



House of Commons
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 011 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, April 29, 2010

—
Chair

Mr. Paul Szabo

Standing Committee on Access to Information, Privacy and Ethics

Thursday, April 29, 2010

• (1115)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): I call the meeting to order. This is meeting number 11 of the Standing Committee on Access to Information, Privacy and Ethics. Our orders of the day are on our agreed upon project: proactive disclosure.

Before moving forward on that, colleagues, since I'm not sure whether members will be able to stay the full time, I want to advise you of the arrangements for witnesses for next week so that you can properly prepare.

On Tuesday we are having Minister Finley before the committee. She will be with us from 11 o'clock for at least an hour. We'll see how that goes.

For Thursday, we had asked for Sébastien Togneri. He has advised us that there is a conflict with another jurisdiction, and he has indicated that he will not be appearing before us as requested, because another matter is going on related to what we're doing. We may want to reconsider that, if necessary, but at this point Mr. Togneri will not be with us. We have a letter from the lawyer, who has given us reasons for which it would not be appropriate for him to appear. So I'm going to accept that at this point, unless the committee would like to discuss it further.

However, next Thursday we do have Patricia Valladao, who is the chief of media relations for HRSDC. She has requested that Mr. Peter Larose, who is the assistant deputy minister of the public affairs and stakeholder relations branch, also appear. She has suggested that the two of them appearing would ensure that all of the concerns of the committee would be better represented.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Excuse me, Mr. Chair, who did you say Patricia Valladao is?

The Chair: She's the chief of media relations for the department, HRSDC.

Mrs. Patricia Davidson: Okay.

The Chair: And she is named in the motion by Mr. Easter. She has recommended, also from that same area, Mr. Peter Larose, assistant deputy minister in the department. So those two people will be here on Thursday.

Finally, we had requested that Dimitri Soudas and Ryan Sparrow appear. They were named in the motion to appear. We had scheduled them for May 11.

Mr. Soudas has not confirmed. We're waiting for a confirmation. Mr. Sparrow has indicated to us that the minister is going to be

speaking on behalf of the department. In his e-mail to us, he indicated that because the ministerial responsibility lies with the minister for her department and staff, and since Mr. Sparrow works for the minister, he would like to request that the minister appear to answer any questions in his place.

Mr. Sparrow, as members will know, did have some direct involvement in this matter, so I'm open... At this point I am going to request that Mr. Sparrow still appear, as he was specifically named. I'm sure a minister can speak for everybody in a department, but certain individuals who have had direct involvement in certain activities may have some information or details that committee members would like to pursue. So I'm going to respect the motion by Mr. Easter that was adopted by the committee, and I'm going to reaffirm that we would like to have him appear, notwithstanding his suggestion that the minister could answer the questions.

This is for the members' information so that they can plan their activities. I will attempt to keep all the members updated on these matters.

Mr. Siksay, go ahead on this matter.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Chair, will you be sharing the correspondence that you referred to this morning with the members of the committee?

The Chair: Absolutely, if you would like.

Mr. Bill Siksay: Yes, please.

The Chair: Mr. Clerk, could you please circulate that?

They are not in both official languages; that's why I didn't circulate it. We will have it translated and circulated.

Mr. Bill Siksay: Thank you, Chair.

The Chair: Okay, we're done.

Back to proactive disclosure. Our witness today, from the Office of the Information Commissioner of Canada, is Madam Suzanne Legault, interim Information Commissioner.

Welcome, Commissioner.

The commissioner has agreed to come to help us further our education on the whole matter of proactive disclosure and possibly give us some words of wisdom on how we might proceed with an enormous project if we were thinking we were going to somehow steer this entire process. That would be overly ambitious, I'm sure, but the commissioner has a presentation for us that I hope will give us the foundation we need to make good laws and wise decisions, as it were, in terms of planning our work plan, which has been drafted by the researchers.

Commissioner, I understand you're a little nervous about the fact that it might be a long presentation, but this is extremely important to us, and I know members will take an opportunity to stretch their legs if necessary and maybe go to the back of the room where there might be something they might want to see.

Having said that, Commissioner, please proceed.

• (1120)

Ms. Suzanne Legault (Interim Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chairman, for inviting me.

Of course, if committee members and you feel that my presentation is too long, I am very flexible and can stop at any time to answer any questions you may have.

Thank you again for this opportunity to appear before you to discuss this very important subject of open government. It's really a tribute to this committee that it is studying this topic on how open government can best serve Canadians.

As interim Information Commissioner, I wish to discuss open government not as an expert in the fields of electronic dissemination of information or information technology, but rather, I wish to discuss it as a proponent of the view that it is urgent that government make a commitment to greater disclosure of its public information and imperative that it develop a comprehensive open government strategy to support it.

The committee has often heard testimony regarding the challenges of providing access to information pursuant to the Access to Information Act. How our law now handles accessing information is fundamentally reactive and reflects the traditional *modus operandi* of the public sector. It is reactive in the sense that access is granted mostly after someone asks for it.

[*Translation*]

By contrast, every day, we learn about new initiatives that transform reactive disclosure to the proactive mode. Proactive disclosure refers to an environment where information is routinely disseminated electronically, with the exception of that which the government must protect because it poses a risk to a public or private interest.

It is an environment where information can readily be made available to the public thanks to advances in technology. Proactive disclosure is an essential component of the broader concept of open government. Open government is predicated on a system in which government records are available to citizens in open standard formats that permit an unlimited use and re-use of the information. This facilitates public engagement and participation which, in turn,

promotes greater transparency, accountability and trust in government.

[*English*]

Based on our reviews and our discussions with other jurisdictions that are leading the open government movement, successes have been based, I believe, on sets of well-defined principles. To lead the paradigm shift from reactive to proactive disclosure, and ultimately to open government, there must be a made-in-Canada strategy. The strategy must reflect the unique characteristics and informational needs of our own society. In this context, I offer five overarching principles for your consideration, which have been gleaned from the various international jurisdictions.

First, there must be a commitment at the top to lead this cultural change conducive to open government. At a minimum, this involves issuing a declaration on open government with clear objectives. The commitment also entails assigning responsibility and accountability for coordination, guidance, and deliverables. It requires prescribing specific timeframes.

Second, there should be ongoing and broad public consultations. Citizens should be encouraged to participate using electronic means. It is critical to determine what government information the public wants and how they want to receive it.

Third, information should be made accessible in open standard formats and rendered reusable. Information should be derived from various sources and integrated to reduce the silos inherent in bureaucratic structures.

Fourth, privacy, confidentiality, security, crown copyright, and, particularly in Canada, official language issues need to be addressed and resolved.

Finally, open government principles must be anchored in statutory and policy instruments.

It is important to stress, Mr. Chairman, that although our legislation emanates from a period prior to the advent of the personal computer, the BlackBerry, Google, Facebook, and Twitter, its purpose clause is nevertheless consistent with the concept of open government. In section 2 of the ATIA, it states that the

Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of...information that is normally available to the general public.

• (1125)

[*Translation*]

The question is what meaning can we impart to these statements in 2010 given current technologies, the need to achieve public service efficiencies and the public's expectations of the role of government in leading the transformation to open government.

Clearly, there are no legislative impediments to advancing it. The concept is embedded in our information laws. The Access to Information Act anticipated elements of open government in its requirements to describe government programs, services and information holdings in a central register called *Info Source* to establish public reading rooms within institutions.

The Library and Archives of Canada Act and associated records management policies are based on the premise that sound information management practices enable departments to be more responsive and accountable to Canadians.

[English]

Further, Mr. Chairman, I think it's interesting to note that in his annual report to the Prime Minister, the Clerk of the Privy Council alluded to this paradigm shift when he acknowledged that the public service faces considerable pressures, such as the globalization of policy issues, the need for more collaborative decision-making, and the impact of ever-changing technologies. Mr. Wouters contended that the capacity of the public service to rethink the way we work—to plan, to reach out to others for good ideas, and to work together within and across departments—will sustain a high-performing public service.

In addition, it's interesting to note that the report to the Prime Minister, also from Mr. Tellier and Mr. Emerson, emulates the same ideas and promotes fostering the engagement of citizens in a collaborative development of policies and programs as a positive step for the government.

