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Chair

Mr. Paul Szabo

Standing Committee on Access to Information, Privacy and Ethics

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• (1100)

[English]

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

This is meeting number 22 of the Standing Committee on Access to Information, Privacy and Ethics. Our orders of the day—and there are three—are pursuant to Standing Order 108(3)(h)(vi), a study on Access to Information Act reform.

Appearing before us this morning is the Honourable Rob Nicholson, Minister of Justice. He is accompanied by Mr. Denis Kratchanov, director and general counsel, information law and privacy section.

Welcome, gentlemen. I appreciate your taking the time to be with the committee.

Minister, as you know, the committee has been working for some time on the issues of access to information and privacy. In one of the responses the minister gave us, he referred us to a document that was tabled in April 2006 in the House by the then justice minister, who is now the Minister of Public Safety.

That document never did make it to the committee. I wasn't the chair at the time—I don't think many people here were on the committee at the time—it was Tom Wappel. But that document was not referred by the House to the committee, and the committee really didn't become aware of it, but we have subsequently, Mr. Minister. I just want to assure you.

Our researchers have examined the elements of the document. They have concluded that substantively all of the items, at some point or another, have been considered by the committee, first of all in its initial report, and secondly, on the report that was coined the “12 quick fixes”, on which we received the original response from you, sir.

Subsequently we requested additional input on the specific recommendations that were made for the guidance of the committee. That is the reason we're here on both reports. The first item is on access, which is of the most significant interest to the committee.

We're in your hands, sir. I'm sure you have a few opening remarks. I'll leave it to you as to how you address them.

• (1105)

Hon. Rob Nicholson (Minister of Justice and Attorney General of Canada): Thank you very much.

I'm appearing before this committee again on the topics of access to information and privacy in my capacity as Minister of Justice and Attorney General.

We have been very busy on a number of fronts, particularly with reforms to our justice system. We all have a stake in making sure the system works effectively and our citizens are safe.

We've made it a priority, of course, to tackle the whole question of crime. As you know, I've introduced a number of bills since March, bills that help protect children from online predators; tackle property crime and trafficking in property obtained by crime; impose tougher penalties for drug crimes, particularly in relation to gangs and organized criminal groups; and provide tougher sentences for fraud to help combat white-collar crime.

We are providing more tools for police and prosecutors to prevent and investigate terrorist activities. We're ending the use of house arrest for property and other serious crimes by serious and violent offenders. We are repealing the faint-hope clause that allows murderers to obtain early parole and gives them the opportunity to repeatedly increase their victimization of the families they have so badly affected. We're strengthening the legislation that handles violent and repeat young offenders.

In addition to this important and necessary group, our government has addressed other issues that affect Canadians, such as the Access to Information Act reform. Again, as the chairman pointed out circumstantially, our government has introduced laws that affect access to information. That, of course, is through the Federal Accountability Act, which makes a number of important and necessary improvements to the whole question of access to information.

Among other things, that particular piece of legislation greatly expands the number of entities covered by the act and strengthens it by providing for institutions to assist requesters without regard to their identity.

When the Federal Accountability Act was introduced in 2006, the government also tabled a discussion paper, which the chairman referred to. The paper raised a number of issues for your consideration in relation to the reform proposals of the former Information Commissioner, Mr. John Reid. The paper encouraged this committee to consider these issues and consult widely with interested stakeholders and affected government institutions.

When I appeared before you in 2008 and again in 2009, I urged the committee to take up a full-fledged study of the issues raised in the discussion paper. We believed that further study would provide an opportunity for this committee to shape further access reforms by calling on key witnesses and stakeholders in order to fully understand all views. The important work conducted by this committee on a broader basis would also provide a deeper appreciation of the impacts of possible access reforms.

As I said in a letter forwarded to you on April 29 of this year, I was pleased to note that the discussion paper has been recirculated to all members of this committee and you have conducted research on the contents of the paper.

This government takes seriously the issues of access to information and privacy. I'm here again to discuss the committee's work thus far and the work that, in my opinion, is still needed before further access to information or privacy reforms are made.

As you know, a year ago this committee tabled its report entitled, "The Access to Information Act: First Steps Towards Renewal". The government reviewed the report with interest and noted that this committee endorsed 12 of Monsieur Marleau's recommendations. As required, the government tabled its response last fall, in October 2009.

• (1110)

It's worth noting that in his introduction to a March 4, 2009, submission to the committee, Monsieur Marleau wrote that "it is recognized that the Act is sound in terms of its concept and balance". Mr. Marleau then went on to say that his recommendations addressed only the most pressing matters. This last point suggested to some that his recommendations could be quickly and easily implemented, which the government takes some issue with.

As stated in its response to the committee's report, it is the government's opinion that the nature of Mr. Marleau's proposals would require and should require extensive consultation with stakeholders.

For example, one recommendation would involve increasing the powers and mandate of the Information Commissioner to include reviewing legislative proposals and making decisions regarding requests for time extensions beyond 60 days. These proposed reforms would create a shift in the nature of the Information Commissioner's office from an ombudsman model towards a quasi-judicial model, which would not be consistent with other agents of Parliament. The government's view remains that implementing the proposals recommended in the committee's report would be neither quick nor easy.

Furthermore, several of Mr. Marleau's proposals could have cost implications, which in the current climate cannot be ignored. Although the economy is improving through sound fiscal management as set out in the economic action plan under the guidance of my colleague Minister Flaherty, we are in a period of fiscal restraint. So we must always be careful.

Turning now to privacy issues, about a year ago, this committee tabled its report "The Privacy Act: First Steps Towards Renewal". As you know, this report provides the committee's recommendations regarding the Privacy Commissioner's 12 proposals for reform. The

commissioner herself describes these as "quick fixes". This committee's report supported five proposals and offered qualified support for one other. The committee also indicated that four of the 12 recommendations required further study.

Finally, you stated that the committee did not consider it a top priority to enshrine in the Privacy Act a requirement for government institutions to assess privacy impacts of new programs or systems. This is a cautious approach to the Privacy Act. The issues involved in privacy are complex and, more importantly, they require the balancing of the interests that are crucial for our democratic society.

For example, the Government of Canada must strike the right balance between national security and Canada's international obligations while respecting the privacy of Canadians. Indeed, the government alluded to this complexity in its response to the committee's report on the commissioner's tenth proposal, which recommended the strengthening of the provisions of the Privacy Act governing the disclosure of personal information by the Canadian government to foreign states.

As you know, a number of the Privacy Commissioner's recommendations proposed to enshrine current policy in law. In its response dated October 29, 2009, the government pointed out that policies have certain advantages over law. For example, the Treasury Board Secretariat issued a new directive on privacy protection and a renewed directive on social insurance numbers that clarifies accountabilities with respect to the management of personal information.

Since the government's response, and as I stated in my letter to this committee on April 29, the President of the Treasury Board has issued three new directives on privacy. They are: the directive on privacy requests and correction of personal information; the directive on privacy practices; and the directive on privacy impact assessment.

These directives provide detailed guidance and best practices for the day-to-day administration of the Privacy Act. They also represent an important development that ensures the privacy of Canadians continues to be adequately protected.

To conclude, it's the government's hope that this committee will continue to consider access and privacy reforms, bearing in mind the complexities they raise, and consult extensively with all relevant stakeholders in order to achieve the best possible results for Canadians.

Thank you, Mr. Chair. If there are any questions, I would be pleased to take them, and I am pleased to be joined by a true expert in this area for any of the technical aspects of both pieces of legislation, Mr. Denis Kratchanov.

The Chair: Thank you, Minister.

I should also say that in 2006 the government proposed to implement the John Reid draft of the Access to Information Act, which I think gave the committee and Canadians the feeling that in fact changes were necessary, and now we've gone through a process since that time. I am little concerned that maybe the process or the responsibility has kind of flipped on its head, and that the onus on updating legislation has been placed on this committee rather than the department of which you are the head.

I should just simply ask whether or not you, as the Minister of Justice, in your responsibilities for both those acts, have any plans whatsoever at this time to update the legislation—either the Access to Information Act or the Privacy Act.

• (1115)

Hon. Rob Nicholson: Well, again for clarification purposes, although I did not have direct responsibility for the Federal Accountability Act in my capacity initially as the government House leader, I was a big supporter and a very big fan of the changes. That act made a number of changes and increased the public's access to important information, so I viewed that as... I mean, as you'll remember, it was a difficult piece of legislation to get through, and I remember that very well in my capacity as government House leader. But again, I think this was a significant reform, a significant step forward, expanding the number of institutions to which the act applies.

