like some clarity. Is it going on? It seemed to be indicated to us that it's not going on, that your office has investigated this. I'd like to know what exactly was found. Is this something that we should look at, and perhaps even have a specific recommendation on?

● (1540)

Mr. Robert Marleau: The short answer to your question, "Is it going on?", is yes. It is and it was.

We had a complaint from the Canadian Newspaper Association about amber-lighting for press-based or media-based requests. We did a very lengthy investigation, going back to 2004.

Our annual report, which is coming up very shortly, will again talk about that. We found that (a) it was going on and (b) the media was not the worst-treated group. Parliamentarians and lawyers were the worst-treated groups in terms of delays because of amber-lighting. Amber-lighting is related to delays caused by the fact that the department wants to prepare responses or communication lines or briefings for ministers, etc.

What I said was that I had no problem with amber-lighting as a concept where a department wants to prepare itself to respond to this information being made public so long as it is done within the prescribed timelines of the statute, and that the requester receives, without any prejudice to his request, the information required in the time required.

Our findings concluded in three recommendations to the Treasury Board. One was that they pay attention to the amber-lighting where it's going on. Some departments were doing it with no delay whatsoever; others were doing it with considerable delay. We recommended (a) that it stop in terms of delays and (b) that Treasury Board monitor this and report on it as well as promulgate or promote better practices where some amber-lighting may be going on.

There are two views out there. Some of my provincial colleagues are dead set against amber-lighting as a concept. I view it as an internal management issue of a department. It probably is even good for the public interest that a response is ready by the time it's made public, but it has to be done within the terms of the legislation.

As far as parliamentarians are concerned, I'll express a personal view. It's unfortunate that parliamentarians interacting with government have to resort to the statute to get information.

The Chair: You have a little over a minute left for questions and answers.

Mr. Borys Wrzesnewskyj: I'll move on to recommendation 8 and cabinet confidences. It appeared that the minister was reluctant on this particular recommendation.

Of all the Westminster-style parliaments around the world, I understand that only Canada and South Africa have a policy of not allowing access for what they label as cabinet confidences. Has there been an issue, for instance, in the mother of parliaments in the U.K. with allowing that sort of access, and what sorts of benefits have been provided by providing that sort of access?

● (1545)

Mr. Robert Marleau: First of all, in terms of whether Canada and South Africa are the only two countries that do not provide for it, I don't have that information at hand. I know that South Africa does not. I know that New Zealand does and that in Australia recommendations have just come forward from the government for it to happen, and the U.K. does it.

In the U.K., there is I think a fairly recent landmark decision by the commissioner to release earlier than the statutory provided time limit of 20 years for cabinet documents to be released, and they were. In New Zealand, it has been going on for years, and the country is being governed I think pretty effectively.

It's not just a question of making all cabinet confidences public. It's a question of turning an exclusion into a discretionary exemption.

[*Translation*]

The Chair: Mrs. Thi Lac.

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good afternoon, Mr. Marleau. I am pleased to see you again before the committee.

I will save some of my questions for your next appearance, next week.

You have explained very well that the Act is obsolete, since it is more than 25 years old. Also, if we want to improve the Act and make it more effective, we will have to deal with issues that did not exist 25 years ago such as the fight against terrorism, identity theft or cybercrime. The arrival of Internet means that the Act has to be reviewed in order to take account of all those changes.

Like my colleagues, I also want to congratulate you for the information you have provided us and especially your color-coded table which is very useful. We appreciate that.

Let us come back to this table which is very comprehensive. Green means that you agree with the recommendation and striped green means that you agree with reservations. Red means that you disagree. Yellow means that you have reservations, and white, that you make no comment.

I want to underline two things. Let us begin with recommendation 11 which is “that the Access to Information Act allow requesters the option of direct recourse to the Federal Court for access refusals”. I see that there is no recommendation in green in the whole of the table.

Could you explain your position on that recommendation? Do you disagree with it, do you agree or do you have a more nuanced position about what the witnesses have told us relating to allowing requesters to have direct recourse to the courts?

Mr. Robert Marleau: First of all, I want to explain the meaning of the colors. Green refers to witnesses who have agreed with my recommendations, and striped green, those who have agreed with reservations. Red refers to those who are in opposition and yellow means that the Minister has requested more time or an in-depth study.

As for recommendation 11, it seems that the majority of witnesses, especially those who are part of the wider community of users as well as my provincial colleagues, are in agreement with the idea of allowing requesters direct recourse to the courts. However, some have suggested it be done on the basis of providing the Commissioner with the power to make orders, which could be reviewed by the courts.

So, the colors refer to the witnesses who agreed or disagreed with me.

Mrs. Ève-Mary Thaï Thi Lac: All right. Thank you for this clarification.

I have noticed also that recommendation 3 is the one that has the less green, which means that it has the less support. Most of the witnesses were in agreement but conditionnally. One was totally opposed and another had reservations.

Why do you think recommendation 3 had so little support from the witnesses, contrary to the other recommendations?

● (1550)

[*English*]

The Chair: If I may, is the colour coding in the French version still self-evident?

Mr. Robert Marleau: Yes.

The Chair: Because what was just stated here doesn't seem to agree with what I see here.

Green, whether light green or dark green, is “agree”. The hatched one, actually, is agree...and even more than that; go further than the recommendation.

They're all green, except the minister has some reservation, and there is one dissension.

For number 3, is that how we should look at that?

Mr. Robert Marleau: Well, yes.

[*Translation*]

As far as recommendation 3 is concerned, striped green means that my recommendation does not go far enough. Those witnesses want the Commissioner to have ful order-making power. That is what makes it different from the others. The minister had expressed some reservations about the potential costs for the courts. Mr. Drapeau wanted to maintain the status quo, for his own reasons.

Mrs. Ève-Mary Thaï Thi Lac: You say that most of the witnesses thought that you did not go far enough with that recommendation?

Mr. Robert Marleau: Are you referring to recommendation number 3?

Mrs. Ève-Mary Thaï Thi Lac: Yes, recommendation number 3.

From what the witnesses have told us, do you think that recommendation should remain as it is? Did the witnesses provide arguments that convinced you to go further or have you maintained your position?