As a first step at the institutional level, each government organization needs to identify the opportunities and means to proactively disclose information. As a means of accomplishing this, the former Information and Privacy Commissioner of British Columbia made a recommendation to the special committee reviewing their own access to information legislation. He proposed that their act be amended to require public bodies to use prescribed access design principles in designing and adopting any information system or program.

The idea here, Mr. Chairman, is also an idea that I know is supported by the national archivist, Dr. Caron, in the sense that the disclosure of information has to be thought about at the beginning of the development of programs and policies so we think in terms of disclosure of information before we develop these programs and policies. This would not only result in more rapid responses to access to information requests, but would lead to direct public access to certain categories of the government's information holdings and facilitate the shift from reactive to proactive access to information.

So what stage are we at in Canada, and what lessons can we learn from colleagues in other jurisdictions? In Canada, there are various open government initiatives of different scopes that are occurring at different levels but without the benefits of central coordination and guidance. I would say this is the main difference between our jurisdiction and other international jurisdictions.

[Translation]

At the federal level, there may have been only very modest attempts at proactive disclosure. Almost ten years ago, the government issued a policy requiring all officials above a certain

level to post, on-line, the specific details of their travel and hospitality claims. A few years later with the development of more sophisticated systems and programs, the posting of this information, along with other information including provisions in contracts and grants and contributions, is now done reasonably well by government institutions.

Unfortunately, in the fast-moving information world of 2010, these attempts to open up government information do not represent the wave of the present, much less the wave of the future.

• (1130)

[English]

However, there are real signs of progress. Natural Resources Canada offers free access to databases that once entailed substantial user charges. Its GeoConnections Discovery Portal is a metadata catalogue that enables users and data suppliers to access, evaluate, visualize, and publish Canadian geospatial and geoscience data products and web services.

Citizenship and Immigration Canada is now also providing public access to many of their massive immigration databases. I've sent the minister a letter of congratulations for this initiative because I thought it was a very good initiative. Their objective, Mr. Chairman, is to disseminate the most popular data sets to the public without requiring recourse to the Access to Information Act.

National Defence and the Atlantic Canada Opportunities Agency are making their disclosure logs of access to information requests available.

My office is also revamping its public website to include access disclosure logs, internal policy documents, and research and statistical data, which we know our stakeholders are interested in.

Several provincial governments have taken the lead in migrating their programs and services to online portals and rendering them interactive. British Columbia, for instance, has created a research data warehouse that draws information from multiple government sources, thereby removing data from their traditional silos. Newfoundland and Labrador developed the first Internet-based data retrieval system to view and analyze social and economic indicators of well-being.

[Translation]

In November 2009, Quebec's new regulation, the *Règlement sur la diffusion de l'information et sur la protection des renseignements personnels*, came into effect. It requires 15 categories of government information to be proactively disclosed to the public by means of the government's website. The categories include internal organizational charts, documents of public interest disclosed pursuant to access to information requests, and studies, research and statistical reports of interest to the public. The regulation encompasses a broad range of institutions from provincial ministries to municipalities, school boards and health and social service agencies.

In municipalities, there are a significant number of practical applications being developed by both the cities and citizens. For example, Edmonton, Nanaimo, Toronto and Vancouver have mounted online data catalogues containing information regarding council meetings, fire and rescue response reports, garbage collection and public transit schedules and building permit statistics. Many of these, such as property searches and restaurant sanitation reports, are supported by online search engines that allow the public to retrieve and manipulate the data. Ottawa is also moving forward to capitalize on new technologies to expand its service offerings.

[English]

It is at the grassroots level, however, where many of the most innovative initiatives are occurring. These initiatives are an indication of the types of information that Canadians actually want.

A recent *Globe and Mail* article entitled “If you won't tell us about our MPs, we'll do it for you” may be of interest to this committee. David Eaves, an internationally recognized expert in open government, described new websites mounted by what he calls digital democratic activists. He cited as an example openparliament.ca, which enables the public to see what members of Parliament say, explore how they vote, and search related press stories.

Another example is howdidtheyvote.ca. This site provides a breakdown of members of Parliament's statistics, including the number of words spoken in the session, the frequency with which members vote against their parties, and members' attendance records.

So you are all in the open government stance by virtue of these initiatives that have been done by individual Canadians in their own backyard.

There's a great deal to be learned from the experiences of other countries in implementing open government initiatives. During the past year, the United States launched its much anticipated open government initiative, the British government...under its “smarter government” umbrella, and the Australian Government 2.0 Task Force issued a comprehensive draft report. Significantly, the prominent features common to the inception and evolution of these initiatives, notably in the United States and the United Kingdom, are that they are based on strong leadership and broad public consultation and they are sustained by central repositories of data supported by commonly available tools to access and leverage the data sets. This is the new age of proactive disclosure.

The American open government initiative illustrates the impressive progress that can be achieved when it is being led by their President. In discussions these past few days with our American colleagues, they emphasized the value of leadership and commitment from the top. They referred to the necessity to have clear and unequivocal objectives, and stated that the government is opening doors and data to all citizens to promote transparency, participation, and collaboration.

Transparency is critical to provide citizens with information about what their government is doing so that it can, in turn, be held accountable. It encourages journalists, researchers, government officials, and the public to scrutinize and thereby improve how government works on behalf of citizens.

Participation is essential in that the government must actively solicit expertise from all sectors so that it makes policies with the benefit of the best information available.

Finally, there must be collaboration so that officials work together and with citizens as part of doing their job of solving national problems.

● (1135)

[Translation]

On a practical level, the open government initiative requires agencies to publish information online in an open format so that it can be retrieved, downloaded, indexed and searched by commonly used web search applications. An open format is one that is platform independent, machine readable and made available to the public without restrictions that would hamper re-use of that information.

Our colleagues also stressed the importance of setting firm milestones — stages, along with dates. The Obama administration established multi-year targets and an associated evaluation process to measure progress. The consultation process, the initial staged release of agency data sets and progress reports to the American people had to be completed by December 2009, only one year following the President's inauguration.

[English]

Leadership from the top also characterizes the British government's commitments as part of its smarter government initiative. It adopted public data principles based on the release of public data sets, which would be made available at no charge. The government promises to release more public information, including health, weather, and traffic data sets, under open licences that enable reuse, including commercial reuse. In fact, the British experience is instructive because it's somewhat different philosophically than the American or the Australian initiatives in that it's very much geared towards gaining efficiencies in public sector service delivery, and that's really very much the focus of the British initiative.

The Australian Government 2.0 Task Force issued its draft report on how to make government information more accessible and usable. The task force's starting premise is that public sector information is a national resource, a national asset, and that releasing as much of it on as permissive terms as possible will maximize its economic and social value and reinforce a healthy democracy. In fact, also an interesting point of the Australian task force is that it actually has some analysis in terms of cost savings in delivering open data to citizens, as opposed to having a reactive mode responsive to simply access to information requests. It also cites in its cost analysis some EU analysis.

It recommends that public sector information should be free, based on open standards, and freely reusable. Since Australian government data is subject to crown copyright restrictions similar to those in Canada, the task force recommends releasing government data on their Creative Commons distribution licence. This means that the government retains copyright but freely licenses the work for reuse with no need for further permissions or compensation and no need for legislative change.

• (1140)

[Translation]

In my view, Canada must move quickly to embrace open government and, in doing so, encourage citizen engagement, especially that of our younger generation. While detractors may claim that rapid adoption of open government poses unacceptable challenges, experience in the “trial and error” approach in the United States has demonstrated that these challenges can be mitigated by a strategy that allows for adjustments and provides multiple channels for feedback.

In my view, the government should advance the transformation to open government as being in the best interests of this country and its people. The transformation can be founded on the principles of strong leadership, public consultations, enhanced accessibility and a commitment to resolve statutory and policy issues. It can build on the fact that Canada is one of the most connected countries in the world and use this fact as one of the major assets in order to increase government transparency.

[English]

In 2010 democracy, government efficiency, and national prosperity share the same core requirement: citizens, experts, and entrepreneurs must be able to easily access, interact with, and reuse current and relevant public domain data.

