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Mr. Blaine Calkins

Standing Committee on Access to Information, Privacy and Ethics

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● (0845)

[*English*]

The Chair (Mr. Blaine Calkins (Red Deer—Lacombe, CPC)): Good morning, everyone. It's nice to see everybody here on the last Thursday before we adjourn meetings for this particular week. This is our 10th meeting on this subject.

We have as witnesses today, from Montreal via video conference, Marc-André Boucher, a lawyer with Fasken Martineau; and Antoine Aylwin, who is a partner with the same firm. My understanding, gentlemen, is that you may have to leave a bit early, so when we start the discussion, we'll start with you.

We also have Mr. Ken Rubin, a public interest researcher, who's here of his own accord; and Mark Weiler, a web and user experience librarian. We thank you, gentlemen, for being here today.

The committee will start by hearing a presentation of up to 10 minutes from each of you or your organizations, and then we'll proceed to rounds of questioning from members here at the table. We will stop the meeting with about 30 minutes to go because we need to work through some issues and instructions for the analysts in order to achieve the objectives of the motion that led us to where we are today so that we can get a draft report out before the summer. We need some time to have that discussion.

Without further ado, Mr. Boucher or Mr. Aylwin, you have up to 10 minutes, please.

[*Translation*]

Mr. Antoine Aylwin (Partner, As an Individual): Thank you, Mr. Chair.

Good morning to committee members and especially to the vice-chair, Joël Lightbound, our former colleague.

First I'd like to introduce ourselves. I am an associate with the law firm Fasken Martineau. In the Montreal office, we both work in access to information and privacy protection, with respect to both federal legislation and Quebec provincial legislation.

In the private sector, I've had the opportunity to argue cases, lecture and publish papers on access to information. My most recent article, on notification requirements when there is a breach of confidentiality, was published in the latest issue of the *Revue du Barreau*.

My colleague Marc-André Boucher published his master's thesis, entitled *La Loi sur l'accès à l'information et la protection des renseignements personnels commerciaux en droit fédéral* in 2014 through Éditions Yvon Blais.

This is my second time appearing before a parliamentary committee this year. I also appeared before the National Assembly as part of Quebec's review of the act respecting access to documents held by public bodies and the protection of personal information.

We would like to address three subjects with you. The first is the issue of notifying third parties. The second relates to access to Cabinet documents, and the third is the administrative framework, including the procedure and deadlines set out in the Access to Information Act.

I'll start with the first subject.

I would refer you to the 2012 Supreme Court of Canada decision in *Merck Frosst Canada Ltd. v. Canada (Health)*, which discussed the matter of the notification requirement for third parties. The Supreme Court of Canada decided to recognize a criterion that access to information officials were not systematically required to notify third parties when they intended to release documents if they were of the opinion that there was no possibility of harm within the meaning of section 20 of the act, which we think leaves a loophole.

We represent public bodies and access requesters, but we also often represent third parties. We have several points of view. In terms of federal legislation, we often represent third parties, and we found that it left an uncertainty. What we told the companies that are going to provide information to the government or to departments is that it might be possible to release the documents without the knowledge of the individuals involved. This is something that we are asking you to review and that you must question, to determine if it's the right mechanism to ensure the protection of third parties, when the access to information official is not an expert in third-party business affairs to be able to judge the applicability of section 20.

With that, I would refer you to pages 69 to 78 of my colleague Marc-André Boucher's book, in which he addresses notice to third parties. That's the first subject we feel that the committee should consider for reforming the Access to Information Act.

● (0850)

Mr. Marc-André Boucher (Lawyer, As an Individual): I'm going to talk about the issue of documents relating to ministerial offices.

In 2011, the Supreme Court of Canada decided in *Canada (Information Commissioner) v. Canada (Minister of National Defence)* that since ministerial offices did not appear in Schedule I of the act, they were not subject to it.

I think this is a significant breach. I think other stakeholders have also mentioned this to you. It's a very significant breach in the act because communications between a minister's office and a federal institution under the minister's supervision are not impermeable. Communications, documents and information in some way frequently travel between the structure of the federal institution itself, which is subject to the act, and the ministerial office, which is not.