Mr. Robert Marleau: I fully agree with all the witnesses who have stated that the Commissioner should receive full order-making power, both on administrative issues and on refusals.

The strategy I had developed for you about those 12 recommendations was based on what I believed would be feasible in the very short term. To my mind, granting full order–making power to the Commissioner on administrative issues would not change the nature of the Act. Furthermore, I believe that recourse to the courts would not be necessary as is the case in jurisdictions having full order–making power.

If I remember my testimony, I had suggested moving in stages. First, recommendation number 1 would have to be accepted and then, five years later, full order–making power would be considered.

Mrs. Ève-Mary Thaï Thi Lac: All right.

The fact that this power would only apply to administrative issues would mean that, if recommendation number 1 was to be reviewed in five years, that would be part of one of the recommendations at that time.

Mr. Robert Marleau: Exactly. The committee would make an assessment at that time.

Mrs. Ève-Mary Thaï Thi Lac: Thank you.

[*English*]

The Chair: Thank you.

Mr. Siksay, please.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Chair.

Thank you for returning to go over these recommendations again with us.

I wanted to continue on number 11. I know the bar association, when they appeared, were concerned that the ability to have direct access to the courts would be limited by the financial resources of the person who was trying to forward their complaint in that way. That caused the bar association concern about the expense involved and how that would limit people's ability to do that. It seemed to make an argument for, again, having a full order-making power in that instance.

Can you respond to that specific concern?

Mr. Robert Marleau: To that specific concern, I'll respond as follows. This recommendation is made on the basis of some representations we had in our consultations. For those who have the resources and wish to proceed quickly to court to get their resolution, we still would keep within the statute the current provision where, once the commissioner has investigated, he can take a case to court on behalf of a citizen, a requester, so there's no loss of access to the court because of costs.

The current regime allows me to go forward, with the requester's permission, to the Federal Court and test the case right up to the Supreme Court, at no cost to the individual. However, in the case of corporations, let's say Canada Post wants something, another company wants something, and they wish to go straight to the court and duke it out there, bypassing my investigation, that's why we made that recommendation.

There are requesters, users, who've made those proposals. But it's not one or the other, it's both.

● (1555)

Mr. Bill Siksay: Okay.

I want to come back to a couple of things. Again, the Canadian Bar Association, Mr. Fraser, and Mr. Whalen from the New Brunswick ombudsperson's office both raised the issue of solicitor-client privilege and concerns that nothing be done that would interfere with that, in the case of the bar association. But Mr. Whalen also went through some of the recent jurisprudence on that issue and was concerned that there be some mechanism for verifying those claims of solicitor-client privilege. I'm wondering what your response to that particular issue is. I'm not sure it's one we've discussed in your earlier appearance, Mr. Marleau.

Mr. Robert Marleau: As I recall, I think you've referred to what's known as the Blood Tribe case. The Blood Tribe case is a case that went to the Supreme Court, but it flowed from PIPEDA, the Personal Information Protection and Electronic Documents Act. Quite frankly, it doesn't apply here. The language in PIPEDA and the Access to Information Act is very different. My statute states "notwithstanding any other act or...", I forget exactly whether it's privilege or convention. We have never had an issue—well, we've had issues, but we have access to solicitor-client privilege documents for review. They may not agree to release them, and if they're being withheld, we have access to them, we see them, and we can judge whether they're being withheld properly or not and can challenge that.

It is my view—and I'm not a lawyer, but I'm advised by some very good lawyers, and I was sitting in the courtroom when the Supreme Court heard the Blood Tribe case—that it does not apply to access to information federally.

Mr. Bill Siksay: So when Mr. Whalen said that Parliament should be clear about maintaining the right of the Information Commissioner and the Privacy Commissioner to review these claims for the purpose of verifying the claims, you don't think there's anything that needs to be made exclusive?

Mr. Robert Marleau: I don't think so, and we have plenty of practice and some jurisprudence to support that.

Mr. Bill Siksay: Mr. Fraser from the Bar Association also raised the issue of the CAIRS system and its demise. I saw that as a blow to the appreciation, I guess, of how the system functions. I don't know if you made statements about the demise of the CAIRS system when it happened or if you have opinions that you can share on that. Was it an instance of throwing out the baby with the bathwater that the system got thrown out to address something that might have been addressed in another way?

Mr. Robert Marleau: At the time that CAIRS was cancelled I did make a public statement that we disagreed with that position, and I think my assistant commissioner made a similar statement. We had been consulted much, much earlier and had made recommendations that if it was going to be discontinued, it should be replaced with something else, not just abandoned.

I made those statements and subsequently received a complaint. We are currently investigating it, so I want to be careful in going any further, except to point out that the Quebec jurisdiction has in law in its statute the duty to publish, and repositories have to be maintained. The U.K. statute has it as well.

It seems to me somewhat logical that at least government, if not users, would have a repository of what is being released. There would be efficiencies in the long term in that you don't ask for the same thing twice if you know it's already been published. But at this point I'd refrain from going any further because we do have an ongoing investigation.

Mr. Bill Siksay: Do you have a sense of how often things are asked for twice?

Mr. Robert Marleau: I really don't have a sense of how often it's being asked twice, because I see the complaints. But I suspect that a central repository would go a long way to cure any redundancy that way.

Mr. Bill Siksay: We had some discussion about fee structures and how they affect the efficiency of the system. I just wonder if you could make any more comments on the fee structure and how you see that working.

Mr. Robert Marleau: Well, the fee structure is almost as old as the statute, and a $5 cheque is worth probably $1.06 right now. It probably costs $55 to process a $5 cheque, so in that sense, I don't think it makes any sense at all anymore.

I think there has to be a reasonable fee to contain.... If I'm going to ask for every document in a government department and I'm willing to pay for the photocopies, then so be it, but I think a reasonable fee has a role to play in terms of cost.

But a fee for cost recovery in this system is an aberrant concept in my view. That's not the spirit of the law. What did the charter cost? What did the BNA cost? You amortize these kinds of laws over the life of a nation. You don't look at cost recovery for the rights of individuals to know what their governments are doing.