To quote from an excellent report compiled by Deloitte entitled *Unlocking Government: How Data Transforms Democracy*:

Government leaders have before them an opportunity to combine the resourcefulness of online citizens and entrepreneurs with the power of factual data to more effectively achieve their mission. In an information-driven age, the ability of governments to seize this opportunity may ultimately determine whether a government fails or succeeds.

Mr. Chairman, I and my office are pleased to assist this committee in this important task within the scope of our very limited mandate. This does not include a research mandate, but we will do everything that this committee requires of us to assist in this deliberation.

Again, thank you very much for the privilege to present you this rather lengthy presentation.

The Chair: I think it was just right. Thank you, Commissioner. It certainly does give us a lot to think about, particularly the principles. I know in tab 2 of your handout that you gave the minister, you summarized the five principles to help government, which I think we have to really let sink in. If you have a good foundation for your work, what you build after that obviously is going to be more secure. I think the members will want to take this into account as we move forward.

We have some members who would like to engage you, so we're going to start with Madam Foote, please.

Ms. Judy Foote (Random—Burin—St. George's, Lib.): Thank you, Mr. Chair.

Good morning, and welcome back.

Ms. Suzanne Legault: Thank you.

Ms. Judy Foote: Thank you for this very informative and thoughtful presentation this morning. As the chair stated, I think it gave us a lot to think about, certainly, as we undertake this review on proactive disclosure.

As I listened to you and followed you in your remarks, you talked a lot about leadership and the importance of leadership in making this happen. I'd like to ask you, from your perspective, how would you define leadership?

Ms. Suzanne Legault: There has to be a commitment from the people who have decision-making power in terms of deciding that an open government strategy is part of the priorities of this government. Really, in my view, it has to come from the Prime Minister and the government. Also, it has to be then implemented by senior officials within each federal institution.

My staff actually spoke with some people in the United States in the last few days just to get a sense of how the open government directive was working in the United States. These are complex things to put in place. They said they are encountering strong reaction from federal institutions, and the fact that it's something that was put forward by the President is what allows them to move forward when they do have push-back at their institutional level.

Ms. Judy Foote: Given your interest in this topic and the work you've been doing, have you had any discussions at all with this government on this particular initiative?

• (1145)

Ms. Suzanne Legault: I've given this presentation to the Canada School of Public Service, and we've had more specific discussions with the Office of the Chief Information Officer, but more related to specific access to information, proactive disclosure issues, rather than this open government initiative.

Ms. Judy Foote: So you have not had a discussion about this topic with anyone in the PCO?

Ms. Suzanne Legault: No, I have not.

Ms. Judy Foote: You haven't shared your information or your views with them?

Ms. Suzanne Legault: No.

Ms. Judy Foote: I'm interested in your comments, because you talk about what's happening in the U.S. under the leadership of the President. I know that when we were under government ops, when we were looking at the stimulus spending and trying to keep track of the amount of money that was being spent and the number of jobs being created, we looked at how it was being done in the U.S. It was very thorough and it was very timely, and you never had to wonder how the money was being spent, where it was being spent, or how many jobs were being created. That was totally contrary to what we faced or we saw here in Canada. We kept insisting on having a much more open, transparent, accountable reporting of the stimulus spending here, but it just didn't seem to garner the same type of support. There were always reasons why it couldn't be done, or explanations: "We're trying to", or "We're working at it."

But I would think when you have something that's being done so well in another jurisdiction, you don't need to recreate the wheel. I'm wondering what you found in terms of looking at what's happened in the U.S., Australia, and Britain, and if you would tell us, of these three jurisdictions, which one you think is well ahead of the game. Is there anything you think we might want to emulate on a go-forward basis?

Ms. Suzanne Legault: It's a very good question, and really, Mr. Chairman, I'm always very leery to compare jurisdictions. I think we have to extract some of the good principles and some of the ways they're moving forward, but each has their own issues.

For instance, in the U.S. it went through very fast; there were very tight timelines. A lot of data sets have been put forward. Some of it has been very successful. Some of it has been the subject of criticism because the data is too difficult for ordinary citizens to actually understand. There was an audit recently of the American system, saying it's not as successful as they thought it should have been.

In Australia they've laid out really wonderful fundamental principles in the task force recommendations, but so far it sits with the Australian government. So we haven't really seen the development in Australia; we've seen the seminal thought piece.

In the U.K., as I said in my opening remarks, the impetus behind it is very different from the American impetus. They're doing it because they've had serious financial difficulties, and they're really looking at it to have and to develop a very cost-efficient public service for their citizens. That's why in my opening remarks I basically said it has to be a made-in-Canada strategy.

We mustn't forget that in Canada, and at the federal level, we have quite a high level of disclosure that's being done by various institutions on their websites. It's very piecemeal. Everybody does their own thing.

The difference between open government and what's going on right now in Canada is everyone discloses their own information. It's usually in a static format, i.e. it's good for information, but you can't really access the underlying data. Open government is different. Open government basically fosters a central repository of data. This data is categorized in certain ways, is accessible from a central point of entry, and can be reused to develop different applications.

In the context of the stimulus spending, for instance, the difference in the U.S. is that the data sets are available, so people can actually

go into that website, get the data, and develop their own analysis, which sometimes is different from the government's analysis. That's the difference. The way we publish information is mostly in static format, except for Natural Resources Canada, which has these open government concept databases.

• (1150)

The Chair: Unfortunately, we're...

We'll be fair. We'll share. We'll get around to you again, though.

[*Translation*]

Ms. Thi Lac.

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good morning, Ms. Legault. I wish to thank you for being with us once again.

During the last meeting, you mentioned that, compared with Canada, Australia and the United States were of the avant-garde. You told us that you would be able to inform us of the progress made during today's meeting, and you held your promise. Many thanks for that.

You talked about the American system. At the beginning of your presentation, I asked myself if this progress was due to the fact that the American system was different from ours. You however well indicated that it is thanks to their political will that the Americans were able to put in place such a system.

In order to express its political good will, should the federal government not, as a first move, appoint a full-time commissioner rather than maintaining this position as an interim appointment? This would confirm that it is a key position within the government.

Ms. Suzanne Legault: Mr. Chairman, I think this question should be put to someone else.

Mrs. Ève-Mary Thaï Thi Lac: For my part, I believe it is one of the first moves that should be made. It would be simple. The conservatives often tell us that everything is long and complex and requires thought.

Could you remind us yet again of how long you have been filling this interim position?

Ms. Suzanne Legault: Since July 1st, 2009.

Mrs. Ève-Mary Thaï Thi Lac: Since then, invitations to tender must certainly have been launched... Were this vacancy to be filled, it would show good will.

We know that the Access to Information Act has been in place for 25 years. At the time, Mr. Plamondon was making his entrance here, in the House of Commons, as an MP. Twenty-five years ago, I did not have the right to vote, and my assistant was not yet born. That gives you an idea of the situation: this legislation should perhaps be re-examined. Changes have been made, but very few compared to what we would like to see and what should be done. As you say, changes come quickly, and we are put on the sidelines.

You have also stated recently that your next report will deal with political interference. If you believe it wise to table such a report, is it because you have concerns in this area in particular?

Ms. Suzanne Legault: Mr. Chairman, last summer, when I became interim commissioner, I published a statement indicating my plan with regard to systemic investigations.

Through these systemic investigations, I was to deal more specifically with the matter of consultations and extensions granted by various departments, because I was of the belief that the performance report cards were insufficient with regard to providing us with all of the necessary information.

Subsequently, as you know, several allegations of political interference landed on my desk; I received several complaints. Indeed, I have three specific inquiries under way. Given that there were several allegations in this area, I decided to include this under my systemic investigation that I will be launching anytime now. In essence, I will have to consult the same documents in order to study this matter. The documentary evidence will be the same, but given that I only have enough resources for one investigation, I am including this under the same umbrella.

Mrs. Ève-Mary Thāï Thi Lac: We talked about the United States and Australia. You however further excited my interest when you talked about Quebec's Act on Access to Documents Held by Public Bodies and the Protection of Personal Information. You are aware that we are MPs who represent the Quebec nation.

I would like to know if you are of the belief that the Canadian government should follow the example of the Quebec government. What advantages would this provide? What regulations, what act should be amended so as to maximize the workings of the federal system? Because things are working well in Quebec, and you are perhaps of the belief that the federal government should follow this example in particular.