With respect to any further changes, I would look forward to your consultations with stakeholders to take up that challenge and the request that I have made on previous occasions to have a look at this. I always look for input from members of Parliament.

Again, all good ideas don't have to originate in the Department of Justice. Heaven knows that they've had many excellent ideas, and I'm very grateful for all of that, but they don't all have to come from the Department of Justice. That is why, on a bill that various individuals have recognized is complex—and it's a question of balancing a number of interests—I certainly would look forward to your study and your input on that.

The Chair: Well, thank you very much, Minister. I'm sure the committee will want to continue to consider matters that may come before us for study. We will assume that at this point there are no plans from the Minister of Justice to make any changes to either of those acts at this time. Correct?

Hon. Rob Nicholson: Again, I never make any announcements before I make any announcements—

Voices: Oh, oh!

The Chair: Okay, fair enough.

Hon. Rob Nicholson: —but again, I am giving you that challenge.

The Chair: All right. Let's go to the members. I'm sure they have many questions for you, Minister.

I'm going to start with Ms. Foote, and then we'll go to Ms. Freeman, Mr. Siksay, and Madam Block.

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

Thank you, Minister, for being here as a witness this morning. We appreciate the time you're giving us, but I do understand that we only have you for an hour.

Is that right, Mr. Chair, or do we have him for longer than that?

The Chair: I'm sure the minister is flexible. We'll see how she goes.

Ms. Judy Foote: All right. I wanted to make that point because obviously the length of your answers is going to be important in terms of the amount of time we have with you this morning.

I want to make reference to a letter that you sent to the chair of the committee, dated April 29, in which you said, "Let me begin by assuring you that the Government is deeply committed to upholding the principles of the Access to Information Act".

I want to go to that because I want to ask you, then, as the minister responsible for the act, are you aware of the provisions of section 67.1(1) of the act? It states that:

No person shall, with intent to deny a right of access under this Act,

(a) destroy...or alter a record;

(b) falsify...or make a false record;

(c) conceal a record; or

(d) direct, propose, counsel or cause any person in any manner to do anything mentioned...[above].

Are you familiar with that section of the act, Minister?

Hon. Rob Nicholson: I'm familiar with the whole act, Ms. Foote.

Ms. Judy Foote: Thank you.

I'm sure you're aware, because it's been in the media, that we had Mr. Togneri in front of us in this committee. Do you believe that the actions of Mr. Togneri in interfering in the ATIP process, despite having no delegated authority, in ordering a report to be unreleased, violated the provisions of the Access to Information Act?

Hon. Rob Nicholson: I think you're asking me to make a quasi-judicial decision, and it's very interesting.

With respect to the provisions and the policy within my department and my responsibilities as Minister of Justice and Attorney General, the powers with respect to ATIP are delegated by me to public servants, who then make those decisions in accordance with the Access to Information Act.

• (1120)

Ms. Judy Foote: So I guess, then, the question I'm asking again is, given the criteria under the act, and given Mr. Togneri's actions—which, by the way, he admitted to in front of this committee—do you believe that he in fact violated the provisions of the act?

Hon. Rob Nicholson: I'm not in a position to start taking evidence, if that's what you're asking me—

Ms. Judy Foote: Absolutely not. I'll repeat what Mr. Togneri said in front of the committee—

Hon. Rob Nicholson: I guess if you're asking me what my position is with respect to the Access to Information Act, again, if you're asking me what I do, it's a delegated authority to the minister, and of course I do that to public servants. I believe that is as it should be.

Ms. Judy Foote: Let's get back to ministerial accountability, then. Under oath here, the Minister of Public Works and Government Services, according to Mr. Togneri, had given him informal authority to do what the Prime Minister's chief of staff told our committee repeatedly—in fact he said so nine times—was strictly forbidden.

So my question again is, given that there was no authority under the act for exempt staff to do these types of things, do we in fact have a situation here where a minister has not taken responsibility for what they're saying he has responsibility for?

The Chair: Excuse me, Madam Foote. I apologize. A point of order has been put forward.

Please, make sure it's a point of order, okay?

Mr. Randy Hoback (Prince Albert, CPC): I believe it is.

Can you ask the member to stick to the topic at hand? She's asking the minister to speculate on something that would be inappropriate for any of us to speculate on, and that's the problem. Members across the floor have speculated and accused people of doing things without any proof. So I would ask that she get back to the work at hand.

The Chair: I must admit I somewhat anticipated that there would be some leakage to other subject matters. I think the minister is quite capable of responding as to what is proper to address. I find it very difficult being in the chair's spot to be able to anticipate where a member may be going, notwithstanding all of the preamble.

Normally it is the case—and I've learned this lesson very well during the Mulroney-Schreiber hearings—that it is really in fact up to the witness to advise the committee as to whether or not they can comment or answer a question for due reason. The minister is quite capable of dealing with this. If the member is going to use their time going where the minister can't answer, that's the member's choice. Okay?

All right. Carry on. You have three and a half minutes.

Ms. Judy Foote: Thank you, Mr. Chair.

Minister, as the minister responsible for the act, these questions clearly would fall under your purview in terms of responding to them.

We have had an exempt staff in the person of Mr. Togneri, under oath in front of this committee, say that he in fact broke the law. And my question, of course, is that if that in fact was the case, and you're the minister responsible for the act, how is it that Mr. Togneri is still employed with this government?

The minister responsible, Mr. Paradis, gave him informal authority when, according to the chief of staff of the Prime Minister, that was not to happen. How is it that we still have a minister who has not been held accountable if in fact this government says there is ministerial accountability for their actions?

A voice: Oh, come on, Judy.

Hon. Rob Nicholson: Can I answer that? Okay. Thank you.

This matter is being investigated by the Information Commissioner. I understand the question because I get this sort of thing all the time. I get people who ask me about crimes that have been

committed and want me to come to decisions, for instance, and publicly express those.

In my capacity as Attorney General and justice minister I'm very careful not to come to a decision unless I have been given that... So if you have information or testimony that you think is of relevance, presumably you will give that to the Information Commissioner.

But again, with respect to my responsibilities and with respect to this act, it is given to the minister, and I delegate this to dedicated public servants who go through this on a regular basis, and I think—

Ms. Judy Foote: Minister, we're talking about ministerial accountability—

Hon. Rob Nicholson: I did ask if I could answer, but okay—

The Chair: Just a moment, Minister. Okay?

Hon. Rob Nicholson: Fair enough.

The Chair: I'm going to ask all of the people at the table to respect the fact that if two people talk at the same time the translators are unable to do their job. So I'd ask members to have questions and answers.

• (1125)

Hon. Rob Nicholson: Again, with respect to... We give these to dedicated public servants and I think it's a system that works well.

Ms. Judy Foote: Well, Minister, it still goes back to ministerial accountability. I mean, we can pass responsibility on to officials and to political staff, but at the end of the day it comes back to ministerial responsibility, and my understanding from the Prime Minister's chief of staff is that there was no permission to give delegated authority to exempt staff to do anything with respect to the ATIP process.

In this case, we had Mr. Togneri, in fact, who directed that a report be unreleased, and he's admitted to that. He's admitted to breaking the law, so where does ministerial accountability reside in this instance? How is it that we still have a minister who is still performing as a minister and we still have an exempt staff member who still has a job with this government when he has admitted to breaking the law under the act for which you have responsibility?

Hon. Rob Nicholson: You may have come to that conclusion, Ms. Foote, and again if you—

Mr. Greg Rickford (Kenora, CPC): Mr. Chair, I have a point of order.

The Chair: Go ahead, Mr. Rickford, on a point of order.

Mr. Greg Rickford: Yes. This is just a clarification. She just accused both the minister and the staff of admitting that they broke the law. I'd like her to retract.

The Chair: First of all, it's not a point of order. It's a matter of debate—

Mr. Greg Rickford: No, it is a clarification. We can go through the rules—

The Chair: No, no. I can assure you—

Mr. Greg Rickford: I'm not going to take your years of experience today. I'm not feeling well either, so it's garbage. I've looked through the book—

The Chair: Mr. Rickford—

Mr. Greg Rickford: —and I've called a point of order on the basis of a clarification.

Yes, shut the mike off; I'm still going to talk.

You're not being responsible—

The Chair: I'm sorry?

Mr. Greg Rickford: I am, too.

A joke....

The Chair: It's not a point of order. It's a matter of debate—

Mr. Greg Rickford: It is.

The Chair: Mr. Rickford...

Mr. Greg Rickford: Yes, Mr. Chair?