Mr. Bill Siksay: Mr. Marleau, Mr. Fraser said—

● (1600)

The Chair: We're going to have to move on.

Mr. Bill Siksay: Okay. Thank you.

The Chair: You have another slot coming up.

Mr. Dreeshen, please.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much, Mr. Chair.

Thanks again, Mr. Marleau, Ms. Neill, and Ms. Legault, for coming here again.

I can assure you that I've gained a greater understanding of your role as Information Commissioner every time you've visited us here, and certainly both your chart and your commentary today have been quite colourful, so let's just see what we can do about putting that new hip in there.

Since your last appearance before this committee, we've heard from a number of different witnesses who both support and oppose the recommendations you've made for reforming the Access to Information Act. I suppose that's fair. After all, as you know, we are trying to make this the best possible ATIA we can.

The Minister of Justice was just before this committee and expressed concerns that recommendations 4 and 11 appear to be in conflict. I'd just like to go through what he mentioned. He said:

> My concern about the Information Commissioner's recommendations 4 and 11 can be boiled down to one of ease of access to justice. Under the current ombudsman model, an access requester can complain to the commissioner about a refusal of access. The commissioner is obliged to investigate, and upon the completion of the investigation, the commissioner will make a finding and a non-binding recommendation. If the requester is unhappy with the result, he or she can then go to the Federal Court.

So my question is, do you think the minister has a point that the current system does satisfy a requester who has a complaint?

Mr. Robert Marleau: No, I don't believe the minister has a point. I think he has misread the recommendation and the text related thereto.

The current system of access to the courts through the commissioner, after investigation, with the commissioner bearing the cost of access, with the permission of the requester, to the court, wouldn't change. That's maintained.

Number 11 creates a fast track to the court for those who want to go to the court and have the means to go to the court. So it's a new avenue to the court, and I would say it would enhance access to justice in that sense.

Numbers 4 and 11 are not intrinsically linked, and I think I said this in earlier testimony. Number 4 is to give the commissioner discretion in terms of dealing with some of the complaints investigations. Right now I have no choice. The law says I “shall” investigate. It's made me master of my own procedures, so I can kind of manoeuvre through that, but it would allow me to deal with some of the issues that the other witnesses deal with, things such as frivolous, vexatious, or voluminous requests. In Ontario, for instance, the commissioner has imposed a certain limit on anyone using the complaint system.

It would allow me to pressure both users and departments, in the case of volume and what might be perceived as abuse. Abuse for the user, in terms of perception, and for the department are under different lenses. It would put me in the position to at least mediate that, if I had the discretion of whether or not to investigate.

So the two are not necessarily linked, in my view.

Mr. Earl Dreeshen: What would be the cost implications of just keeping it the way it is, or of number 4 versus number 11, or however you might want to look at that?

Mr. Robert Marleau: In terms of costs, as I said, it's difficult to come up with a particular figure. What I've done is look at it in terms of low, medium, and high.

In the context of, say, number 4, I see that as low-cost because it allows me to manage the workload, and it may in fact reduce costs in terms of my office and it may reduce the workload in government departments. If a frequent user smothers a department with 500 requests in one day and then files 400 complaints with me, then I can step in and say, "Wait a minute. I'm not going to investigate those. That's not reasonable." So there could be lower costs with that one.

Number 11 I see as kind of neutral, because the entire cost for fast-tracking to the court is borne by the users, not by the office and not by the department. It may increase the court costs that, let's say, a crown corporation might have to incur, because it's going to go there faster than the investigation, but chances are it's going to go there anyway, investigation or not.

● (1605)

Mr. Earl Dreeshen: The minister also had some concerns with regard to recommendation number 3, and I'd just like to quote what he said there:

> Recommendation 3 is that the commissioner be provided with order-making power for administrative matters. The commissioner describes this as a third model, a hybrid of the ombudsman model and the tribunal model. As this recommendation stands, a government institution could decide to appeal the commissioner's orders regarding, for example, extensions of time. As a result, the resources of the Federal Court could be increasingly occupied with disputes about the Access to Information Act's administrative or procedural matters.

My question is, aren't you concerned that this recommendation would consume additional resources to fulfill the mandate, as it seems to me that we're creating these additional bureaucracies, more red tape, and, consequently more costs as well?

Mr. Robert Marleau: No. There again, I disagree with the minister's position, simply because of the experience in the provinces where there are full order-making powers, as well as administrative and substantive issues.

Having, say, a 60-day deadline and having to come to the commissioner, as happens in Alberta, and explain why you need more than 60 days focuses the mind on performance within a department. They don't necessarily like to go there, and they don't necessarily like to be refused. So in that kind of context, I think the dynamic would push early response, and I don't see any particular increase in costs for the court per se.

In any case, I think the courts would be very intolerant of a debate between a federal commissioner and a department over whether it's 62 days or it's 72 days and that kind of stuff. Because it's administrative, the courts normally would frown on appeals. It would have to be an appeal based on a point of law, not on a decision of process.

Mr. Earl Dreeshen: When the initial decision was made about the number of days—and we speak about the 60 days that New Zealand has and the 60 days that Alberta or an individual province would have—did anyone take into account the fact that we are a country with many time zones? Did they just pick a number out of the air, or did they say this is what New Zealand or some other smaller country has?

Mr. Robert Marleau: I don't think it was taken into consideration in 1983 when they decided on 30 days as the expected time return for access to information. Today, with the Internet and people being web-based, it's not an issue.

Mr. Earl Dreeshen: Okay.

The Chair: Mrs. Simson, please.

Mrs. Michelle Simson (Scarborough Southwest, Lib.): Thank you, Chair.

Thank you, Mr. Marleau, Ms. Neill, and Ms. Legault. I really appreciate your time. I'd like to echo Ms. Thi Lac's congratulations on this. I think this is an outstanding piece of work. Nothing illustrates better where people are positioned than a colour-coded chart.

In your opening comments you mentioned that the minister in his testimony had stated that this was an extremely good piece of legislation, which obviously flies in the face of what was described in a major newspaper article this week as legislation that keeps Canadians huddled on the dark side of the renaissance. I found that very interesting.