• (1155)

Ms. Suzanne Legault: Yes, indeed, the Quebec regulations and... In fact, the Quebec legislation is more recent than Canada's. It better satisfies international requirements with regard to access to information. And the regulations list several elements that must be disclosed by Quebec institutions.

With regard to these requirements, one must be careful. Indeed, at the federal government level, various things must be disclosed proactively at the administrative level, which is quite compulsory and which is outlined in Treasury Board policies. One must really compare the two in order to determine if there truly is a need to amend the legislation in order to ensure the same level of disclosure. I do not have this information, I do not know exactly what is disclosed at the federal level at the present time, administratively speaking, and I do not know what the Quebec regulations provide for.

There is a major distinction: in Quebec, these regulations include the obligation to disclose the access requests that are made. That does not exist at the federal level, nor elsewhere in Canada; it does, however, exist in Mexico, in Great Britain, to my knowledge, and it is outlined in legislation.

In my opinion, this would be excellent. Two departments do this voluntarily: the Department of National Defence and the Atlantic Canada Opportunities Agency. And, as of tomorrow, I believe that there will also be my office.

Mrs. Ève-Mary Thāï Thi Lac: Thank you very much.

[English]

The Chair: Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair, and thank you, Commissioner.

This is a very helpful start to our deliberations. I appreciate that you've done it, even though you don't have a research mandate. It's very helpful for us, and I hear your comment.

Commissioner, I want to ask about the terminology we use starting at a very basic level. We've been using the term "proactive disclosure", but I have a feeling, just from the very preliminary look that I've had, that other jurisdictions in other places use different language to describe the same kinds of issues. I know that the *Choosing Transparency* report in Quebec talked about automatic publication as kind of an overarching term.

Can you say something about the kinds of terminology that are used and what the differences are in that?

Ms. Suzanne Legault: I think one of the key things to understand, at the federal level particularly, is that the term "proactive disclosure" in the federal government—and I know because I've been told this specifically by the Secretary of the Treasury Board—means what is mandatory disclosure, what you find on federal department websites, which includes travel expenses, hospitality, contracts, and so on. That's what the federal government understands as proactive disclosure. It doesn't understand it in the same context that I think this committee is looking at it—generally, in terms of what information we voluntarily disclose as institutions to the public. That's one distinction in terms of proactive disclosure.

Open government is different from proactive disclosure, in my view. It's a form of proactive disclosure, but open government means that you don't only disclose information, but you disclose it in a format that can be disaggregated, as data that can be reused, and people can use different technological applications to analyze this information.

The third concept that I would say is fundamental to open government is that it entails a collaboration with the citizens so that it's an exchange of information based on the data. The idea is to tap into the knowledge, creativity, and innovation of citizens to improve what the government is doing. So it's very much using the new technology such as social media and so on to interact with citizens to improve policies, programs, and service delivery. That's what I understand in terms of open government.

Mr. Bill Siksay: Do other jurisdictions, like the United States, Australia, and Britain, use different terminology? The Americans obviously are using open government as a key concept. Do you know what terminology the U.K. and Australia are using?

Ms. Suzanne Legault: They're using "smarter government" in the U.K. Aside from what I've just said, I'm not very familiar—

• (1200)

Mr. Bill Siksay: So “smarter government” would connect with their government efficiency key principle in terms of why they're looking at this.

Ms. Suzanne Legault: Yes, and in fact, if the committee is interested, the Deloitte article I mentioned—I didn't bring it because it's in unilingual format—is a wonderful piece of work that goes through what we used to have when we started public government and what the situation is now. They call it the legacy, the learning, and the leading. They have this concept of where we should be going in terms of using technology to engage with our citizens. It's a really well done piece of work. If the committee has the resources to translate it, and if it's available, I think it would be a seminal piece for the committee to look at.

Mr. Bill Siksay: It would be helpful to at least have the reference to where we could track it down.

You said in your opening statement that this proactive disclosure consideration needed to look at specific Canadian requirements. The one you explicitly laid out was official bilingualism. Could you say a bit more about that, and can you identify any other unique Canadian requirements?

Ms. Suzanne Legault: That's the one that really distinguishes us from the Australians, the Americans, and the British in terms of their initiatives. We have our own security policies in the government. We have our own copyright issues. We have our own data sets of information already, and our citizens may be interested in different sets of information. The main characteristics of the other jurisdictions are that they consulted the population and did thorough reviews before coming out with their strategies.

It is not a simple matter. It really needs to involve technology experts. You need to have security experts, because once you start having an open forum for discussion, it opens up security issues for institutions to consider. Official languages are obviously an issue for us in terms of what we publish.

So it's not a simple task to determine what's best for Canada in terms of open government, how we go about it, and the various considerations we have to keep in mind. Legal, security, privacy, confidentiality, official languages, and copyright issues are the ones that come to my mind. But we shouldn't look at those as being impediments to moving forward. I think we have to be mindful that they're there, but it does require considered study by leading experts. It really does.

Mr. Bill Siksay: Do you see our jurisdictional structure in Canada as more problematic than those in other jurisdictions, or is it just different?

Ms. Suzanne Legault: It is different, and each of the other jurisdictions has interesting lessons to learn from us. The U.K. and Australia are Westminster models, so they have perhaps similar issues with cabinet confidences and other types of information. Parliamentary privilege issues would be very similar. They have crown copyright issues.

The Americans are our trading partners, so that's a different consideration. Do we want our researchers, our academics, our interpreters to have less access to data and less access to potential

data sets that will lead them to create innovations in Canada versus the U.S.? These are the types of things we should look into. But we have to develop what's good for us and look at and perhaps benefit from what's going on in the provinces.

Mr. Bill Siksay: The question of records—

The Chair: I'm sorry, Mr. Siksay, but we'll be back to you.

Mr. Poilievre, you're next, please.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I'd like our exchange to be very mechanical and mechanically focused on what proactive disclosure means.

If I am a researcher or an investigative journalist and am seeking information from a government of Canada that under this scenario would have instilled the same kind of proactive disclosure as President Obama pronounced upon in the days following his inauguration, what would be different for me?

Ms. Suzanne Legault: For instance, in relation to the stimulus spending, the difference would be, say, that if you really wanted to conduct your own analysis of the spending, you would have access to the data. You wouldn't have access simply to knowing that the government spent so much money on this project at this certain place and have a document that states that. What you would have is all of the data, which you could then manipulate to see whether or not—

• (1205)

Mr. Pierre Poilievre: What kind of data do you mean?

Ms. Suzanne Legault: It depends on the different data sets. Open government in the U.S. has a variety of data sets. You'd have to look into it.

Mr. Pierre Poilievre: Specifically you used the example of our economic action plan versus the American Recovery and Reinvestment Act of 2009. What data is available to an American journalist that is not available to a Canadian journalist, vis-à-vis our governments?

Ms. Suzanne Legault: They have all the financial spending data, as you would if you looked at a financial statement and had all of the disaggregated data and could actually use it, because it's in a format whereby you can use different technological applications and do different graphs—

Mr. Pierre Poilievre: What data do they not have right now? Specifically what data is it?

Ms. Suzanne Legault: I didn't conduct a detailed analysis, Madam Chair, of the data set that's available in the U.S., but it's essentially the distinction between a static disclosure of information and an open government disclosure of information. It's that you have access to the raw data and can conduct analysis. That's essentially the main difference.

Mr. Pierre Poilievre: It's still not clear to me what data we're talking about. Perhaps you could get back to the committee, if you want to develop your example to show, practically speaking, what data a journalist studying the American Recovery and Reinvestment Act and its projects would have that someone studying the Canadian government economic action plan would not have. I am not clear on what the distinction is.

Right now, it's relatively easy for anyone to find out which projects the federal government funded and for how much. Most municipalities have data regarding jobs that they predict will come from each of those projects. As far as I know, we have all the same data available with our economic action plan as exists in the United States.

Is there any other example you could give us to perhaps illustrate the mechanical difference that I would experience if I were investigating American government spending or decisions, or any other matter? What advantage would I have there that I do not have here? Please be very specific.