The Chair: I'll just remind members that the chair has a responsibility to keep order and decorum and to make decisions. Those decisions are not debatable, but the recourse for any member would be to challenge the decision of the chair, and the committee will decide.

I don't want to have debates with anybody on these matters. All members will know that if they're going to use their time in ways in which they're not going to get information, it doesn't serve any useful purpose to anybody. They also have parliamentary protection on matters that they say here.

I won't judge any member on this committee. I have no authority to sanction or censure, and I won't, but I caution members to be judicious and not to overstep the bounds. We have rights, but with rights also comes responsibility.

That said, we have 30 seconds left in your time slot.

Ms. Judy Foote: Let me make the—

Mr. Randy Hoback: How could she have 30 seconds left? We have over—

The Chair: Excuse me; I heard the question.

Whenever a point of order is raised by an honourable member, I stop the clock, because if I didn't, a member's time could be totally taken up by other members' points of order—

Mr. Randy Hoback: I appreciate that, Chair, and I understand that, but in the same breath we're—

The Chair: And the official clock—just a moment—is the clerk's clock. It's at 6:31 right now. There are 30 seconds left in this time slot, and the reason it's over about a 10-minute period is that there have been points of order, okay?

That's just so members are aware of how it works. The chair doesn't do this arbitrarily; it's on the clock. Okay?

I know you have a BlackBerry that has a timer on it, and things like that, but—

Mr. Randy Hoback: Well, I've been timing it, Chair, and it's—

The Chair: Anyway, let's carry on.

Madam Foote, you have 30 seconds left if you want to use it; otherwise, we'll move on.

Ms. Judy Foote: No, I will use it, Mr. Chair, just to put it on the record that Mr. Togneri did say under oath before this committee that Minister Paradis had given him informal authority to deal with access to information requests.

The Chair: Thank you.

Go ahead, Madame Freeman, please.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):

Good morning, Minister. We are very glad to have you this morning, especially since we have invited you several times.

I would like to ask you a question. As part of our study of the Access to Information Act and of other studies conducted by this committee, we have questioned various witnesses, including Mr. Togneri. We have also invited other witnesses to appear, such as Mr. Dimitri Soudas. However, you know that Mr. Soudas was a no-show. Actually, he did accept our initial invitation, but unfortunately, the fire alarm went off. The circumstances were rather unfortunate, don't you think so? After that, we had to subpoena him.

The three of them were subpoenaed, and each time, you said that ministerial responsibility was involved and that the ministers had to appear. Last Tuesday, Mr. Walsh informed us that ministerial responsibility extended to your officials, but not to your political staffers. So then, the first thing we had was the Law Clerk and Parliamentary Counsel of the House issuing a legal opinion.

Then, regarding the Afghan detainee issue, on May 25—I'm not sure about the date—the Speaker of the House of Commons, Peter Milliken, also contended that you should, as a member of the government, submit to the will of Parliament—be it Parliament or a committee—and that Parliament had precedence over the executive power.

So, we have two opinions—Peter Milliken did not issue an opinion, he made a ruling, and Mr. Walsh issued a legal opinion.

Yesterday was the last possible day for Mr. Dimitri Soudas and the two others who were subpoenaed to testify to appear. You are, as Minister of Justice, the embodiment of law and order, so please explain to us why you think that it is okay for Dimitri Soudas, an employee of the Prime Minister, to not appear. Since you are Minister of Justice, sanctioning Dimitri Soudas' actions is tantamount to violating the laws and rules. That is what Mr. Peter Milliken told the House and what your law clerk told us in committee on Tuesday. Can you explain to us why the Minister of Justice is not complying with the law?

● (1130)

[*English*]

Hon. Rob Nicholson: You have a lot there. You said with respect to the ruling of Speaker Milliken... Again, Speaker Milliken dealt with something very specific, which is with respect to documents that had been redacted on the basis of national security, national defence, or international relations. There has been a considerable ongoing—

[*Translation*]

Mrs. Carole Freeman: Excuse me, Mr. Chair.

[English]

Hon. Rob Nicholson: No? You didn't mention that? Okay.

[Translation]

Mrs. Carole Freeman: I would like him to answer my question. I do not want him to review Peter Milliken's entire ruling. I would like him to stick to Peter Milliken's statement. That is the only thing that I am interested in. I do not want him to report on the issue of Afghan detainees. I just want him to...

[English]

The Chair: Madame, this is—

[Translation]

Mrs. Carole Freeman: After all, this is my allotted time.

[English]

The Chair: Madame.

Order, please.

Hon. Rob Nicholson: But Madame—

The Chair: Minister, just... Let's understand—

Mrs. Carole Freeman: Answer my question.

The Chair: —how the chair looks at these things. We only have a—

The clock is stopped, Mr. Hoback.

Voices: Oh, oh!

The Chair: We only have limited slots of time, and in the absence of any extraordinary circumstances, I try to allow proportionality in terms of the question and answer. The question was complex, with a number of issues, etc. The minister was in the middle of answering to the best of his ability, and in respect to the witness, I think, Madame, we really should let the minister respond. If the minister should happen to maybe stretch things on a little too far and gobble up too much time, I certainly will interrupt. Okay?

Just to finish off on the first question from Madame—

[Translation]

Mrs. Carole Freeman: Mr. Chair, I will simplify my question.

[English]

The Chair: Madame.

[Translation]

Mrs. Carole Freeman: Since you are saying that my question is very complex, I will clarify it.

Does the Minister of Justice...

[English]

The Chair: No, Madame.

Madame, maybe for your next question, it'll be less complex. I think the minister heard you and wanted to respond.

[Translation]

Mrs. Carole Freeman: I'm sorry. A point of order, Mr. Szabo. I am entitled to my seven minutes. That time is my own, and not the

Minister's. This is my allotted time, so I have the right to rephrase my question if I want.

[English]

The Chair: Madame—

A voice: So go ahead—

The Chair: —the minister had the floor, and I'm not going to judge whether your question was or was not a good one or whether it should be simplified to help the minister. Sometimes that's appropriate, but I think when a witness is before us and is trying to respond to the best of their ability to what they heard from you, we should respect at least their opportunity to complete a thought or something like that, okay? It's just a little respect.

So the clock has been stopped. So the minister has decided that he will yield on further answering your question. The clock hasn't moved. It's at 3:30, which means you have about three and a half minutes left, and the floor is back to you.

• (1135)

[Translation]

Mrs. Carole Freeman: May I rephrase my question? The Minister said that it was very complex.

[English]

The Chair: You have the floor, Madame. You can use your time as you wish.

[Translation]

Mrs. Carole Freeman: Thank you for being fair.

My question is simple. As Minister of Justice, how do you explain ignoring the subpoenas, that is, the orders to appear before us? How do you explain, as Minister of Justice, political staffers violating this rule?

[English]

Hon. Rob Nicholson: Well, it's just precisely because you used the term "breaking the law". and then you quoted the Speaker's ruling, Madame Freeman, and so we'll have a look at the transcripts but you made this accusation about the law not being followed and you mentioned specifically.... So I began to say, with respect to Speaker Milliken's ruling, that in fact there have been negotiations in good faith that have recently been concluded, to which your party was one of the parties.

If you are also referring to ministerial responsibility, yes, ministers are accountable and answerable to Parliament, and the government House leader, Mr. Hill, has made that very clear. Again, ministerial responsibility is part of the parliamentary system that we have inherited and adapted in this country. On both counts, yes, there is ministerial responsibility.

And now that I have the opportunity, you mentioned the ruling of the Speaker, and again, I believe some people disagree with the conclusions we have come to with respect to the Speaker's ruling, which is their privilege, but we have entered into a document that we have tabled with Parliament, and I think it works very well. We're all part of the solutions, Madame Freeman, and we'll go forward from there.

[Translation]

Mrs. Carole Freeman: Thank you, Mr. Nicholson, but you are not answering my question.

Mr. Nicholson, ministerial responsibility does not extend to employees of various ministerial offices. That is what Mr. Walsh said on Tuesday. How is it that the Law Clerk of the House is saying that ministerial responsibility does not extend to these staffers and that they are required to appear before us, but that you, as Minister of Justice, are disregarding this opinion?

[English]

Hon. Rob Nicholson: I do take note of these on a regular basis, and of course I listen very carefully to all the arguments that get made on all of these, and I appreciate legal opinions that are put forward by distinguished individuals.

Again, as someone who has studied the Constitution of this country for many years, I'm very aware of their responsibilities, of ministerial responsibility, and this is why. This is why you get ministers who appear before committees, and we do. We provide the technical assistance.