A lot of the complaints seem to be cost-related. That brings me to number 2, the right of all persons to have access. The minister testified and acknowledged that a lot of other jurisdictions have universal access, but cost could be an issue. Do you have a sense from any of your colleagues across the country, or have you seen in any of these other jurisdictions, whether that could be the case? It doesn't say cost would be an issue; it's the minister's perception that it could be an issue.

● (1610)

Mr. Robert Marleau: I can only echo what the other witnesses said in support of this recommendation. Virtually every one of them said that if it's being done, it's being done now. The lack of direct right of access can be easily circumvented by using data brokers. The requests are currently being made through third parties. These restrictions are easily circumvented. So in terms of costs, we already bear them, I believe. There might be an initial surge, but I put that one at a low impact in cost.

Mrs. Michelle Simson: Thank you.

The colours tend to give you an overall picture of how the witnesses saw the particular recommendations. On recommendation 6, the advisory mandate to the Information Commissioner on proposed legislation in the legislative initiatives, it seems to have broad-based appeal, with the exception of two witnesses who essentially disagreed with almost every recommendation. It seems to appeal to all the witnesses. The minister remarks that it represents a departure from the usual process. If that were adopted as one of the initiatives, a departure from the usual process wouldn't necessarily be a bad thing. How would you see that enhancing it and making future changes to legislation easier than this process has been?

Mr. Robert Marleau: That recommendation actually finds its genesis in what goes on in privacy right now. You're looking at the Privacy Act. You know about privacy impact assessments. It's also a recommendation from former Justice La Forest in his report on access to information. It's a recommendation from the Delagrave report.

The idea here is that before government begins a new program or new initiative, or develops a new database or new care system, they would consult with the commissioner, who would advise—advise—on accessibility. What are some of the needs of requesters in terms of when you produce whatever you're going to produce from the program? How are you going to more efficiently retrieve it or structure it so that it is retrievable? That's all it is.

When the minister says it's a departure from usual practice and wasn't sure in his testimony.... PIAs—private impact assessments—have been going on for several years. It's a policy of Treasury Board; it's not required by law. In other jurisdictions it is required by law. It's simply coming to the commissioner, without prejudice to future investigations, and getting the best advice in terms of how the system could be made to improve access for those who want to have information. That's all it is.

In terms of Monsieur Drapeau, he seems to believe that it might interfere with my investigations. We have to be bicephalous from time to time and look at policy issues and deal with the investigations as well.

Mrs. Michelle Simson: Thank you.

The Chair: Thank you.

We'll go to Mr. Dechert, please.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair.

Welcome, again, Ms. Neill, Mr. Marleau, and Ms. Legault.

Mr. Marleau, earlier today you mentioned that the current $5 fee is certainly archaic and probably unreasonable given the current circumstances of the cost of the system. You also, I think, quite correctly pointed out that it probably costs the government $55 or more to process a $5 cheque. Given all that, and given the costs, which I think you earlier mentioned were about $1,425, on average, to comply with an access to information request, what would you suggest a reasonable fee be in the current context?

Mr. Robert Marleau: Zero.

Mr. Bob Dechert: Zero. So you're saying we should go down from $5 to zero.

Mr. Robert Marleau: It's costing you money. You'd probably save $50.

Mr. Bob Dechert: All right.

The last time we met, you mentioned that a significant number of ATI requests, and the complaints to your office generated by those requests, actually came from requests to the Department of National Defence. They pertained to the cost of equipment used by our armed forces. When I asked you who was making these requests, you said that you thought a lot of them were made by lawyers, presumably acting on behalf of defence manufacturers, perhaps foreign defence manufacturers. Given that those requests were made by commercial organizations for commercial information, do you think it would be fair that these organizations contribute in a reasonable way towards the cost of providing that commercial information?

● (1615)

Mr. Robert Marleau: It becomes quite difficult to make a distinction between commercial and private users, because under our statute, and I would argue that it should be maintained that way, the requester remains private. The access request is processed without regard to the identity of the individual.

Mr. Bob Dechert: But they do know, do they not? The ministry does know. Each department does know the name of the....

Mr. Robert Marleau: They should not. As they process the request, only the ATIP office knows, and they are bound to process that without regard to the identity of who's asking. If we were looking at charging fees for commercial endeavours, I think you'd have to restructure part of the statute for that. Since I made this so that it can be done quickly and easily, I didn't address that particular point.

Mr. Bob Dechert: Do you think it might be worth looking into this? You mentioned that a large percentage of the complaints to your office were derived from these kinds of requests. You gave us a chart, as I recall, that showed increased numbers of requests to various departments and ministries, and one was the Department of National Defence. These aren't individuals asking about their veterans' pensions or anything of that nature. Who else would want to know the cost of a particular piece of equipment the military is using?

Mr. Robert Marleau: I think, with respect, Mr. Chairman, the member is confusing two things. There are those who make requests on those kinds of issues and who they might be, and then there are those who complain to my office.

Mr. Bob Dechert: I realize.

Mr. Robert Marleau: The largest users of the access to information system broadly, as reported by Treasury Board, are business—pharmaceuticals, whatever.

In terms of complaints in my office, right now business represents about 18% and media 12%.

Mr. Bob Dechert: So you're saying the vast majority of access to information requests, which are the things that cost on average $1,425 to comply with, are from business organizations. Is that correct?

Mr. Robert Marleau: The vast majority, yes.

Mr. Bob Dechert: Then it seems to me that it's worth some time investigating a system where you would have requests for personal information about individuals, such as veterans' pensions or Canada Pension Plan pensions, that sort of thing, versus what is obviously commercial information, which is being used for a commercial purpose and sold for a commercial purpose. Would that not make sense? Would that not save the taxpayers some significant dollars that perhaps could be put to some other important need of the government?

Mr. Robert Marleau: I think you have to have a larger policy discussion about it. It would add a revenue recuperating cost aspect, as you suggest, but corporations pay taxes too. Lawyers' offices pay taxes too. A corporation is a legal person. I think it would be quite a trick to draw a distinction under the current structure.