Ms. Suzanne Legault: Okay.

Madam Chair, the best person to give that specific response to the member is Jennifer Bell of VisibleGovernment.ca. She is here in Ottawa. She has basically looked at the two different portals concerning stimulus spending as between the Canadian experience and the American experience. She is much more a technology expert than I am to answer this question. I think she would be best to answer this question, because she can actually show you—

Mr. Pierre Poilievre: Sure. What can you tell us about the differences, though?

The reason I ask is because there's been a lot made of this declaration the President uttered in the aftermath of his inauguration. In all the reading I'm doing, I'm not quite clear on what it actually means in a tangible sense. I know it has a tonal importance, a rhetorical importance, but I'm trying to get a sense of what the real tangible difference is.

Ms. Suzanne Legault: Well, one of the differences you can actually look at in Canada is the website I mentioned in my presentation in terms of open parliament. The difference between Hansard and that portal is that with Hansard you'll have to do a search to look for a member's name and everything this person has done. The other is a centralized portal where you can get all of this information. It's a different application in Hansard. You can actually get all the words that are spoken, all the motions and everything, in one search engine.

So that's the difference. It's a static data set that you can actually manipulate and reuse for different applications. I don't know how to explain it in any other manner.

The other thing they have in the U.S.—

Mr. Pierre Poilievre: It sounds to me like it's not the availability or the supply of data but the ability to apply technology, to manipulate it and perform different studies on it.

• (1210)

Ms. Suzanne Legault: Yes, that is in large part what the difference is. The other thing is that there's usually a centralized

portal. The data they have on government is everything the institutions have been asked to disclose as part of the open government initiative in a central portal.

Mr. Pierre Poilievre: So that everyone can access it.

Ms. Suzanne Legault: Yes, but it's also one central website where you can access all this information as opposed to going through each government institution. It's very similar, if you want to think about it, to what the federal government did with Service Canada in terms of program operations, where they have a one-stop shop.

Mr. Pierre Poilievre: Right, a one-stop shop.

Ms. Suzanne Legault: Yes. The idea with this open government initiative, with some of these databases, is that it's a one-stop shop.

Mr. Pierre Poilievre: When people talk about proactive disclosure, they talk about it as though it's some sort of an ethical change—

The Vice-Chair (Mrs. Patricia Davidson): You're running out of time.

Mr. Pierre Poilievre: I'll just wrap up then. It's like an ethical change in the evolution of freedom of information. But what you're telling me is that we're talking about the efficiency of the way already available information is presented, making it a little bit easier and a bit more convenient. Is that correct?

The Vice-Chair (Mrs. Patricia Davidson): Okay, thank you. I'm afraid we'll have to wait for that answer, Mr. Poilievre.

We're moving on now to Mr. Murphy.

Hon. Shawn Murphy (Charlottetown, Lib.): Thank you, Madam Chair.

Thank you very much for your excellent report. I just have a few questions.

You've compared what's going on in Great Britain, Australia, and the United States. It's my understanding that with Great Britain and the United States, it is part of their affirmative policy to go with open government. Is Australia's 2.0 report similar, would you say?

Ms. Suzanne Legault: The Australians commissioned a task force, and the task force issued a report in December 2009. The task force was composed of experts in the field, and they produced this report where they make recommendations to the government. To my knowledge, the government has not yet implemented it.

We've sent some questions to one of the people who worked on the task force. In fact you have a list of questions in your handout. We're proposing to get the answers from these conversations, get them translated, and send them to the committee. Because we're not quite sure... We're reading materials, but we don't know what has actually been done in Australia.

Hon. Shawn Murphy: So it looks like Australia has done a report, and Great Britain and the United States have made an affirmative policy direction. Canada is in a stage that's called proactive disclosure, but that's just one component of open government.

Ms. Suzanne Legault: In my own understanding of the definition of proactive disclosure, open government is taking it to a different level.

Hon. Shawn Murphy: I know that Treasury Board had its directive on the administration of access to information. Are there any other policy directions out that you're aware of dealing with access to information?

Ms. Suzanne Legault: They're in the process at Treasury Board Secretariat of revamping all of their policy suite in terms of access to information, with guidelines and directives. They also have their records-keeping policy, which is relevant to this, because if you have proper records management and proper information management practices, it's a lot easier to proactively disclose information.

In fact, for instance, in our office we're planning to use our information management process to proactively disclose information once we have finalized documents, so that they're basically ready to go. Instead of waiting for an access to information request, we're going to deal with exemptions related to personal information and other issues and then disclose them proactively.

Hon. Shawn Murphy: So you're saying that there's really no legislative or regulatory impediment; it's just an issue of policy to take the next step.

Ms. Suzanne Legault: As I said, I haven't done the full spectrum of review on this, but in my view, certainly in terms of access to information and of information management, records keeping, and the Archives Act, privacy is going to be an issue, and security is going to be an issue, but I don't think we should consider that these issues are insurmountable.

Hon. Shawn Murphy: I know there was a report card done recently, but it seems to me that this would really go to the performance of a department or an agency. Is this issue talked about? Is it elaborated in the departmental performance reports that are filed annually by the departments and agencies in Ottawa? Do they have a section dealing with how they are getting along in dealing with their management—I guess that's how I would classify it—of access to information?

• (1215)

Ms. Suzanne Legault: There is an obligation under the Access to Information Act to publish an annual report on performance of access to information obligations, for each institution covered by the legislation.

Hon. Shawn Murphy: I'm talking about the individual departmental performance reports from the departments and agencies.

Ms. Suzanne Legault: I don't know that there is a specific requirement in the DPR for that. There is not one that I know of.

Hon. Shawn Murphy: Just inform me how the system works. We've had some high-profile cases in which someone on a minister's staff has been involved in adjudicating or managing these access to information requests. I would have thought that the deputy minister, being in charge of the department, or the chief executive officer, being in charge of the agency, would have total control of this and that it wouldn't involve a political dimension. Can you just explain to me how that comes to be?

Ms. Suzanne Legault: Mr. Chairman, I'm not sure I understand the question. How what comes to be?

Hon. Shawn Murphy: It's as to how it gets into the political domain. You have an access to information request. The deputy minister would be in charge of the management of the department and would have to process the request and deal with it in a legal manner.

How do the political staffers get involved with the type of information that's given, or when it's given, or how it's handled?

Ms. Suzanne Legault: Mr. Chair, the political staffers have no authority under the Access to Information Act. They have no delegation of authority under the Access to Information Act to make any decisions about access to information.

Hon. Shawn Murphy: In other words, they shouldn't be involved in the process. Is that what you're saying?

Ms. Suzanne Legault: They can review matters for information purposes, but they certainly should not be involved and they have no legal authority to be involved in making decisions about disclosure of information under the Access to Information Act.

Hon. Shawn Murphy: Thank you very much.

The Chair: Mr. Rickford, please.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair.

Thank you, Suzanne, for visiting us again and for providing some great information.

I'm pleased to hear, as you said earlier, that overall you felt like our government departments were quite open. There is still more work to be done, and I think what we're really talking about here at committee is a process in terms of how we can get there.

I have some questions on information, but given the richness of some of the questions that have been asked earlier, I want to fill out some space on them.

I was particularly struck by some comments earlier around the Freedom of Information Act in the United States, the open government regime. You alluded to some problems there. I appreciate that there were different reasons, first of all, why the United States, the U.K., and Australia got to where they're headed by way of policy or formal legislation. I'm reading from tab 4, from the materials you gave today. It's my understanding here that according to the report on FOIA—that's the Freedom of Information Act—fewer than a third of the 90 federal agencies that process requests for information have significantly changed their practices since Obama's initial order. The report also found a wide variety of changes in each agency's decision to release or deny access to information. So there are clearly some challenges there, I suppose, to the overly favourable characterization that my colleague had earlier.

Furthermore, the *Washington Post* analysis published in January 2010 found that more people have sued the government for access to federal records in the first year of the Obama administration—more than 319 lawsuits—than in the final two years of the previous administration. So clearly, while the language has been typically colourful, as it tends to be from that particular President, there is still a lot of work to be done on the ground with respect to access to information. We want to be sure, as a committee, then, that we study the challenges that the United States have faced and try to overcome them. That said, I do appreciate that not all of Obama's ideas are great with respect to access to information, and this committee should be here to help Canadians get access to that.