[Translation]

Mrs. Carole Freeman: You are not answering my question, Mr. Nicholson.

[English]

Hon. Rob Nicholson: As I indicated to you, Mr. Kratchanov, in a sense—

[Translation]

Mrs. Carole Freeman: Mr. Nicholson, pardon me for interrupting, but this is my time.

[English]

The Chair: Order.

Hon. Rob Nicholson: —it goes beyond—

[Translation]

Mrs. Carole Freeman: A point of order, Mr. Chair.

[English]

The Chair: Order.

Hon. Rob Nicholson: Go ahead, Mr. Chairman.

Mrs. Carole Freeman: *Point d'ordre*—

The Chair: Order.

Mrs. Carole Freeman: *Ma question*—

The Chair: Order.

Your time has expired, Madame, and unfortunately I'm going to have to move on to Mr. Siksay, but you could be on for the next round to carry on.

Mr. Siksay, please.

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

Thank you for being here, Minister.

Minister, in your letter of April 29 to the committee, in light of our concerns, I think we were concerned that we hadn't had a very detailed response to our report on the quick fixes on access to information. I think it's fair to say that one of your key concerns was that the recommendations would lead to increased costs. You mentioned that in your opening statements as well: that you thought in this time of fiscal restraint increased spending on access to information just wasn't in the cards.

Minister, have you or your department done studies on the specific costs of the recommendations that were in the report?

Hon. Rob Nicholson: We have not done any specific investigation into that.

Mr. Bill Siksay: Minister, can you explain to me how you reached the decision that it was unwise to pursue these issues given the fact that you believe it would cost more money?

Hon. Rob Nicholson: It's just one aspect of that. It seems to me that whenever you make changes to a piece of legislation like this, it can be very complex. I mean, it wasn't easy to bring in the first Access to Information Act in this country. So what I've been asking, on a regular basis, is to bring in people who are stakeholders, to bring in the individuals who would be affected by it. That's quite apart from cost considerations. Get their input into this before we make any further changes.

Again, I was very pleased... I didn't have direct responsibility for the changes that were made under the Federal Accountability Act, and again, any time you make changes in this area, it is a challenge, but this has been the main thrust of what I've been suggesting to you. Bring in some of the people, have them testify before this committee, and have a look at that. I'd be very interested to hear what you have to say.

● (1140)

Mr. Bill Siksay: Well, Minister, I know you're aware that over many years there have been many studies—I think you have even been involved in some of them, when you were in opposition—into the access to information regime in Canada. We've heard from many experts over those years, but frankly, that doesn't seem to be the bottom line for you in your response to the committee. The bottom line on any number of the issues was “without increasing the resources of the Information Commissioner”.

So again, I want to come back to how you reach that determination. If you had no studies, if you had no one work on that, how do you come to that conclusion so clearly on so many of those recommendations?

Hon. Rob Nicholson: It was pointed out by Mr. Kratchanov that in 2006 there was some estimate of the costs, but again, before we make changes, and indeed, to both pieces of legislation, whether it be the Privacy Act or the Access to Information Act, they have served this country well. That's my opinion. They have served this country well. I think it was a major change, a major improvement.

Again, if you remember my opening comments, I said that I'm a fan of the legislation, and that even though I didn't have responsibility for the Federal Accountability Act, I was one of those individuals who was very interested and very pleased to see that come forward. Why? Because it expands the number of institutions, including crown corporations, to which it applies. And that only makes sense, because they, too, are spending the taxpayers' money, and they are making decisions that affect people. I think these were steps forward.

So on the one hand, yes, I think there were those changes, and for other changes, I said I would love to have your input on that.

Mr. Bill Siksay: Minister, could you share that 2006 report that looked at the potential costs of changes to access to information?

Hon. Rob Nicholson: Mr. Kratchanov, would you speak to that?

Mr. Denis Kratchanov (Director and General Counsel, Information Law and Privacy Section, Department of Justice): Yes. I think it's part of the document in 2006 that was given to this committee. We can certainly provide it again. There is an annex 1 of the 2006 discussion paper and there is a consideration of the costs included for the changes that were then being considered in the Reid bill.

Mr. Bill Siksay: Thank you.

Minister, has there been any work done on potential cost savings of new approaches to access to information, such as, for instance, requiring more proactive disclosure of information and posting it on the website so people wouldn't have to go through the whole process of engaging an application for information and maybe having it turned down or having to wait or having a delay and that kind of thing? I—

Hon. Rob Nicholson: That's a very good point. Sorry, go ahead.

Mr. Bill Siksay: Has the government undertaken a study of what costs might be saved in the system with that kind of approach?

Hon. Rob Nicholson: I don't think there are any formal studies on that, but I agree with you. To the extent that we can make proactive disclosure, this is very helpful. In my capacity as Minister of Justice, I am asked on a regular basis whether we can put a certain report on the website. I think if you check, you'll see a steady stream that has come from my office over the last three and a half years.

Because I agree with you: by getting the information out there on a number of these studies, I think they're very helpful... Hopefully—again, it's hard to quantify these—you probably have fewer access to information requests once those are made available to the public. But I agree with you that to the extent possible, we can and should continue to make them available.

Mr. Bill Siksay: Minister, what's the relationship of the 2006 Conservative Party platform on access to information to the current government program? We know that by all accounts, by all reviews, it was an excellent platform on access to information. It had eight points.

Hon. Rob Nicholson: You don't have to limit it to access to information, Mr. Siksay. I mean, you could talk about 20 or 30 different areas—

Mr. Bill Siksay: Well, we'll keep it to that one for right now. The government has completed one of those eight points. I wonder if it's still part of the agenda.

Do you hold yourselves accountable to what you proposed in 2006 on this? Can we expect any further movement? Or are you done and resting on the Accountability Act's laurels?

Hon. Rob Nicholson: Well, I remember being at a number of press conferences in 2006 with respect to the whole question of access to information and accountability, so yes, I was very pleased.

If you'll remember, Mr. Siksay, in terms of the government's agenda throughout 2006—I remember it very well as government House leader—it was a priority to get the Federal Accountability Act through. As you know, it touches a number of different areas, and is consistent; as you point out, this was one of the promises we made to Canadians in 2006, so I was very, very pleased.

Again, in my role as government House leader, I made sure, to the extent possible, that it got debated and that we did everything possible to get it passed. I think it was really one of the great pieces of legislation that we got passed in our first term.

• (1145)

Mr. Bill Siksay: But you'll agree that it was only one of the eight points your party promised in that election.

Hon. Rob Nicholson: Well, again, I think it's a major part, but I'm open to suggestions. Again, having served on parliamentary committees for I think a little less than a decade, I know how valuable they can be in making input, and I look forward to further input from you.

The Chair: Thank you, Mr. Siksay.

If I may, just with regard to the costs issue that Mr. Siksay raised, annex 1 of the report from April 11, 2006, deals with a cost study from 1994, updated in 1999. It all has to do with the proposals by former Information Commissioner Reid. These costs deal with: adding institutions, which was done under the Federal Accountability Act; public register requirements; universal access; duty to document; time limits for investigations; and other proposals such as public awareness, training, monitoring, etc.—the education side.

Minister, I think Mr. Siksay's question was with regard to the quick fixes that were included in the report on updating the Access to Information Act. It was whether or not there had been some costing on those to the extent that there would be meaningful costs associated with them, because your representation actually had to do with the costs rationalization. I wonder if we—

Hon. Rob Nicholson: I don't have anything specific, but again, any time you expand any particular legislation, of course there are costs associated with that. I've had people raise the question with me every time we change the Criminal Code. There are those who think that some of that will cost more.

Again, Mr. Chairman, I didn't indicate that there's any particular study on it.

With respect to the quick fixes, it seems to me that my point has been that it's a little more complex and I'd like to see a more comprehensive approach to it.

The Chair: Okay. We have no information that we could request to receive.

Hon. Rob Nicholson: Yes.

The Chair: It's your assessment, your personal assessment, on that, is that it? That's fine. Thank you.

Mrs. Block, please.

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

Welcome to our committee meeting today, Minister Nicholson.

Last week I noted in my remarks that in the time I have been a member of this committee, I have seen the potential for us to do some very meaningful work when it comes to access to information, privacy, and ethics. Last year, we embarked on following up on the recommendations made by two commissioners for those acts, and we had most recently talked about proactive disclosure and even open government.

You did quote Commissioner Marleau's acknowledgment that the Access to Information Act is "sound in terms of its concept and balance". I think we as Canadians can all agree that we can be proud of our access to information laws and proud of the fact that our government and this committee continue to look at ways to improve them.