Mr. Bob Dechert: What about foreign corporations or foreign governments that aren't paying taxes and perhaps want to bid on a defence contract or just want to know what we're spending?

Mr. Robert Marleau: They're doing it now through the brokers.

The Chair: Your time has expired.

I'm going to have to move to Mr. Nadeau *s'il vous plaît.*

[*Translation*]

Mr. Richard Nadeau (Gatineau, BQ): Thank you, Mr. Chair.

Good afternoon, Mr. Marleau, Mrs. Neill and Mrs. Legault.

Mr. Marleau, when was the Access to Information Act passed?

Mr. Robert Marleau: In 1983.

Mr. Richard Nadeau: If I am not mistaken, in 1987, the Justice committee had already made 100 recommendations to reform the Act. In 2000, the President of the Treasury Board and the Minister of Justice had set up a committee of officials to study the Act in order to make regulations and establish policies that would modernize the Access to Information system. In 2001, the special committee chaired by John Bryden, a Liberal MP at the time, had tabled 11 priority recommendations.

Since then, a number of Parliamentarians have tabled private Bills to amend the Act. In April 2005, Liberal minister Irwin Cotler had asked the committee to study the Act. There was a detailed framework document relating to reforming access to information. In October 2005, your predecessor, Information Commissioner John Reid, had submitted a comprehensive Bill to the government of Paul Martin. The Standing Committee on Access to Information, Privacy and Ethics, which I am now a member of, has twice called on the Liberal and Conservative governments to stop pussyfooting and to table a Bill to reform the Access to Information Act. All to no avail.

On November 3, 2005, New Democratic MP Pat Martin had tabled a motion asking the government to table a Bill. In December 2005, a certain Stephen Harper, leader of the old Reform Party which is not the Conservative Party, had stated that he would implement the recommendations of the Information Commissioner on reforming the Access to Information Act. We are still waiting and that is another broken promise.

In September 2006, Carole Lavallée, a Bloc québécois MP, had also tabled a motion in the committee asking the government to table a new Access to Information Act in the House before December 15, 2006. On September 27, 2006, the committee had tabled a report in the House of Commons with the same recommendation.

More recently, a motion passed on February 11 last by the committee chaired by MP Paul Szabo recommended to the government to table in the House before May 31, 2009, which is pretty soon, a new, stronger and modern Access to Information Act which could be based on the work of the previous Information Commissioner, Mr. John Reid.

On March 4, 2009, you submitted twelve recommendations which I have read and which have been studied several times by this committee. I would suggest that we include all 12 recommendations in a single one asking the government to keep its promise and to do what the Liberals did not, that is to say to be persons of honor and to table a Bill—with all the information gathered over the past 20 years—finally to give us a new Access to Information Act.

Could such a recommendation come from you? I do not want to put you on the spot but I want to help you to make sure that Canada leave the Middle Ages. Since you referred to a grandmother, you see where I am coming from.

● (1620)

Mr. Robert Marleau: Mr. Chairman, the honorable member has just summarized all the recommendations for reform made over the past 20 years. What he said is absolutely exact and correct.

In my second Annual Report, I stated that the government should follow-up on those recommendations and get to work. I believe that this type of legislative reform can only be launched by a minister, a member of the executive council. It will require investments from the government and there will be costs. As far as we are concerned, only the government can do this.

The efforts of Mr. Martin, of Mrs. Lavallée and of simple MPs—and I say this with respect— are certainly laudable but, I believe, cannot lead to a modernization of this Act without some initiatives based on new investments.

Mr. Richard Nadeau: Thank you.

Mr. Chair, I repeat my request to the representatives of the government—of which six or seven are present in this room—to talk to one of their ministers so that a Bill be tabled in the House of Commons—the text has already been drafted by Mr. Reid, Mr. Marleau's predecessor—so that we can move to something else like the tricks probably played by the Conservatives, the famous 67 persons who, during the 2005-2006 elections...

● (1625)

[*English*]

The Chair: *Merci.*

[*Translation*]

Mr. Richard Nadeau: Mr. Poilievre is well aware of what I am referring to. It is painful to him but we must be able to deal with that issue in committee and to stop playing games with this.

[*English*]

The Chair: I'm sure the committee will want to discuss the matter of looking down the road to getting some progress here, and I'm sure it will be interesting.

I'm going back to Mr. Dechert. Then I have Mr. Siksay, and then Mr. Wrzesnewskyj.

Mr. Bob Dechert: Thank you, Mr. Chair.

Mr. Marleau, you have told us that a small number of people are responsible for a large percentage of both ATI requests and complaints. We went through the list of ATI requests to certain departments. I think in one case you mentioned that one individual was responsible for 500 requests with respect to the CBC.

Given that sort of situation, would it be fair, in your view, that large users of the ATI system be required to pay some kind of escalating fee above a certain minimum, especially in a situation where they are asking for essentially the same information multiple times?

Mr. Robert Marleau: You could have a graduated increase in the user fee, but to some degree that undermines the principle of transparency that underlies the statute.

Mr. Bob Dechert: What about the principle of fairness to the taxpayer against abuse of the system?

Mr. Robert Marleau: Recommendation number 4, in my view, giving me the discretion over investigations, would go a long way to cure that. I think I can deal with the few people who make frequent complaints, because we need to make a distinction between frequent requests versus frequent complaints. I can do this fairly quickly if I'm not bound by the law to investigate everything they send my way.

Mr. Bob Dechert: Let's talk about frequent requests, because frequent requests are what really cost a significant amount of money. The cost of your office is relatively modest by comparison. So if somebody makes 500 requests, times $1,425 per request, on essentially the same information, is there no point in having some kind of a deterrent fee to at least require them to be more reasonable about the requests? There's no way the CBC can refuse the request, is that correct?

Mr. Robert Marleau: They're not supposed to.

Mr. Bob Dechert: Right. They have to comply in every case, and that's a significant cost to the taxpayers.

Mr. Robert Marleau: You're talking about frequent requests and requesting the same information.

Mr. Bob Dechert: Yes, that's one example.

Mr. Robert Marleau: A general repository where that is posted would go a long way toward diminishing repeated requests for the same information.

Mr. Bob Dechert: Perhaps.