I might preface my question by a simple observation. While perhaps in the United States they were busy loading up what they intend to do, we were busy getting shovels in the ground. If anybody disputes that, they can come to the great Kenora riding and see holdups with road delays and bridges under repair, schools being built, and just an overall kind of “get it done” sort of theme. I have been busy loading that information into a massive spreadsheet, which I hope to make available to the public on my website, which clearly demonstrates the status of all of the announcements and the work we're doing. That will benefit, clearly, not just my own constituents...

There was an infrastructure stimulus fund secretariat...he was disguising himself; he was actually a Liberal MP who was calling around to communities in my riding to get information about the status of certain projects. So he, too, instead of having to disguise himself, will be able to get that information. Again, we're helping with that.

My question is this, then, leading in, and it's a rather lengthy segue, and I apologize, Mr. Chair.

• (1220)

The Chair: I was wondering if the sign was going to come out, the government's action plan.

Mr. Greg Rickford: Given the length of the presentation, I can't confine myself to a couple of quick, rapid-fire questions.

What is it about too much information...? Let's look at the implications of the problems of more information being proactively disclosed, or perhaps the types of information. Do you have any specific concerns around that?

Ms. Suzanne Legault: Mr. Chairman, I think this is a very good question. If we start overloading people with information, it becomes not useful.

One of the concepts in the open government plan in the U.S., which I think is something that's really interesting to look at when we look at disclosure of information, is that they have the concept of high-value information. They're not saying any information; they talk about high-value information. They describe it as being information that can be used to “increase agency accountability and responsiveness; improve public knowledge of the agency and its operations; further the core mission of the agency; create economic opportunity; or respond to need and demand as identified through public consultation”.

In the open government initiative, in answer to your colleague's question as well, the main difference is that it uses technology to become interactive with citizens. The purpose is to gain knowledge and to develop better policies and programs through this interaction. What we're seeing develop at the grassroots level and at the municipal level, in particular in Canada, is that there's a strong desire among Canadians to interact like that.

In the Deloitte piece, there's a really interesting example of young Ontarians and how they responded to the Ontario government's desire to pass new legislation for young drivers. People think that young people are not connected to what the government is doing, but they received hundreds of thousands of responses from these young people, who wanted to comment on this legislation, through social media. That's what open government is about.

It's not that it's not happening in Canada; it is. In various areas, as I mentioned, it is happening. What's not happening is a coordinated, concerted effort by the government to say that we're embracing this—

Mr. Greg Rickford: It's the cost.

Ms. Suzanne Legault: —as a way of doing our government business.

Mr. Greg Rickford: It's sort of a template...

The Chair: Thank you.

Madame Thi Lac, *s'il vous plaît*.

That's only six minutes. But for commercials, I give a discount rate.

Mr. Greg Rickford: Was it five minutes and you gave me six minutes?

The Chair: Yes.

I didn't charge you for the full amount of the commercial.

Mr. Greg Rickford: Oh, it was for the commercial. Okay.

The Chair: It was entertaining.

Mr. Greg Rickford: Right.

The Chair: Go ahead, Madame Thi Lac.

[*Translation*]

Mrs. Ève-Mary Thāi Thi Lac: Ms. Legault, earlier, I asked you a question. I told you that I believe that finding someone to occupy the position of commissioner would already be one way for the government to show its good will.

Have you received signs or information on the part of the government? Were you told that there was a timeframe for filling the position of commissioner? Will this be done in short order? Has there to date been any announcement as to the opening of the position?

Ms. Suzanne Legault: Yes. Last summer, the government made an interest call. I applied, it is not a secret, because I spoke of this openly to all of those who questioned me in this regard. In September, I was contacted in order to determine if I was willing to accept that my mandate be renewed for an additional six-month period. I accepted. The second mandate will expire at the end of June. We will see what happens.

•(1225)

Mrs. Ève-Mary Thāi Thi Lac: I am not talking about your interim appointment, Ms. Legault. I really want to know if the government has set a deadline to fill the position after having held an interest call. As you stated, the position was opened last summer. Nearly nine months later, it is rather surprising to see that a candidate, be it yourself or someone else, has not been found, in order to finalize the process.

Has the government announced a new deadline, a new timeframe with regard to the appointment of a candidate?

Ms. Suzanne Legault: Mr. Chairman, I am really not part of that process.

Mrs. Ève-Mary Thāi Thi Lac: Have you, personally, been informed...

Ms. Suzanne Legault: No.

Mrs. Ève-Mary Thāi Thi Lac: Given that it is your last mandate, have you been told that something would be happening after the month of June? You are unaware?

Ms. Suzanne Legault: Yes.

Mrs. Ève-Mary Thāi Thi Lac: Very well.

Are there other people in your entourage who work with you and who are in the same situation as you?

Ms. Suzanne Legault: Persons who also are filling interim positions?

Mrs. Ève-Mary Thāi Thi Lac: Yes.

Ms. Suzanne Legault: Yes, of course. I am normally Assistant Information Commissioner. I therefore certainly do not have a joint commissioner elsewhere within the organization. Operationally speaking, it is certainly more difficult.

Mrs. Ève-Mary Thāi Thi Lac: Indeed.

Earlier, when you were talking about voluntary disclosure, you mentioned three departments. You also talked about the vote to be held shortly.

Two others have already been held. Since when have these two other departments functioned in this way?

Ms. Suzanne Legault: That is a good question. I will have to come back to you on this. I know that, in the case of the Department of National Defence, this has been the case for quite some time now. In the case of ACOA, I am not sure.

Mrs. Ève-Mary Thāi Thi Lac: I would also ask that, when you provide us with these documents, you indicate whether you have seen improvements and savings since the implementation of this system in these two departments.

We often hear the conservative government say that it is not all information that can be disclosed, because some information is delicate. Do you not believe that in several cases it is more a matter of the culture of secrecy than the protection of delicate information?

Ms. Suzanne Legault: The act provides for numerous discretionary exemptions. When it is a matter of disclosing information, there are many discretionary exemptions. It must be determined if the information should be disclosed or not. That depends on the

circumstances at the time the access request is made. It must however be underlined that the act clearly states that there is a presumption in favour of disclosure. President Obama did the same thing with his order. That is provided for in our legislation.

Mrs. Ève-Mary Thāi Thi Lac: Ms. Legault, you use the term “discretionary”. Do you believe that, were we to make changes to the act, this would be one of the most important?

Ms. Suzanne Legault: I believe it is important to retain this discretionary power, because, when an exemption is invoked, it is obviously contextual.

Mrs. Ève-Mary Thāi Thi Lac: Do you not believe that it is precisely this discretion that opens the door to abuse?

Ms. Suzanne Legault: Mr. Chairman, we recommend that there be a public interest test and a test allowing for an analysis of the harm that could result from disclosure. These are international principles, that are in addition to the analysis done. It is not simply a matter of discretion, but we also want to determine if it is in the public interest that information be disclosed and if disclosure might cause harm.

As a matter of fact, we are going to see the results of the case that the Supreme Court is studying, dealing with the public interest in the context of the Canadian Charter of Rights and Freedoms. We are awaiting the decision, because it will most certainly, to some degree, clarify this matter as well.

[English]

The Chair: Thank you.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: Thank you, Ms. Legault.

[English]

The Chair: Mrs. Block, please.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much, Mr. Chair.

Again, welcome, Ms. Legault. It's always good to hear from you. I do look forward to reading the rest of the package you gave us.

I was going to brag about the fact that I have the openparliament.ca RRS feed embedded into my MP website, but then I had to wonder about the high value of the information, like how many words are spoken in the House.

In your presentation you made the following observation. You asked, “At what stage are we in Canada and what lessons can we learn from colleagues in other jurisdictions?” You then went on to reference different initiatives municipally, provincially, and in other countries. We have a list of potential witnesses that we are trying to narrow down to a short list. My question for you is, do you have any colleagues in the other countries you've referenced that you think would be helpful for this committee to speak with?