I would propose that ministerial offices be subject to the Access to Information Act moving forward, especially since section 21 sets out an exemption for consultations, deliberations and information specific to ministers, and section 69 of the act provides an exemption that specifically targets Privy Council documents, which also includes certain documents of the minister. This section is extremely well detailed and already amply protects sensitive documents and information. Therefore, they can include ministerial documents.

Therefore, I'll repeat that I think ministerial offices should be included in Schedule I of the act, so that all documents are subject to it, even if other more specific exceptions are subsequently provided.

I will turn things over to my colleague, who will conclude by addressing the last issue.

Mr. Antoine Aylwin: The last issue, which is in fact closest to my reality as a practitioner, has to do with the administrative framework of the applicability of the act.

As I said in the beginning, we have experience both federally and in Quebec. You've already heard from Diane Poitras, the vice-president of the Commission d'accès à l'information. You are probably also aware of the mechanism that exists in Quebec and the administrative tribunal with binding powers. However, before speaking about that, I would like to talk to you about some delays that cause frustration to third parties and access requesters. And since it can take an excessively long time to process requests, it may also create a lot of uncertainty. When an access-to-information request is made at the federal level, there is no way of knowing how long it will take to get an answer. The act sets out an indicative time limit that can be extended depending on the willingness of the public body, and the requester doesn't know when an answer will be received.

When third parties are consulted, they are often left in the dark, and they don't know whether a decision has been made or not. In my experience, when the public body decides to accept third party representations and not release the documents that the third parties are asking not to be released, we don't know about it. We have to follow up, chase after the bodies, and we have no information about when the decision should have normally been made. This can vary greatly. However, I don't think it is a question of bad faith by access-to-information officials. Depending on the department, the wait may be very short or very long because of the scope of the access requests.

The mechanism is two-pronged at the provincial level. First, there is a specific time limit of 30 days maximum. Then, there is a valve that allows public bodies to request that a much too onerous request not be processed. At the federal level, we often see mammoth requests where a vast number of documents is being requested. They pay $5 and try to make sure that the list of documents is as long as possible to cover everything. However, processing those cases may take months, if not more than a year. The first source of irritation is therefore the time limit framework for processing access requests.

The second source of irritation that contributes to time limits concerns the lack of powers given to the Information Commissioner, who acts more as an ombudsman than a decision-maker in access-to-information matters. Once again, these are time limits and decision that are not binding. So when you are a third party or access requester, in addition to the uncertainty about time frames, the answer that is slow to come and the outcome of the process, there is the Federal Court. So if you want to exercise your rights to the end and want a binding decision, you send people to the Federal Court after a lengthy wait. The Federal Court is probably one of the least accessible tribunals for citizens because of the excessively unwieldy process they have to follow.

When we compare Quebec, which has a relatively simple administrative tribunal, where a simple letter can start the process, with the Federal Court, where there are requirements and high fees, we see that the administrative process in place between the request and the completion of the decision-making process for the request is long and can be costly.

Therefore, the main thing that should be done regarding the Access to Information Act would be to re-examine this process. We should determine how we want requests for access to government documents to be handled, within what time frame and how we want to come to a final decision within a reasonable time frame and at a reasonable cost.

That is our presentation. We tried to be as brief as possible to give you an opportunity to ask questions.

● (0855)

[*English*]

The Chair: Thank you very much, gentlemen.

I'll just let you know that we very much appreciate Mr. Lightbound, and you can't have him back.

Voices: Oh, oh!

The Chair: We'll now go to Mr. Rubin.

You have up to 10 minutes, please.

Mr. Ken Rubin (Public Interest Researcher, As an Individual): Thank you, Mr. Chair and members, for inviting me.

I'm here because Saudi Arabia human rights reports are released late, after the minister makes his export permit decision. There are four drafts of it, that go back to the Conservative times, heavily blanked—different.

I'm here because Treasury Board takes a six-month extension to tell me about transparent government.

I'm here because I'm a long-time person who knows, who's been in front of Parliament dozens of times, and who would like to get somewhere.

I'm here for basic structural change. I'm not here for technical changes.