What percentage of access to information requests are for individual personal information versus non-personal information?

Mr. Robert Marleau: I don't know that. I don't think it's classified that way by Treasury Board; it's classified by user group.

Mr. Bob Dechert: Presumably you would agree that personal information on any person or individual case is not something you're going to post. It's not something that's going to be posted on the Internet.

The Chair: Just so that everybody understands your point, could you give us an example or two of something you would consider to be personal information?

Mr. Bob Dechert: Sure. A veteran's pension account, for example. If they have a complaint about not receiving the amount they should be receiving, or they're not at all getting an amount they should be getting, they may make a request to the Department of Veterans Affairs for information about their veteran's pension account.

The Chair: Their own information.

Mr. Bob Dechert: Yes, it's their own personal information.

What I'm trying to determine is what percentage of that kind of information versus just general information is requested on an annual basis.

I don't think you made a specific recommendation about posting information proactively on the Internet. Obviously it would be a somewhat complicated decision to make as to what should be posted and what shouldn't. There obviously would have to be some rules developed on that.

Have you done any study on the effect of proactive posting of substantially all of the government's information on the Internet in reducing the number of ATI requests?

Mr. Robert Marleau: No, I have not done any study. There's a jurisdiction in Quebec that has just begun that. They did a study. It was a lengthy process to determine what should be posted, when, and those kinds of things. It's a complex issue, I'll grant you that. But I would say that kind of proactive disclosure obviously would reduce —

● (1630)

Mr. Bob Dechert: There's no question it would. I just wondered if you had done any analysis.

I have another question with respect to the number of ATI requests from business organizations. You mentioned earlier that the majority of requests were from business organizations. There are other things government does, such as issuing CRTC licences and certain resource licences, where they charge a fee to a user in situations where the user is then going to resell that service or information to commercial consumers or other consumers.

What's the difference between that and a situation where a defence contractor or a lawyer, such as I was in private practice, acting on behalf of a defence contractor and who's charging several hundred dollars an hour, gets information that costs the taxpayers potentially tens of thousands of dollars, and then provides that information to the commercial organization so they can use it in their commercial operation? What's the difference between charging them an appropriate fee for the cost of that information and charging an appropriate fee for, say, a CRTC licence or a natural resource licence?

Mr. Robert Marleau: Again, when you're looking at a fee structure, the complexity it would introduce would probably not bring you much return. People will get around that by getting their brother-in-law to file their request.

Mr. Bob Dechert: Do you think a lot of individuals will do that just to avoid paying that cost?

Mr. Robert Marleau: Well, sure.

Mr. Bob Dechert: Or would they just assume that it's a cost of business? For other forms of services the government provides, people aren't doing that kind of end run around the cost structure, are they?

Mr. Robert Marleau: Those who want to get around it, obviously, will get around it.

Mr. Bob Dechert: I'm sure some devious people will, but isn't it reasonable for a commercial organization to pay a reasonable fee for a product it's going to resell for profit?

The Chair: All right. We're getting into a little debate.

Mr. Marleau, if you want one last point, you can make it, but I'm going to have to move on.

Mr. Bob Dechert: Is my time up?

The Chair: Yes, two minutes ago.

Mr. Robert Marleau: There is an issue, if you will, with data brokers who gather information and may sell it. The challenge will be how you sort them out. The lawyer who's acting for a new immigrant who is not versed in—

Mr. Bob Dechert: That's personal information. That's different.

Mr. Robert Marleau: Well, it may not be. I'm not sure; it may not be. It could be substantive information about policy. For example, if I'm a new immigrant and I don't understand why my wife is not being allowed back in the country, I may want to find out some policy information and advice that might have been given to the minister, or background on it. I might have to use a lawyer because I don't understand.

Mr. Bob Dechert: Fair enough. That's in the field of personal information.

The Chair: Thank you.

Mr. Siksay.

Mr. Bill Siksay: Thank you, Chair.

Mr. Marleau, if you've been following the hearings of the committee, you'll know that one of the lines of questioning from one of the members has been around what the most significant revisions to the ATI act over the years have been. I know the line did change over time; I have to grant the member that. It did cause some concern to one of our witnesses, Stanley Tromp, who believed he was misrepresented. I think he would want me to say that what he said was merely that the accountability act was one step forward, but it was not the most single significant step. In fact, he believes the most significant reform to the ATI act was the amendment to the act to add section 67.1, introduced by MP Carole Lavallée and passed in 1999.

That change was, I gather, for prescribing fines and jail terms for the unauthorized destruction and falsification of records. Did that actually go all the way through? Did it succeed in making its way all the way through Parliament and ultimately being proclaimed?

Mr. Robert Marleau: That was a private member's bill, and it was Carole Beaumier, not Carole Lavallée, who sponsored the bill in 1997. It was an amendment that is now section 67.1, which makes it a criminal offence to destroy documents. It flowed from the Somalia inquiry issues and the blood inquiry issues of the early 1990s. It was a significant amendment in the sense that it was a message to all who are in ATI that they are duty bound not only to respond, but to preserve. So it probably is the most significant since 1983.

Bill C-2, the Federal Accountability Act, broadened the scope of the statute, but when you look at the scope of what was done, you have crown corporations and you have parliamentary officers and a few foundations. So it's an improvement, but there are also, as I said in earlier testimony, new exemptions and exclusions added that cause me concern.

● (1635)

Mr. Bill Siksay: I think it was Colleen Beaumier.

Mr. Robert Marleau: Sorry, not Carol, Colleen. Thank you.

Mr. Bill Siksay: We both got the wrong name there.

There was another concern raised in the testimony we heard. I know two of our witnesses, Mr. Drapeau and Mr. Racicot, who appeared together, I believe, said they perceived that the United Nations saw Canada's ATI act as a model, but they couldn't show us any demonstration of that. I know that some other folks...including Toby Mendel of Halifax, who works with Article 19, a London-based human rights organization that focuses on freedom of information worldwide, who said that despite all of his work with UN human rights bodies, all the ones relevant to access to information, he can find no body that has any standard-making mandate that has adopted the Canadian model.