•(1230)

Ms. Suzanne Legault: Certainly, we can provide a list of potential witnesses to the committee. As I said, we did endeavour to contact a few people in the U.K., the U.S., and Australia, before coming here today, but we couldn't reach everyone. We do have the list of questions and we will provide that to the committee in bilingual format as a preliminary step.

My staff spoke to Melanie Pustay at the Department of Justice this week, so we're getting the government's perspective. It's also important to get the perspective from NGOs or other experts. I think there has to be a balance, because we're getting, as is normal, different perspectives on how these things are working or not working. We can definitely provide a list of potential witnesses to the committee.

Mrs. Kelly Block: Okay.

On page 2 of your presentation, you state that:

Proactive disclosure refers to an environment where information is routinely disseminated electronically, with the exception of that which government must protect because it poses a risk to a public or private interest.

I'm wondering if you would expand for us what you would define as being too sensitive to be made public.

Ms. Suzanne Legault: It depends on the circumstances. I think the way to go about it from each institution... You see, each institution knows its own information holding and they have to make their own determination based on the Access to Information Act and based on the protection of personal information.

For instance, in our institution I can tell you that the information holdings that are the most sensitive are the investigation records and information we get as part of our investigations—for instance, from other institutions like CSIS or CSE. We do get documents from those institutions. To us, those would be documents that we could not proactively disclose.

What we will proactively disclose is our statistical information, because we know our stakeholders are really monitoring our performance. We want to provide that to them so they can follow on a more regular basis, as opposed to on an annual basis in our annual report. I can tell you that I'm not that pleased about the April statistics, but there you go; they're going to be out.

There has to be a certain level of understanding that we will be more scrutinized when we do this. But I think there's also an education process for citizens that we cannot always be perfect in everything we do, so there has to be this interaction and understanding.

That's an example of what I know, specifically, about what would be highly sensitive and not to be disclosed and what would be disclosed.

Mrs. Kelly Block: It might have been in one of your answers to a question, but you also said that you were reluctant to compare jurisdictions and that what we need to do is extract some good principles from other jurisdictions. You also talked about proactive disclosure being very different from open government.

When we look at what is happening in other jurisdictions and some of the good principles we need to extract from them, are those

the ones that you've captured here, the five principles you referred to?

Ms. Suzanne Legault: Yes, Mr. Chairman, these are the ones we extracted in terms of embarking on a process of open government. There are more details to this in the sense that, for instance, in the Australian task force recommendations, they recommend who should be the people who are going to be developing an open government strategy. In the U.S., you look at how President Obama structured the development of the open government strategy. It's one thing to say we're for open government, but it really has to be put in place, it has to be monitored, it has to be implemented. It's complicated, so there have to be people who are charged with that. They need to have proper accountability.

It is something that needs to be structured, but the five principles are the ones that we thought, for certain, could be extracted out of the other jurisdictions. Then I think there are more lessons to be learned and more details.

•(1235)

The Chair: Thank you.

Mr. Siksay, now you can get that next question in.

Mr. Bill Siksay: Thank you. Next? I have ten, Chair, but I'll try a few.

The Chair: Well, carry forward from the last round.

Mr. Bill Siksay: Thank you, Chair.

Commissioner, you mentioned the list of potential witnesses. That would be really helpful. I only wanted to clarify that you would provide that to the committee.

In your statement today, you noted that the Clerk of the Privy Council had said that one of the pressures around this whole issue of proactive disclosure was the globalization of policy issues. I think you've touched on that already this morning, but I wonder if you could say a little bit more about how that pressure is functioning, or what the specific pressure is.

Ms. Suzanne Legault: I can't comment on what the clerk meant; I'm simply reading from his report. But information is global. Development and use of information is global. It really transcends boundaries. You know what the social media is doing. Everybody's interacting on an instant basis, and people are commenting and people are interacting automatically.

Globalization means that...I have an economics background, so I would say from a competitiveness perspective, I don't think we can lag behind in terms of having access to this public asset, that is, public sector information.

Mr. Bill Siksay: Thank you. That's helpful.

I think earlier as well you were talking a bit about records management. I'm wondering if there's any updating or changes needed around the duty to create a record, and the kinds of policies or legislation we have in Canada on that specific issue as it relates to proactive disclosure.

Ms. Suzanne Legault: The policies are well in place in terms of duty to record. There have been proposals for amendments to have a positive legal obligation to create a record.

To me, as long as the policies are being implemented appropriately and people are held accountable for whether or not these records are created, whether it's in the legislation... To be in the legislation would mean that it would be more in accordance with what's in newer legislation in terms of access to information or in the library and archives act. Maybe that's the proper place to have that duty to record.

I'm hopeful with the records-keeping policy. I am following it quite closely with the national archivist. I know the chief information officer and the national archivist are working on that. In the report cards we did find quite a few departments that are putting in place programs for information management.

I'm hopeful. I'm an eternal optimist. I've said this before, I think.

Mr. Bill Siksay: Okay. Sounds like—

Ms. Suzanne Legault: We'll see how it goes.

Mr. Bill Siksay: There are some specific examples of it anyway that give rise to that.

I think one of the sections of your statement that you didn't talk about this morning was the quasi-constitutional or the constitutional right to access to information. I'm wondering why you didn't talk about it. Could you just comment a bit on that question?

Ms. Suzanne Legault: I just thought it was a really long presentation, and I thought it was well-known to this committee in any event.

Mr. Bill Siksay: You haven't changed your mind about the idea.

Ms. Suzanne Legault: No.

Mr. Bill Siksay: Okay. I see.

One of the issues you talked about was prescribing access design principles. I gather that the issue is making it easy for people, in some ways, to find what they're looking for and to gather the information they're interested in.

Is there a place where that kind of discussion would be held? Is it something that has to be held across jurisdictions? I guess it could be held across the federal government. Exactly what did you mean by prescribing access design principles when we're talking about the technological change and the goals of a proactive disclosure policy?

Ms. Suzanne Legault: You're referring to the British Columbia commissioner's proposals?

Mr. Bill Siksay: It could be.

Ms. Suzanne Legault: Basically the idea is that you do what's commonly known as an access impact assessment. The idea is to think about disclosure of information when you create documents, when you start developing policies and programs.

One of the difficulties now is with the complexity of government, which is not only done horizontally across departments but also multi-jurisdictionally, i.e. federal, provincial, territorial, aboriginal governments, and in the private sector. So it's very difficult to access information about different types of programs and policy.

My favourite example is the Mackenzie pipeline project. I dare anyone to try to access information on that, because it's been going on for so long and there are so many parties involved. If we think

about disclosure of information when we embark on these complex projects, then we can think *ex ante* about disclosure. That would facilitate access.

I know that Dr. Caron is on the same wavelength as I am on this one. It's the thought process of managing your information and keeping appropriate records when you start projects, programs, and policies. So it's disclosable and also it's archivable.

● (1240)

Mr. Bill Siksay: Okay. So that's one of those cultural changes you're talking about?

Ms. Suzanne Legault: I think also that this is a major resource issue within institutions. We're going through this process ourselves, and it needs serious education, serious commitment within the institution, and serious discipline in order to have sound information management practices, particularly with electronic documents.

The Chair: Okay. Thank you.

Ms. Foote, please.

Ms. Judy Foote: Thank you.

Since I was the one who raised the whole ideal of transparency and reporting on the stimulus spending... To give an example, we tried for months, even into a year, to get a handle on the number of jobs actually created under the stimulus spending. Despite the government's claim that there would be over 200,000 jobs created, whenever we asked the question we were told that they don't keep track of the number of jobs and that it was left to the municipalities. I don't know how they were ever supposed to guarantee that 200,000 jobs would be created.

This is a case in point of wanting to track the information about where the jobs were being created. It was a headache, and it couldn't be done. I just raise that as an example of the difference in the information available on the Canadian website versus the American one.

In your most recent report on access to information and the delays we're encountering, you said then, at the time, that there's a lack of will by this government to be transparent. That was in your report. Yet I read in your comments today that:

Proactive disclosure is an essential component of the broader concept of open government. Open government is predicated on a system in which government records are available to citizens in open standard formats that permit unlimited use and re-use of the information. This facilitates public engagement and participation which, in turn, promotes greater transparency, accountability and trust in government.