Canada needs to embrace transparency legislation that is bold. For too long, Ottawa's antiquated and dysfunctional act has blocked fuller transparency and encouraged secrecy practices. The right to access should not be hindered by barriers that include lengthy delays, high fees, creative avoidance, and multi exemptions and exclusions. Governments and information commissioners to date unfortunately have sought housekeeping and quick-fix changes that do not—do not—abandon the culture of secrecy.

The best way to move forward is with a comprehensive bill for open government that brings together several transparency measures. That's because better access to government information alone will not bring about transparency or a culture of openness without a combination of measures to create more effective means for greater public disclosure.

In other jurisdictions, New York state, for instance, they combine such transparency measures as a sunshine open meeting component with record disclosure in their information laws. Other countries, such as Mexico, have shown the way by designating specified categories for proactive disclosure that go beyond digital data banks and traditional access to few records. Brazil incorporated inquiries into historic truths side by side with its transparency legislation.

Sweden is one country—I don't know if you heard from their ambassador—with a long tradition of transparency that has successfully combined freedom of the press and protection against censorship with access to public records in companion legislation. New Zealand, where I visited and gave a workshop at the ombudsman office, is a parliamentary democracy that treats access to cabinet records more as an invitation to open government at work rather than as the centre cornerstone of a culture of secrecy.

Canada must catch up and toughen and expand its right to know legislation and become a leader, finally.

Central to this substantial effort is the creation of a proactive disclosure code and transparency agreements with the purpose of guaranteeing information rights, freedom of expression, and freedom to participate. I will go through some key ingredients.

One, you need a clear purpose clause, which we don't have. It would be part of a new right to know act that enhances the freedom of information and maximizes public disclosure and accountability. It is an essential part of the Canadian Charter of Rights and Freedoms; it's just been downplayed under the current act, whose emphasis on secrecy goals is right in the principles.

A proactive disclosure code would help this transition. It would create a legal mandatory obligation, making data on public monies, health, safety, and environmental and consumer matters widely available via the Internet in a digital, machine-readable, usable format on a regular and instantaneous basis. The code would set up the operative principles, including the right to transparency and broad access, right to proactive service for access, right to wide coverage, right to effective decision-making and record-keeping retrieval, and right to independent review. Under this code, proactive disclosure will no longer be limited to a few selective administrative records.

Next, and tied to that, governments and corporations would put in place agreements to actively disclose their information and explain their actions consistent with the code. It would mean enacting federal, provincial, and international information disclosure codes. Proactive disclosure would as well become an integral section in all legislative bills.

What we also need is a proactive disclosure code system that would enable much broader private as well as public sector coverage. No public money would go to those private agencies receiving federal benefits or to those organizations carrying out public functions that do not have disclosure service agreements.

● (0900)

Coverage would include the PM, the PMO, cabinet ministers, and Parliament. No corporate third parties would have special veto powers to object to disclosure. We also need available records from institutions that are wide coverage, including procurement, budget, infrastructure, government operations, and safety and health data. Restrictions would be removed on accessible machine-readable records. There's a court decision that does that.

In order to achieve this, we need other things, too. We need open meeting requirements. Effective public entry to the decision-making meetings of boards and commissions should be required instead of the real business being done behind closed doors. We also need early public policy notification and participation requirements, so the public early on can be involved and be consulted, and it not be token. We also need a system that can be reliably connected to the Internet and where institutional data can be transmitted and set out. We also need, and I think this is really part of it, an independent parliamentary budget officer who provides a fuller picture of financial costs and projections, ensuring that Parliament and the public are better served. In addition, we need a parliamentary legislative officer who would make public analysis of ever increasing complex legislative proposals available to the public and Parliament.

Administrative tools are many, and I'll try to go through them quickly.

There is the duty to document. No transparency and accountability system can do without an up-to-date and immediate retrieval of information, as well as responsive management and effective information management systems. We need to preserve and document decisions, their background, day-to-day operations, and matters of significant public interest.

I'm also putting in here a duty to investigate, because I think a triggering mechanism is needed so that public inquiries can be generated to gather and collect significant material in the public interest. These are matters like food safety, indigenous rights, and health care. Just as the Truth and Reconciliation Commission sought out information on residential schools, and various inquiries sought out data and reported, we need to have an embedded public inquiry mechanism that gets at the truth through investigation, documentation, and public reporting.