I'm just wondering if that corresponds to your experience. If countries were looking to establish an access to information or freedom of information regime, would they look to our law at this point in history as a model for how to do that?

Mr. Robert Marleau: I've had to deal with some of those situations, and what I share with interested parties from other countries is that we have a very sound statute in its principles, and they should look to it as a model.

In terms of its current status, there are a lot of lessons to be learned on how not to do it. In every experience where you learn from your mistakes or you learn from your inactions or your neglect, then other people can learn from that.

We are not compliant with the United Nations declaration. We are not compliant with article 19. We're not compliant with the Atlanta declaration. We're not compliant with the Commonwealth Secretariat's model. We're not compliant with the Commonwealth Parliamentary Association's recommendation, and some of you are members of that association.

Zimbabwe adopted our model and then tacked on a press control dimension to it. It's the only one I can point to right now that I know of where they took our law and said it was a great law and then added on all this control on the media.

So I disagree with any witness, including the minister, who says that we are compliant with any of those recent declarations on what a citizen is entitled to in access to information.

Mr. Bill Siksay: Thank you.

David Fraser, from the Canadian Bar Association, said that when the ATI act—I'm quoting from his testimony—was originally introduced, it wasn't meant to be the only way that people could get access to information about what's happening in the government. It was meant to be a bit of a backup for general openness and transparency.

Would you agree with his assessment of how things have unfolded, that government now, rather than taking measures for openness and transparency, relies on the letter of the ATI law?

Mr. Robert Marleau: I totally agree, and article 2 of the act expressly says so. The act is intended to complement and not replace existing procedures for access to government information, and it is not intended to limit in any way access to the type of government information that is normally available to the general public. Unfortunately, the act has become the default position of government and bureaucracy. You hear it all the time: "You want this document? File an ATIP request."

As I said earlier, I find it somewhat disconcerting that parliamentarians, in their duties, have to use the statute to get information. You have questions on the order paper as well, but it seems to me that the default position ought to be disclosure, and where there's a dispute, turn to the statute.

Mr. Bill Siksay: Okay.

Thank you, Chair.

The Chair: Thank you.

We'll hear from Mr. Wrzesnewskyj, and Mr. Dechert has come back on the list again.

Mr. Borys Wrzesnewskyj: I'm not especially encouraged to hear that Mr. Mugabe's regime in Zimbabwe has found our access to information regime to be effective.

But I'd like to get back to this whole business of cabinet secrecy.

What is our recourse if a member of Parliament makes an access to information request, or in fact any Canadian makes an access request, that might be embarrassing for a minister, and a minister decides he's going to invoke cabinet secrecy? What do I do in that situation when I get blank pages coming back?

● (1640)

Mr. Robert Marleau: You can file a complaint with the commissioner, and the commissioner will cause an investigation. We will interact with the Privy Council Office, which is responsible for managing cabinet confidences. Through the investigation, ultimately, if they maintain their position that it is a cabinet confidence, they will issue a certificate saying so.

I do not get to see the documents. I have no idea whether that certificate is bound and is founded, in terms of a cabinet secrecy. In many other jurisdictions in the provinces and internationally, in, for instance, the U.K. and New Zealand, the commissioner's role, as a third-party review, is reinforced in the legislation. Right now you have to take the clerk's word for it. I'm sure the clerk is very thorough in his evaluations—I'm not challenging that—but there's no third-party review.

Mr. Borys Wrzesnewskyj: Sure.

In fact, it appears that the clerk of the PCO is very thorough. First of all, most requests are being delayed these days, and nine out of ten times, when we call a department for an update about a request that's beyond its due date, the response is that it's in PCO consultations. PCO got one of the lowest ratings on your report card, when, in an interview in February of this year, you stated, "My understanding is there is a stranglehold in the centre on communications." Were you referring to PCO there?

Mr. Robert Marleau: I was referring to the central agencies, PCO being one of them, in the sense that if there is a stranglehold on communications, that has a trickle-down effect down the side of the mountain. So if you're not allowed to communicate what you would normally communicate without checking with the centre, there are going to be delays. It was not necessarily cabinet confidences I was talking about.

Mr. Borys Wrzesnewskyj: I can see why in Zimbabwe they'd appreciate this sort of system. You provide a certificate, a stamp, that says, yes, the minister is actually quite correct in saying that this is cabinet secrecy.

I had a request to Heritage that took ages, months upon months, dealing with plaques on interment sites across the country and the education materials being prepared for that. I can't remember if it was 48 or 49 pages, but all except two came back blank.

I kept thinking, how could that be? What kinds of secrets could have been on those plaques, or in the preparation of those plaques? But I didn't cause an investigation. As we have seen over and over, we have an Orwellian process, with amber-lighting of members of Parliament, and delays, and that wasn't a serious issue.

There are issues that are serious and that Canadians are concerned about. Take the two requests to the Department of Foreign Affairs for information on detainee transfers: delayed over 300 days. Take the Department of National Defence request for information on the acquisition of Chinook helicopters, huge expenses for the taxpayer. We've heard it over and over. I mean, members here are perturbed about $5 fees, and yet we can't get information on these contracts; it's been over 350 days now, I think.

My point, I guess, is how do we address this? If you were to rank the importance of some of your recommendations, would the recommendation allowing you to take a look at the claims of cabinet secrecy be one of the more important ones?

Mr. Robert Marleau: It's a very important one. I wouldn't say it's the most important. I tried to bring twelve recommendations as a package. Obviously, you can take some out and the package will survive.

The key with cabinet confidences is that right now the clerk has no choice. It's a mandatory exclusion. So if he deems it to be a cabinet confidence, that's it.

If it were turned into a discretionary exemption, it might be in the public interest for a minister to have the ability to make it public earlier than 20 years. He might choose to do so. Right now he's prevented from doing it in law.

That's what has happened in Great Britain. Cabinet decides, hey, we made a good decision here, so we're going to release it.

It's discretionary, and that's the key dynamic that has to change. It would reduce a lot of these consultations. If the government decided it was in the public interest to release a cabinet decision or documents earlier than 20 years....

I mean, I'm going to leave, in my will, a $5 cheque to my grandson so that he can file one for me 20 years from now.