You go on to say that at the federal level, presently—I'm assuming this is what you're referring to—there have been only modest attempts to have proactive disclosure.

Given that statement in your report, and now your comments today, what makes you think this government will be even remotely interested in having an open government or in being proactive when it comes to proactive disclosure? Is there anything you're seeing that would lead you to believe that this is even remotely possible, given your two comments?

Ms. Suzanne Legault: Mr. Chairman, I'm trying to look at my report to see where I said that there was a lack of will. I can't find it, nor do I remember it. So I'm not sure I stated that. I think what I said that's being most widely disseminated is that the right of access to information "is at risk of being totally obliterated because delays threaten to render the entire access regime irrelevant in our current information economy".

Ms. Judy Foote: We'll take that line.

Ms. Suzanne Legault: That's what I think. And that was the point, because that paragraph specifically refers to the delays we're experiencing in dealing with access to information requests, which is a reactive mode of disclosing information in the context of today's technological environment. That's what this sentence was referring to. It's important, because that's what I'm talking about. I'm not here to say that this government should do this or this government should do that. I'm here to state, as a proponent of transparency, that I really believe that open government is the way to go. I think there are various reasons to go there—for economic reasons, for innovation, for citizen engagement, and to maximize public service efficiency. I think there are many reasons to go towards open government.

• (1245)

Ms. Judy Foote: Based on your experience to date, given the time you've been in office, albeit in an interim position, what's the likelihood of that happening? Are you seeing anything at all that would lead you to believe that...? Obviously, you believe that this is the way we should go. Where are we in terms of going down that path with this government?

Ms. Suzanne Legault: Mr. Chairman, my role is the role of an ombudsman. I really take this very seriously, and the reason I'm here is that I believe this is something we should adopt. It is in the interest of Canadians that the government adopt it. Further than that, I will continue to do what I do, which is to advocate before this committee, before other jurisdictions, and before other fora. Beyond that, it is really out of my control.

I take your suggestion to speak to the Clerk of the Privy Council, and I might very well speak to other people about it, because I think it's a very valid suggestion. I should actually get on with that.

Ms. Judy Foote: If we all take seriously, on behalf of Canadians, that they need to have access to information that should be readily available to them, I think the onus is probably on those of us who are in a position to make that suggestion to do that. I'm glad you're going to do that.

Thank you.

The Chair: Mr. Saxton, please.

Mr. Andrew Saxton (North Vancouver, CPC): Thank you, Mr. Chair, and thank you, Commissioner, for coming here today.

I'll just follow up what my colleague, Ms. Foote, brought up around the issue of open government. Since coming to power in 2006, our government has opened up 70 new organizations to the Access to Information Act, including the CBC and the Wheat Board. Would you consider this move to be consistent with a government that wants to be an open government?

Ms. Suzanne Legault: I think adding institutions that are covered is a good step forward in terms of increasing transparency, yes.

Mr. Andrew Saxton: Also, since coming to power in 2006, we eliminated a program that was known as CAIRS, which was used under the previous Liberal government to filter information that was then released to the public. Are you familiar with CAIRS?

Ms. Suzanne Legault: Yes, and, Mr. Chairman, I do have an investigation in relation to CAIRS, so I am bound by confidentiality.

Mr. Andrew Saxton: Would you consider that a government that eliminates a system such as CAIRS is a government that is working toward being an open government?

Ms. Suzanne Legault: Again, Mr. Chairman, I would ask the indulgence of the committee. The report on the CAIRS investigation should be out fairly soon, and I would prefer to make comments once the investigation is complete. Certainly it will be something I will post on the website. If the committee wishes to have me back to answer questions, I would be more than happy to do so.

Mr. Andrew Saxton: Thank you. We look forward to that.

In your opening statement, Commissioner, you said our jurisdiction can learn from practices in other jurisdictions. You also said other jurisdictions can learn from Canada as well. Perhaps you can highlight some of the areas that other jurisdictions can learn from what Canada is doing well.

Ms. Suzanne Legault: I think Canada was at the forefront of proactive disclosure about 10 years ago when we started posting travel and hospitality and expenses. It was definitely something that was in advance of other jurisdictions. Other jurisdictions are either putting that in legislation now or they're emulating those types of disclosures.

What National Resources Canada is doing I think is a really good initiative: GCpedia is inside of government, but it is a collaborative tool for sharing and collaborating on information within government. The Clerk of the Privy Council again reiterated the importance of using that tool. I think those are really good news Canadian stories.

Mr. Andrew Saxton: Thank you.

Mr. Chair, how's my time?

The Chair: Two minutes to go.

Mr. Andrew Saxton: Okay. I'd like to pass the microphone to my colleague, Mrs. Davidson, if I may, please, to finish up.

The Chair: Absolutely.

Mrs. Patricia Davidson: Thank you very much.

And thanks once again for being here with us. Certainly we always appreciate your coming forward and giving us the information. The purpose of today's meeting was to gather information so we could see where we wanted to go with this process. I think this process has been supported by both sides of the room here. I don't think there's been any objection from the government side at all. I think it's something we do want to explore.

I was glad to see in your opening remarks that we are seeing some signs of progress. I think that's encouraging. Certainly it's not the answer or the end of the process, but it is encouraging to see that some departments and some areas are doing things very well. I think the opposition needs to realize this process is being driven by everyone around this table, not by the opposition. I wanted to make that very clear.

The one thing I haven't heard today and that I have a question about is that the process has to have a cost involved in it. Have you talked with any of the others that have done this, that have started into it? Do you have any idea what the U.S. or the U.K. or Australia may have budgeted for this process?

• (1250)

Ms. Suzanne Legault: No, I don't know.

As I said in my opening remarks, the only analysis that has been done of the cost is what I've read in the Australian task force, where they basically put a dollar value on the value of public sector data, almost as an economic input.

The other thing we know is that open government, say in Vancouver, has led to the development of various applications, which the government would probably never have developed but have resulted in a lot of use by their own citizens. So there is value for the citizens, which ends up being of little cost to government—the municipal government in this instance.

But I think if you were to ask some of the witnesses, if you invited some of the people from the municipal governments or spoke to the people from the U.S. who are involved in open government initiatives, they might have better information.

In Australia, they have not implemented it yet. In the U.K., you would get a different perspective, because, as I say, they're looking at it as a way of streamlining their public service by using this interaction with their own citizens. They have quangos, and are looking at not having so many. They're looking at different types of services that would no longer be necessary. So they're coming at it from a cost savings perspective.

The Chair: Thank you.

Madame Thi Lac, do you have a last question?

Mrs. Ève-Mary Thāi Thi Lac: No.

The Chair: You're satisfied with that?

Mrs. Ève-Mary Thāi Thi Lac: Yes.

The Chair: Okay. We have just a few minutes left.

I want to thank you, Commissioner, for your thought-provoking remarks. For a two-hour session, this was not dry. This expanded the mind, and all of a sudden, we can look at the possibilities.

I participated in your initiative, the Right to Know round tables. The principles that came out of those have to be on the table with this, because questions have come out about too much information, for example, and in some of the statements, about some of the principles underlying access to information. I guess some people have boldly said, "Well listen, the taxpayers paid for it and they're entitled to know what's there." Some things are embarrassing to governments and to opposition members and public servants, but the public still has a right to know.

There may be enormous amounts of information that very rarely would be of measurable public interest. There are ways to deal with that. But we probably have to work on the rationalization of the compelling arguments for why we move from where we are today to a system that really allows us—maybe not so much our generation, or maybe my generation—to understand that the kids today are working in a whole different world of information velocity. The synergies that are available there...yes, they will be able to scrutinize things and will probably impose greater scrutiny on accountability. But they will also identify opportunities and threats and weaknesses, all kinds of things that we couldn't possibly do when we were working with paper and pencil.

With velocity of information, the new age or new generation of information, we have to look forward. We need to prepare, because if we were to envision this project, this is not going to take a couple of years but probably a decade. I think we're on the first step here.

So I want to thank you very kindly for opening up and offering to continue to support the committee in its work. We may even think of renaming our initiative to be more reflective of the reality.

Thank you kindly.

• (1255)

Ms. Suzanne Legault: Thank you.

The Chair: We are adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

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

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

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

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>