I consider the work of this committee, as I said earlier, to be of the utmost importance in looking at ways to reform the Access to Information Act. I would also like to point to an observation that is made in the government's follow-up response to our report on the ATIA.

In this response, Minister, you stated that "the ultimate test of any access to information legislation is not solely how it appears on paper but also how it operates in reality, that is, whether requesters can actually get access to government records in a timely manner". I'm wondering if you would be willing to comment on this statement for us today.

Hon. Rob Nicholson: It's an overall report, and just in answer to Mr. Siksay about proactive disclosure, I think this is very important. Again, you can check the record of the Department of Justice over the last few years. I think it will confirm what I'm saying, which is that we make every effort to get information out to the public, because people who have an interest in this, people who want to know, people who have a right to know certain types of information, ought to be able to access that.

So you try to make it a little bit easier for people to do that and that's why I say that I was very pleased by and supportive of the changes under the Federal Accountability Act. Just one of the changes was increasing the number of investigators from four to eight that the Information Commissioner may use for investigations concerning sensitive material related to the defence of Canada or national security.

Again, it's giving more resources to the commissioner, and it's expanding the number of areas, getting it to all crown corporations, their subsidiaries, agents and officers of Parliament, and foundations. These are steps in the right direction in terms of getting people the opportunity to find out what's going on and to find out where and how their taxpayer dollars are being spent—and indeed, other issues that are important to people.

So yes, it's in the public interest, and you and I have been part of a political movement that has always agreed with that. And certainly I agree, and each minister within his or her department, should make every effort.... I can tell you that the Department of Justice has received an A in the last two years, and there's one prediction I made: I said that nobody will ever ask me about that.

Voices: Oh, oh!

Hon. Rob Nicholson: I said that it's the one thing I would never be asked about. But that said, it's not just a question of the mark you can get. You might get a D in the sense that you may be overwhelmed with requests or they may be very complex, so it's very difficult. But again, we all have that responsibility and we do our very best.

• (1150)

Mrs. Kelly Block: So why don't you tell me about the A that you received in the Department of Justice?

Hon. Rob Nicholson: I wasn't going to say. It's like being back at law school again.

Voices: Oh, oh!

Hon. Rob Nicholson: I mean, somebody may access those records at some point in time. They may be released.

But again, each department has its own responsibility in terms of working as expeditiously as possible, and since you've mentioned it and asked the question, this is the second A in a row—

Mr. Randy Hoback: The second A.

Mrs. Kelly Block: Way to go.

Hon. Rob Nicholson: —for the Department of Justice.

Thank you very much. I think I see a nod of approval from the Liberals, but again, even if we received a B or a C, the direction that I give to the department and to everybody is that we do our best. This doesn't mean that next year we couldn't be overwhelmed with requests, and they may be very complex, and we may need extensions, and therefore I may get a grade that's less than that, or the department may get that, but again, I appreciate all the work that is done, certainly in my own department, and indeed in all of the departments.

Mrs. Kelly Block: Do I have any time left?

The Chair: One and a half minutes.

Mrs. Kelly Block: Also, in your opening remarks, Minister, you said that you would encourage our committee to consult widely and do a full study. Can you just give us some idea of what you would like to see this committee do in terms of consulting widely?

Hon. Rob Nicholson: If you made it known that you were prepared to hear testimony on this, I think you would get a wide range of individuals and groups that would want to come forward and make their case one way or the other.

As Mr. Siksay pointed out, I've had a look at this whole issue, I think about 20 years ago, and again, you get some good insight into the different issues. I think it could be very helpful and very instructive for the committee, and indeed for those of us who work on these issues.

Mrs. Kelly Block: Would you be willing to provide us with some suggestions of individuals or organizations that we might want to—

Hon. Rob Nicholson: I would be glad to take that up with you, Ms. Block, and again, I really appreciate and thank you for all your interest in this. I have to tell you that you've been very supportive of everything we have done, I know, in the criminal justice area. I've mentioned to you before how appreciative I am of that. So yes, any way I can be of help to you or the committee in that regard, I would be pleased to do so.

• (1155)

Mrs. Kelly Block: Thank you very much.

The Chair: Thank you, Mrs. Block.

Mr. Easter, you have five minutes.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Welcome, Minister. Congratulations to your department on the mark of A. It gives you a double A. Randy and I both have been in the beef business: a Triple A is what you really need to get there. Triple A is very good beef.

Some hon. members: Oh, oh!

Hon. Wayne Easter: But, Mr. Minister, the government as a whole is an entirely different story.

I want to go back to the beginning, because when you started off, you talked at some length about the important work of this committee. You even mentioned the Federal Accountability Act. However, what we've seen in practice, I think, is a Prime Minister and a government that basically, regardless of what the Federal Accountability Act says, have subverted the ability of parliamentarians like ourselves, both in the House and at committee, to do our jobs.

You're aware of the issue of the three witnesses: Mr. Togneri, who is still under summons; Ms. Jillian Andrews, whom the bailiff couldn't find to issue a summons; and Mr. Soudas, who appears in TV pretty nearly every second or third night, to whom the bailiff couldn't issue a summons either. They're not appearing before committee.

I want to just put on the record, Mr. Chair, some of the scenario behind this. The clerk got a letter on June 1 from the Prime Minister, in which he said, "The purpose of this letter is to inform the

Committee of my instruction to Mr. Soudas that he will not appear before the Committee". He said in the letter:

Next week I will be present in Question Period on Tuesday, Wednesday and Thursday. Questions about these matters can be directed to me there.

Ms. Foote asked a question to the Prime Minister in question period. He didn't answer, so he didn't keep his word in that regard—that he would answer questions.

So the Prime Minister is not answering questions on Mr. Soudas from members of this committee, and Mr. Soudas is not appearing before the committee. Then we had the law clerk before the committee, Mr. Rob Walsh, and this is what he had to say—

The Chair: Mr. Easter, you're already halfway through your time slot. I wonder if I can go quickly to the minister, and we'll just see whether you're going to have any more time left.

Hon. Wayne Easter: No, Mr. Chair. I need to finish my question. It is my time and I want to finish my question. It will just take me about 30 seconds more, because—

The Chair: Okay. Well, you're already over half of your time and—

Hon. Wayne Easter: I want to lay out the facts to the minister.

The Chair: Well, okay. Fair enough.

Hon. Wayne Easter: I want to lay out the facts to the minister.

The Chair: As long as everybody understands—

An hon. member: Point of order, Mr. Chair.

Hon. Wayne Easter: Mr. Walsh, when he was before this committee, said—

The Chair: Just a moment, Mr. Easter. I'm sorry. Mr. Hoback has called a point of order.

Mr. Randy Hoback: I'm sure you're not implying in your statement that—

The Chair: Okay. Order. Order. [*Inaudible—Editor*]...that's not a point of order.

Mr. Easter, go ahead.

Hon. Wayne Easter: Mr. Walsh, when he was before the committee, said that "the Prime Minister, and any minister, has no authority to prevent someone from appearing in front of a committee", and went on to say, "but everyone has a duty, apart from members of Parliament, senators, and the Governor General, to show up when summoned before a committee".

My question is, with that kind of background—you're the Minister of Justice—how do you square that circle for us to be able to do our jobs and still at the same time argue that you're an accountable and transparent government. How can you argue it?

Hon. Rob Nicholson: Well, again, you've heard my testimony here today about all the different efforts through the Accountability Act in making all of these different crown corporations, commissions, and individuals be within the Access to Information Act.

With respect to the doctrine of ministerial responsibility, Mr. Easter, you may or may not be a student of the British parliamentary system, but ministerial responsibility is embedded in our system: ministers are accountable and answerable to Parliament and, by extension, to the public.

Again, if you aren't satisfied with the answers I'm giving you—or indeed any minister—you're free to make the argument that you don't like that, but that is part of our system, ministerial accountability. I know that my other cabinet colleagues have made every effort to appear before committees.

Again, I'm here myself, and I'm pleased to have officials from the Department of Justice here on perhaps technical questions that you may have with respect to reforming the Access to Information Act or the Privacy Act. I'm pleased to provide that technical assistance, but the buck stops with the ministers. That is part of our parliamentary system and it has been for at least a couple of centuries.

• (1200)

Hon. Wayne Easter: Which makes my point—

Hon. Rob Nicholson: I go back to the late 1700s at the very least—

Hon. Wayne Easter: That makes my point. You have staff with you who deal with the technical area and that's all right on the public servant side, but the staff we want to deal with—

Hon. Rob Nicholson: Are on the political side...?