We also need, and it's sometimes overlooked, proactive service and interaction. Instead of codes of silence, which is what we have now even under this government, and public relations, enforceable codes of service and disclosure are required. We also need no fees and prompt service. Data needs to be immediately available, and proactive disclosure agreements should eliminate the need for lengthy consultations and time extensions. Along with that, an administrative arm's-length agency is needed whose prime goal is to encourage getting answers and releasing information, not to tangle it up or deny it.

Yes, we need a broader commission with order powers, but with broader powers to order release of documents, duty-to-document documents, access to meetings, and whistle-blowing data that's hidden. We need to have a commissioner who undertakes mediation, but who can also do inquiries and issue binding order powers. We need a commission that leads an audit and education mandate, and that can help look at the implications of legislation.

The courts have a bigger role to perform. Right now they perform more of a conservative role. They need a broader role of protecting rights of disclosure and freedom of expression, and prompt and affordable access to justice.

You can't do a lot of this without some penalties for altering, withholding, and distorting records. You need those kinds of things and tougher sanctions.

You also need a parliamentary oversight committee, because you need to promote the legislation. You need a regular committee that is going to examine all the secrecy provisions in federal acts and assist...reverse that and pass legislation with all proactive disclosure codes, and pass an act that I'm suggesting.

You also need for those members of the public who have few resources, some means to support and challenge secrecy practices. You need the mediums of the Internet and telecommunications, and an independent media to help make all of this possible.

● (0905)

You sure don't want censorship and publication bans and not having net neutrality. You need whistle-blowing protection for both the public and private sectors because that helps bring transparency and accountability.

You can't just—and that's the problem with the current act and the culture of secrecy—elevate secrecy to a principle. The top-down approach in this country that places cabinet records out of reach of Canadians and hides policy options and ongoing work as advice must end.

A mandatory general public interest override would apply to the few narrower exemptions. Narrowing the application of exempt areas also means greatly reducing the time periods for protection, and applying significant injury tests and eliminating secrecy overrides in other legislation.

No one would dispute that the access act is broken, but there's a great divide to what steps to be taken. I was around before the act and I was a consumer advocate back then when I started to make submissions in 1975. I can assure you the act we got is not what I wanted, not what other people voted on. I believe one of your other witnesses went into that. It's broken, and we need to fix it.

The Liberal government is saying to delay to 2018, just like they're delaying my access request and claims it can introduce order-making powers before that, which it cannot without amending the act and looking at it comprehensively, and it cannot if it doesn't look at the prime problem, which is exclusions and exemptions in the act. The current Information Commissioner unfortunately has very limited administrative changes. They won't fix this. They won't fix the legal secrecy framework and practices entrenched in Ottawa.

A basic change in attitude and political will is required that makes information rights, freedom of expression, and freedom to participate as paramount. What is not wanted is more default and delay systems, codes for silent conduct, and superficial chat dialogues, as the minister is doing. There should be no confusion with open data sets as equivalent to giving Canadians the right to know how the government operates.

What legislators, 34 years later, need to address in a non-partisan way.... I was here for the 1987 non-partisan report which at that time went as far as it could with those administrative changes. Now it's 2016, almost our 150th anniversary. We need more. We need a system where disclosure and a culture of openness becomes the norm, not a consolation prize secondary to the many entrenched special claims with special interests. Starting with cabinet and senior officials, the privileges can no longer by law be sacrosanct and claimed as confidences. Canada needs more than access to public records. It needs mechanisms to finally create a public disclosure atmosphere that rejects fear, avoidance, deception, and secrecy, and I've had enough of that and I've had it for over 30 years, or 50 years as an investigator/researcher.

Canadian legislation should not be lulled into doing very little on transparency reform and must significantly roll back—do not look at cosmetic changes—government delays and denials and put forward bold multi-transparency initiatives.

Thank you very much. Hopefully, I'll get some questions, including on the so-called 2016 budget.

● (0910)

The Chair: Thank you very much, Mr. Rubin. You've clearly been a very patient man for many years. We also gave you about five minutes more than we normally would allow. I didn't want to interrupt what was a great presentation.

Now we move to Mr. Mark Weiler, please, for up to 10 minutes, if you can.