● (1645)

The Chair: On that, we're going to move to Mr. Dechert, please.

Mr. Bob Dechert: Thank you, Mr. Chair.

Mr. Marleau, are you familiar with Quicklaw, or Westlaw, which is owned by Thomson Corporation of Canada?

Mr. Robert Marleau: Yes.

Mr. Bob Dechert: Then you know that they provide public information to members of the legal profession and others for a fee. Thomson Corporation is a very profitable corporation, even today. Lawyers gladly pay those fees as part of their cost of doing business, and sometimes pass on that cost to their clients.

So what is it about that model that makes it an abhorrent concept, as you've suggested, to suggest that Thomson Corporation pay a reasonable fee for the information that they are going to resell for profit to business organizations? Why is that abhorrent?

Mr. Robert Marleau: The whole structure of transparency of government gets undermined, in my view. That's why it's aberrant. The government is the trustee of citizen information. The citizen has paid for this already. It's sitting on a shelf.

Mr. Bob Dechert: Aren't they paying for it again by having to supply it again?

Mr. Robert Marleau: There may be costs associated with making it public, but as a citizen, I'm willing to bear that.

It's $1.60 per year per Canadian citizen. It's a Tim Hortons medium double-double. If you went to a large double-double, or an extra-large double-double, I'd be happy.

Mr. Bob Dechert: Okay. So you'd be more happy if it went that way.

I'd really like to be able to support your recommendation 2, but I'm concerned, Mr. Marleau, that if one of my constituents were sitting here in this room, they might wonder why they were being asked to subsidize the profits of the Thomson Corporation.

You told us earlier that the majority of the users are business organizations. Presumably they're mining this information for for-profit businesses. Surely it's worth our time to investigate how we might design a reasonable fee structure to at least compensate the taxpayer for some of the costs of providing that private information.

I'm sure that some organizations could use a series of senior citizens to make their ATI requests to get around that, but do you think Thomson Corporation is going to do that for its thousands of information requests, which it then resells to its clients?

Mr. Robert Marleau: Not likely, but it's just going to pass on the cost to its clients.

Mr. Bob Dechert: It's going to make profits, and here we are in a deep recession and this is costing taxpayers a lot of money. If we could at least take some time to study that to see if there's a reasonable way you could differentiate between what are obviously business information requests versus personal information requests, I think you'd find a lot of my constituents, and I would suspect the constituents of a lot of the members sitting here at the table today, would find it an easier thing to support.

Mr. Robert Marleau: Mr. Chairman, I'm not insensitive to that side of the debate: it exists and it's there. It's a perception that I disagree with. It's an approach I disagree with, but I'm certainly willing to discuss it further. I know of no other jurisdiction that does it.

Mr. Bob Dechert: British Columbia does it, does it not?

Mr. Robert Marleau: No.

Mr. Bob Dechert: I thought the British Columbia information commissioner suggested they do have a cost-for-recovery fee basis for information requests. That's right here in Canada. It seems to be working. That's fairly relevant—very recent, too.

Mr. Robert Marleau: I'll have to review it, but I know that the Delagrave commission in 2000 looked at it as well and recommended against it.

Mr. Bob Dechert: Could you do some investigation as to how the system is working in British Columbia and perhaps report back to us?

Mr. Robert Marleau: Sure, absolutely. No problem.

Mr. Bob Dechert: Thank you.

The Chair: Thank you.

The chair is asking for some words of wisdom here. The issue of costs has come up often, not only with regard to access but also with regard to our work on privacy. If we only had one request, the cost per request would obviously be the entire budget of your department, or not your department but at least the government's cost of processing a request. No complaints—I suppose that would be a great system. Somehow everybody's just cooperating and you don't have to go through the system.

I guess the real question is, how do we appreciate and how should we assess the importance of having an Access to Information Act? Can you remind us of why we have it and why it's important that we finance an effective and efficient Access to Information Act?

● (1650)

Mr. Robert Marleau: To me it is as important as financing an efficient judicial system. In other words, the courts—the Supreme Court of Canada—have called this a quasi-constitutional right. What price do you attach to the right of a citizen?

His or her right to vote has costs attended to it, and exponentially over the years Parliament and government have improved the electoral act and will continue to do so. Cost is always an issue, but it rarely puts back into question the citizen's right to cast that vote. How can a citizen cast his vote intelligently if he has to pay $500 to get the information he wants to get to the right decision? How do you cost the recovery of that?

To me it's a value judgment. As I said earlier, there are costs, I don't deny that, and we're in tough times. We've been in tough times before. This has to be amortized over the life of a nation, in my view, just like the Charter of Rights and Freedoms. There were great costs to the Charter of Rights and Freedoms. As I recall, in 1983 we were in a recession too.

I don't want to be dismissive of the debate. I think it's important to have the debate, because I think it brings you back to the question you've just asked: why do we have this? If it weren't linked to that, then it's just another program, and I don't think it's just another program.

The Chair: On behalf of the committee, I want to thank you for coming again to help us in our thought process. Over the next couple of weeks we are going to be working through the documents and discussing the quick fixes and working on a report, which we intend to table in Parliament before the summer recess. We want to thank you kindly for helping us work through these interesting questions.

I'm pretty sure most members will agree that since you've put some focus on certain items out of 10, if we can't sell the need for changes on one, two, or more of these, then it's quite unlikely there will ever be changes to the Access to Information Act. This is almost a test case, and I think it's the same with regard to the Privacy Act. We need to be successful on some of these, at least; otherwise there is either no appetite or no bravery in touching these two statutes.

Your opening statement about grandma—I think we'll remember that for a little while, and thanks to Mr. Dechert's analogy as well. So thank you kindly.

Mr. Robert Marleau: Thank you, Mr. Chairman. I must say we are very grateful as a team for the time the committee has committed to this. I've truly enjoyed the discussion, and I hope I've been respectful of the questions in my answers. There are issues to be debated, and I'm grateful the committee has taken the time.

The Chair: Thank you very much.

The witnesses are excused. We're going to suspend, and we're going to come back in camera to resume our work on the privacy report.

[*Proceedings continue in camera*]

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