Hon. Wayne Easter: —in order to get information on what they've done, are the ones who actually “done the deed”.... They know where they were at a certain time and we have to be able to access them, and Mr. Walsh claims we have that right. You as a government are subverting our rights as parliamentarians.

The Chair: Your time is up.

Hon. Rob Nicholson: Well, you say you want to question “what they done...”. I can say to you that if you want technical... Sometimes it happens. Many times I've been before committees and they do want technical information, and again, with respect to the Access to Information Act or the Privacy Act, for which I was invited, yes, I've brought technical staff.

If you're asking me on a political level, again, I speak on behalf of the department for political responsibility. As I say, that is part of our system, and I think it's a system that's very workable.

So I take responsibility for anything on the political side, but at the same time, if you need technical assistance now or in the future, I'm always pleased to provide that.

The Chair: Thank you.

Mr. Rickford, please.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): A point of order.

A voice: Don't start the clock yet.

Voices: Oh, oh!

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

Mr. Pierre Poilievre: I believe we led the minister to expect to spend exactly one hour here. It's now noon. I believe that he has

probably planned other meetings for the early afternoon to which he has to move on. If we could allow him to do that by honouring the time commitment we sought from him, I think it would be well appreciated.

The Chair: Do I understand that the member is suggesting that we stick to the time commitment we asked of him?

Mr. Pierre Poilievre: I understand that he had committed to be here for one hour.

The Chair: The time commitment that we asked of him...?

Mr. Pierre Poilievre: The time commitment that he offered.

The Chair: The committee passed a motion: one hour on access, one hour on privacy. He accepted the date of the seventeenth and I have received no further communication in writing from the minister—

Mr. Pierre Poilievre: I think he indicated he was available for one hour.

A voice: One hour.

The Chair: Not to me.

In any event—

Hon. Rob Nicholson: I think we're just about there, aren't we, Mr. Chair, because...?

The Chair: We are.

You're familiar with the drill at committees. We're just into the second round, and I think there are three more people. I think we could probably get through it.

Hon. Rob Nicholson: Yes, fair enough.

The Chair: We have other work to do as well.

Is that okay with you, Minister?

Hon. Rob Nicholson: Yes.

The Chair: Mr. Rickford, please.

Mr. Greg Rickford: Thank you, Mr. Minister.

I appreciate you coming here today and making some comments about the rich British traditions. The Liberals actually do have one. It's called the House of Lancaster; it's not really the House of Commons. That's I guess where they carry out a lot of their ministerial level affairs—

Voices: Oh, oh!

Mr. Greg Rickford: It is funny.

In any event, Minister, I think our work so far on access to information and on the act is solid. I know that the Federal Accountability Act sought to make further improvements to access to information. It seems to me that there are some residual issues with respect to access to information that are not included substantively by the FAA, I'll call it.

If I understand it correctly, it's because these issues have some degree of complexity. They require further analysis. You mentioned earlier the importance of discussion and consultation with stakeholders before anything is really implemented. I believe these issues were laid out in the discussion paper by your predecessor, in April 2006. We've heard some reference to that today.

Since then, you've asked this committee to delve into these issues and present their findings to the government. I wonder if you'd take a few minutes to tell us why you think it would be valuable for the committee to study the issues raised in that paper.

Thank you, Minister.

Hon. Rob Nicholson: I'm a big fan of parliamentary committees and I'm a big fan of the work they do. I've been a member of 35 legislative committees and five national investigations and reports with respect to various topics. Again, I find this very useful.

I've made the point that I was a big supporter of the Federal Accountability Act. It was a tremendous improvement on the whole question of access to information. Again, to move forward, I think it would be very helpful and very instructive for this committee to bring stakeholders forward.

In answer to Ms. Block, I'd be pleased to forward the names of a number of organizations to make those available to you, if that's of interest.

Thank you very much.

• (1205)

Mr. Greg Rickford: Okay.

Thanks.

The Chair: *Madame Freeman, s'il vous plaît.*

[Translation]

Mrs. Carole Freeman: Here is my first question for the Minister of Justice: Do you consider yourself above the law?

[English]

Hon. Rob Nicholson: Well, I do my best, Madame Freeman. I can tell you that I have several thousand lawyers who assist me on a regular basis, so I get quite a bit of good advice.

[Translation]

Mrs. Carole Freeman: Thank you.

I have a second question for you.

Many lawyers are helping you. Could you provide us with a legal opinion contradicting that of the Law Clerk, Mr. Walsh, who contends that staffers must present themselves when subpoenaed to appear? Can you provide us with a document or a legal opinion issued by your thousands and thousands of lawyers that could prove to us otherwise?

[English]

Hon. Rob Nicholson: Madame Freeman, I'm quite familiar with the concept of ministerial responsibility, as per my answer to my question from Mr. Easter.

With respect to political accountability, I believe that rests with the ministers of the crown.

With respect to any technical questions, as you probably are aware from when I have appeared before this committee and, for the most part, before the justice committee, I do have lawyers who advise me with respect to the technical aspects.

So I think on both counts, if there's something, I think we're covered.

[Translation]

Mrs. Carole Freeman: I simply wanted to know if you can provide us with a legal opinion contradicting the opinion Mr. Walsh issued at Tuesday's committee meeting.

[English]

Hon. Rob Nicholson: You had the statement by Mr. Hill, who, as the Leader of the Government in the House of Commons, I think was very clear, very comprehensive. As the chief legal officer of the Government of Canada, I can tell you that I think he clearly set out the doctrine of cabinet responsibility.

[Translation]

Mrs. Carole Freeman: The issue here is not ministerial power; we are talking about the constitutional power committees have to subpoena witnesses to appear. Have you received a legal opinion that is contrary to the one we received about constitutional and not ministerial power? Would you be able to issue a contrary legal opinion, Mr. Minister?

[English]

Hon. Rob Nicholson: I actually don't agree with you that there's something separate from a constitutional power and a ministerial power or responsibility. It seems to me that the doctrine of cabinet responsibility and ministerial responsibility are a part of the Constitution. As you're aware, many of these can be within either the written or unwritten parts of our Constitution.

[Translation]

Mrs. Carole Freeman: As you know, Minister...

[English]

Hon. Rob Nicholson: Again, I'm completely confident that this is within the Constitution.

[Translation]

Mrs. Carole Freeman: Pardon me, Minister.

The Constitution states that Parliament has precedence over the executive arm of the government. You know this. You are a lawyer and Minister of Justice.

So, I want to know if you could provide us with a legal opinion. I am asking you the same question I asked earlier. Can you provide us with a legal opinion issued by one of your numerous lawyers, thus proving that Mr. Walsh is in error? I would like to get a legal opinion on constitutional power and not on your ministerial power. Would you be able to issue this opinion?

[English]

Hon. Rob Nicholson: Well, again, what I'm prepared to tell you is that the ministerial responsibility in this country is clear. You mentioned the Constitution, but I'm of the opinion—you can accept my opinion for this, and I'm sure you will—that there are written and unwritten parts to the Canadian Constitution. I agree that certain parts with respect to ministerial responsibility come within the unwritten sections of the Constitution, but they are constitutional nonetheless.

• (1210)

[Translation]

Mrs. Carole Freeman: Right now, you are giving us a political answer instead of a legal one.

Minister, I would like you to provide us with a written response. I want a written document stating that Mr. Walsh erred when he came here and issued this opinion. I want you to provide us with the legal opinion issued by one of your officials in order to prove that Mr. Walsh really did err.

[English]

Hon. Rob Nicholson: Well, you may like certain things, Madame...

Chair, you said that mine is a political... But I also believe that it's consistent with legal precedents in this country that there is ministerial responsibility in this country and that is a part of the Constitution of this country.

The Chair: *Merci, Madame.*

Madam Davidson, please.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Mr. Chair.

Minister, thanks very much for being here with us once again.

There's just a couple of things I'd like to clear up for the record. I have a letter in front of me, Mr. Minister, just in case you thought you may have done something that didn't get received by this committee. It did. I have a letter in front of me dated June 2 and addressed to the chair. It reads:

Thank you for your letter dated May 13, 2010, inviting me to appear before the Standing Committee on Access to Information, Privacy and Ethics.

I would be pleased to accept your invitation to appear for an hour before the Committee on June 17, 2010 to respond to questions.

Then it goes on to talk about the two reports.

I also have in front of me a letter to the clerk, dated June 7, which reads:

As I indicated in my letter of June 2, 2010, I was pleased to accept the invitation to appear before the Standing Committee on Access to Information, Privacy and Ethics on June 17, 2010. While I am happy to appear before the Committee, I am only able to be present to discuss both reports for one hour only, as I stated in my previous letter.

I just wanted to make sure that this did get on the record. Sometimes things get misplaced, and sometimes with all due good intentions people can forget what they have read and what they have

Hon. Rob Nicholson: I appreciate that, but again I have to accept what the chairman said, that you did not get that, and again, it's always difficult at this time of year, right near the end, to try to schedule these things. We do our very best to try to come up with a time slot to accommodate the committee. Again, I'm guessing they've gone through a number and that we perhaps are just about at the end of this.

In any case, thank you very much. Thank you for clarifying that.

Mrs. Patricia Davidson: I certainly appreciate your accommodation for us.

Hon. Rob Nicholson: It's my pleasure.

Mrs. Patricia Davidson: The other thing I'd like to correct for the record is in response to some comments were made by a member opposite.

I'm just going to read from the testimony I have in front of me that was given to this committee on May 6, 2010, by Sébastien Tognéri. It says:

Mr. Chair, I never said that I contravened the act, and, in my opinion, that question gives rise to hasty conclusions. That is my answer.

I think I already answered the question about directives. I did not receive any directives.

...As for the other question, once again, I think it gives rise to hasty conclusions. I never admitted to contravening the act.

So that is testimony that was—

Hon. Rob Nicholson: I appreciate you saying that, because this goes back to my original point. This is why I don't give any quasi-judicial decisions or comments on these things. If something is being investigated by the Information Commissioner, I don't go there.

Actually, that's a very good reason why any minister, anybody in my position, shouldn't get into pronouncing one way or the other on ongoing matters that are being looked into.

But thank you for that.

Mrs. Patricia Davidson: I certainly appreciate that and I appreciate your vast knowledge and experience in being able to respond to some of these quotes or some of these allegations that may be just that.

Hon. Rob Nicholson: Thank you. That's very nice.

Mrs. Patricia Davidson: I do have a question for you, though.

In your opening remarks, you said there were three new directives since the April 29 letter that you sent.

Hon. Rob Nicholson: Yes.

Mrs. Patricia Davidson: Could you elaborate a bit on those directives, please?

• (1215)

Hon. Rob Nicholson: Yes. They weren't issued by me, but by the President of the Treasury Board. I'll turn this over to Mr. Kratchanov, who might be able to give you some answers.

Mr. Denis Kratchanov: The directives seek to give guidance to government institutions in the application of the Privacy Act. One of them is on the issue of the need to notify the Privacy Commissioner if ever there is personal information that is released by accident by departments, so that the Privacy Commissioner is notified of that fact.

The other documents speak more generally to how the Privacy Act is to be applied. They provide general guidance to that effect. These directives are now available on the Treasury Board website for those who want to know more about their content. The Treasury Board itself conducts training sessions with each of the government institutions to make sure they understand these new directives and how they are to be applied.

Mrs. Patricia Davidson: Thank you very much.

The other thing I would like to say, Minister, is that I was extremely interested in your comments on proactive disclosure. I'm not sure if you're aware of it, but that is one of the items of study that has been before the subcommittee for this committee, and it is one that this side of the table certainly would have liked to see get under way this spring.

We all feel that it's extremely important. It is one of the best ways to get information out to the public. I was pleased to hear your remarks on proactive disclosure. Is there anything else you'd like to add to that?

Hon. Rob Nicholson: No. We all do our best on that, Ms. Davidson.

As I answered to Mr. Siksay, it's very helpful, and if you have a look at what we have done within the Department of Justice, you'll see many of these reports and the information.

The feedback I get is that it's very helpful. Again, this is one more aspect that we are undertaking to make sure that people get information, that we're transparent and as accountable as possible.

Mrs. Patricia Davidson: Thank you, Minister.

Hon. Rob Nicholson: Thank you very much.

The Chair: Mr. Siksay has a brief intervention and Mr. Hoback has a request. There's a quick one from Madam Foote as well.

I'm trying, Minister.

Mr. Siksay.

Mr. Bill Siksay: Thank you, Chair.

Chair, I'd like to move that, with thanks to the minister, we now move to item 3(b) on the agenda, which is the discussion on the non-appearance of Sébastien Togneri, Jillian Andrews, and Dimitri Soudas.

The Chair: All right. Mr. Siksay took the floor, his time slot, and has moved a motion. The motion is in order and it's debatable.

I understand if members say, "Well, we could only take a few more minutes to deal with the minister". But—

Hon. Rob Nicholson: If they want to get any questions they may have for me, then perhaps you could move to that, just as a suggestion, Mr. Chairman—

The Chair: It's really up to Mr. Siksay, who has the floor and asked for a motion.

Where are you at, Mr. Siksay, please?

Mr. Bill Siksay: I've proposed a motion with intent, Chair, as much as I'd like to hear from the minister.

The Chair: Unfortunately, this is going to take a little bit more time than you had offered. Accordingly, I guess we have to move forward with that.

Perhaps I could leave you with just one point, though, if I may, Mr. Siksay, on the idea of consulting widely, etc. I just want everybody to know that in the privacy report, in 12 recommendations, we had 33 witnesses, 4 submissions, and 18 meetings. That, I believe, would constitute a comprehensive consultation. On the access report, we had 22 witnesses, 5 submissions, and 14 meetings.

So I want to assure you, sir, that when we send you a report with recommendations, we've done the best that we can.

Hon. Rob Nicholson: Thank you very much.

The Chair: Thank you, Minister. You're excused.

Mr. Siksay, on the motion...

Now I've really blown it. No, no, it's not the first...and I'm going to have to apologize because we may have just lost the minister.

But don't go away, Mr. Kratchanov.

That motion is not debatable. It's one of those special motions. The motion is in order. I was correct on that, anyway, but it actually is not debatable. I have to put the question.

Could you repeat your motion just for the edification of everyone, Mr. Siksay?

• (1220)

Mr. Bill Siksay: It was that, with thanks to the minister, we now proceed to item 3(b) on the agenda, discussion on the non-appearance of Sébastien Togneri, Jillian Andrews, and Dimitri Soudas

Mr. Pierre Poilievre: On a point of order, Mr. Chair.

The Chair: I'm sorry, that's—

Mr. Pierre Poilievre: It is in order.

The Chair: I'm sure you think it is—

Mr. Pierre Poilievre: The point is—

The Chair: —but we're in the middle of—

Mr. Pierre Poilievre: There is no vote.

The Chair: No, there is a vote.

Mr. Pierre Poilievre: You haven't called a vote.

The Chair: There is a vote because the process is that here's the matter we're voting on, and I asked him to repeat it so that everybody understood, and this is part of the process of the vote.

So please call the roll.

We have a tie. The chair will vote yes.

(Motion agreed to)

The Chair: We'll move to the item referred to in the motion by Mr. Siksay.

Mr. Kratchanov, you are excused, sir. Thank you very kindly. Please extend that to the minister.

I wanted to advise the committee that the reason I was a little tardy getting here—I'm usually here about 10 or 15 minutes before—is that I did run into Mr. Soudas outside the chamber this morning on the way here, and we had a little conversation. I offered him the summons, and he thought I shouldn't be giving that to him, so... It was only a photocopy, though.

In any event, he is well aware and following this. I think I had indicated that his position was that the matter was a matter for disposition by the House. That's a point for debate, I'm sure, either here and/or in the House.

The matter that Mr. Siksay has suggested that we move to has to do with order number 3, the second item. We're skipping over the instructions to the chair concerning information requests. It is the whole question of the discussion of the non-appearance of Mr. Togneri, Ms. Andrews, and Mr. Soudas.

I think when we had Mr. Walsh here we did receive a fair bit of information that is consequential or may have some impact on our decision as to how we proceed now that we have passed the date of Madame Freeman's motion and Mr. Soudas did not appear by the sixteenth. So I think we have all the information that we're going to get, other than the responses to the requests for information from Public Works that were under the Valeriotte motion.

I understand that those are still not translated from Public Works.

A voice: No.

The Chair: Okay. So there's nothing I can circulate to the committee for their information at this point and we are still having some difficulty with the PMO and with Mr. Paradis' office.

This morning Mr. Giorno has written to the committee and indicated to the clerk that he shouldn't be writing to the person he wrote to in order to get the information. I think that—

Mr. Bill Siksay: On a point of order, Mr. Chair, this is helpful information, but it's not what we're discussing on the agenda. We're supposed to be discussing the situation with regard to the three witnesses who did not appear.

The Chair: All right. I will leave it at that. I think we understand the...

Now, just a moment. On this matter, do we have a speaking list?

I guess Mr. Siksay starts off the speaking, right?

Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair. I think we've finally gotten to the point that we should have been at earlier, in my opinion. But it's clear that the three folks who we wanted to hear from, Mr. Togneri, Ms. Andrews, and Mr. Soudas, are refusing to appear before the committee despite being invited and despite being summoned. I believe it is important to proceed to report that issue to the House.

In that light, I'd like to propose a motion dealing specifically with Mr. Togneri. We have the wording that was distributed by you and by the clerk earlier, at an earlier meeting, and I'm following that wording in the suggested report. I'm just following on that document that was provided. Specifically, I'd like to move:

That the Committee report the following to the House. On Thursday, April 1, the Committee agreed, pursuant to Standing Order 108(3)(h)(vi) and the motion adopted by the Committee on the same day, to undertake a study on allegations of interference in access to information requests.

In the course of this study, the Committee chose to invite Sébastien Togneri to appear before it. Here are the facts...

We can take out that sentence about "these witnesses refused to appear before the committee". So it reads, "Here are the facts...". So the paragraph about Mr. Togneri—

• (1225)

Hon. Wayne Easter: On a point of clarification, Mr. Chair, I need a copy of the paper, if we have it, please. Do we have a copy? I don't have my original motion.

The Chair: It was circulated and Mr. Siksay is reading it into the record.

Hon. Wayne Easter: I can't find it. Never mind—I have it. Thanks.

The Chair: Carry on, please.

Mr. Bill Siksay: To the paragraph about Mr. Togneri, I would suggest adding the following paragraph: "On May 25, 2010, the Leader of the—"

The Chair: Mr. Siksay, if you're going to add something to that, unless you have it written out for us...

Mr. Bill Siksay: I do.

The Chair: Okay. That'll be helpful, because the wording is important.

This document is the full motion.

Mr. Bill Siksay: This will pertain to the part that I'm adding. I'll make that clear when—

The Chair: Okay. And this part that you're adding is in both official languages so members will be able to link these two, the original one that was put out, and the balance, which Mr. Siksay is giving us. Okay.

Mr. Bill Siksay: Chair, I would continue:

On May 25, 2010, the Leader of the Government in the House of Commons made a statement regarding the attendance of ministers' employees before parliamentary committees. A copy of this statement is attached to the report.

Also:

The Committee received a letter dated May 31, 2010 from the Minister of Natural Resources, noting that he had "instructed Mr. Sébastien Togneri and Ms. Jillian Andrews that I will appear before the Committee in their place". A copy of this letter is appended to the report.

I would continue:

In light of this matter, the Committee has reason to believe that a potential breach of privilege has occurred. Your Committee feels it is their duty to place these matters before the House at this time since a question of privilege may be involved and to give the House an opportunity to reflect on these matters.

The Chair: Okay.

Voices: Oh, oh!

The Chair: No, no. Excuse me. Order, please.

The original motion that was drafted by the clerks directorate, on Mr. Togneri only, was circulated to the committee. Mr. Siksay has circulated additional language that he wants to put into it.

An hon. member: Mr. Chair, could we have the language again?

The Chair: So you have—

Mr. Greg Rickford: Do you need 48 hours' notice?

The Chair: No.

You may recall that when I first raised it with the committee, I said that here is a template, here is what other committees have done, and it was just on Mr. Togneri. It listed the dates of service, etc. To this document, which was dealing just with Mr. Togneri... And this is in fact a motion that Mr. Siksay moved initially. That was tabled, but now he's bringing that matter basically back on the floor with the addition of this part, which goes into the middle, before "therefore we've decided to do this..."

I do know that members have the original draft of a possible motion that was circulated when Mr. Siksay moved it. He has just circulated the additional language that he would like to have in it. If the committee would like to have the whole thing read right through again, for greater certainty, we could certainly do that. How's that?

Mr. Siksay, I'm going to leave it up to you to make absolutely sure.

But you have the documents.

• (1230)

Mr. Greg Rickford: Sorry, Mr. Chair. Do I have what he was reading as an add-on?

The Chair: That was circulated at a prior meeting.

Mr. Randy Hoback: Is this an amendment to the original motion?

The Chair: No. He's moving a whole new motion that happens to incorporate that one plus this additional language.

Mr. Siksay, please read the motion that you're asking the committee to consider.

Mr. Bill Siksay: Thank you, Chair. It is:

That the Committee report the following to the House. On Thursday April 1st, the Committee agreed, pursuant to Standing Order 108(3)(h)(vi) and the motion adopted by the Committee on the same day, to undertake a study on allegations of interference in access to information requests.

In the course of this study, the Committee chose to invite Sébastien Togneri to appear before it. Here are the facts:

On April 12th, 2010, the Committee sent Sébastien Togneri an invitation to appear before it on May 6th, 2010. On April 28, 2010, Mr. Togneri's lawyer sent a letter to the Committee saying that Mr. Togneri will not appear before the Committee. The Committee decided to summon Sébastien Togneri to appear before it. Sébastien Togneri appeared before the committee on May 6 and May 11, 2010, meetings. However, he refused to appear at the June 3rd meeting even though he was not duly discharged.

On May 25, 2010, the Leader of the Government in the House of Commons made a statement regarding the attendance of ministers' employees before parliamentary committees. A copy of this statement is attached to the report.

The Committee received a letter dated May 31, 2010 from the Minister of Natural Resources, noting that he had "instructed Mr. Sébastien Togneri and Ms. Jillian Andrews that I will appear before the committee in their place". A copy of this letter is appended to this report.

In light of this matter, the Committee has reason to believe that a potential breach of privilege has occurred. Your Committee feels it is their duty to place these matters before the House at this time since a question of privilege may be involved and to give the House an opportunity to reflect on these matters.

The Chair: Mr. Siksay, I have followed it through. It fits with the documents you provided to the committee.

Mrs. Davidson.

Mrs. Patricia Davidson: I apologize, Mr. Chair. I'm not sure if this is a point of order, but I cannot find the large document Mr. Siksay was reading from. Does anybody have a copy of it?

Would the clerk have a copy of it? Was it circulated, that first document he's reading from?

An hon. member: She does not have that.

Mrs. Patricia Davidson: I don't have Mr. Siksay's motion. I think what I have—

The Chair: Well, it's in the transcript of our meetings and it was circulated at the meeting. I circulated it.

Mrs. Patricia Davidson: Well, the clerk must have a copy of it, then. It's very difficult to discuss the motion when it's this...

Does Mr. Siksay have a copy of the one the clerk distributed?

Mr. Bill Siksay: And the chair distributed.

An hon. member: No—

Mr. Bill Siksay: You've just heard two paragraphs from that.

An hon. member: That's right.

Mrs. Patricia Davidson: And where did the other paragraphs...?

Mr. Bill Siksay: That was the material that was distributed by the chair on the advice of the clerks department a few meetings ago.

An hon. member: Bill, is it this whole thing...?

The Chair: All right. I'm going to suspend.

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• (1240)

The Chair: We have resumed.

Colleagues, we don't have very much time to deal with this, and going in the usual fashion would be very time consuming. I think if we're going to have some frank discussions, the best thing would be for us to move in camera now. I want to suspend to go in camera.

Mr. Bill Siksay: Point of order, Chair.

A voice: Oh, we're suspended—

Mr. Bill Siksay: I was saying "point of order" as the gavel was coming down.

An hon. member: [*Inaudible—Editor*]

Mr. Bill Siksay: Chair, on what basis do you want to do this? This is not a confidential issue. We are discussing a motion that's before the committee. That should be a public discussion. I don't support going in camera. I'll challenge your ruling on that.

The Chair: Okay. I hear you. Mr. Siksay, I think my concern was that in fact the issue and the motion are not secret, but it is the discussion on the motion that is the issue, and that is the normal practice. I've suggested or I'm recommending that we go in camera and I've made a ruling that we move in camera to have the discussion on this motion, but if you would challenge the chair, sir, I certainly will take that motion and we'll deal with it.

Okay. The chair is challenged, so the question is, shall my decision to go in camera be sustained? If you want to go in camera, say yes; if you don't want to go in camera say no.

Call the roll. I hope everybody understands.

(Ruling of the chair sustained)

The Chair: Okay. We're going in camera. I'll suspend.

Please clear the room if you shouldn't be here.

[Proceedings continue in camera]

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