Dr. Mark Weiler (Web and User Experience Librarian, As an Individual): Thank you for this opportunity to come before you and answer your questions. My name is Mark Weiler. I am a web and user experience librarian at Wilfrid Laurier University. I am speaking today in my capacity as an individual, and not on behalf of the university.

As an academic librarian, my professional responsibility is to advocate for the value of access to information within society. As a user experience librarian, I am interested in how to make the Access to Information Act more user-friendly. In my own academic research I have used FOI laws many times, and I have helped academics use FOI laws for their own research.

It is an honour to discuss the Access to Information Act with you this year as 2016 is the 250th anniversary of freedom of information legislation. On December 2, 1766, Sweden passed the world's first freedom of information law. Coincidentally, 250 years ago on this very day, April 21, committee members of the Swedish Parliament were debating the issue of government censorship in the context of larger discussions about freedom of the press and access laws. Government censorship is a topic I will raise here today.

I would like to note that the Swedish Parliament has commissioned an edited volume by eminent Swedish and Finnish historians on the topic of their freedom of the press and access laws. I've organized an international petition, supported by 114 people from 33 countries, asking the Swedish Parliament to translate the book, so that lessons of Sweden's past will be accessible to current debates, such as the ones we will have in the next few years.

Although that FOI law has been around for 250 years, most of the world has only adopted FOI laws in the last 15 or so years. Canadians have only had the Access to Information Act for about 30 years.

Many people say the Access to Information Act is in a crisis. They will cite delays or redactions as irrefutable evidence that the law is broken. However, I disagree with such blanket statements, because they risk throwing the baby out with the bathwater. What is rarely discussed is how utterly amazing the Access to Information Act is when it works. In 1981 it would have been inconceivable for Canadians to access any significant amount of unpublished information held by a federal department. Now, with the Access to Information Act, it is possible for Canadians to know more about what goes on in a department than most employees who actually work there. Critics do not generally acknowledge this astounding development.

Now, to be very clear, I am not saying the Access to Information Act does not need improvements. It most certainly does. Rather, I'm saying it has revealed itself to have breathtaking promise that is worth the highest degree of protection.

I applaud the government for wanting to make more information proactively available and for improving the Access to Information Act; however, sometimes open government, open data, or proactive disclosure becomes conflated with meaningful improvements to the Access to Information Act.

For example, in 2013 when the Information Commissioner of Canada was conducting a public consultation on reforming the Access to Information Act, the Australian Information Commissioner made a submission endorsing a transformation from a reactive to a proactive framework. However, when the Australian commissioner was asked for clarification, he revised his statement, saying that proactive disclosure should operate alongside the right to access unpublished information.

I strongly object to any conflation of proactive disclosure with freedom of information legislation. Freedom of information legislation is rooted in the rights of Canadians to decide what unpublished information held in the custody of government departments they will access. In contrast, while proactive disclosure positions the government as a publisher of information, it simultaneously positions the government as a censor, in that the government decides what to publish but also what not to publish.

A report presented to the Swedish parliamentary committee on April 21, 1766, exactly 250 years ago to this day, said that it is no less certain that the government censor must also show greater partiality towards the publication of those works that support its opinions than those in which the faults of the party with which he sides.

Freedom of information legislation prevents governments from becoming censors of government information. Now, to be sure, I most certainly think there is a place for governments to publish information. But government publishing programs can never replace a robust access to information law that enhances the abilities of Canadians to access unpublished information.

To avoid harmful conflation, I recommend creating a new, separate law dedicated to publishing government information or data. Call it the mandatory information publication act. It could be rooted in the principle that governments have a responsibility to publish information that Canadians need to be informed citizens. Parliament or cabinet could debate the publication schemes it would include.

● (0915)

The Access to Information Act is fundamentally different, which is why it needs to be separate. It is rooted in the principle that governments are custodians of unpublished information and Canadians have a general right to access that information. I encourage strengthening the Access to Information Act by revising sections or adding new ones that enhance the ability of Canadians to identify and access unpublished information. I can speak to specific areas that I think are in need of improvement.

Thank you for your time. I am happy to answer any questions.

The Chair: Thank you very much, gentlemen.

We had some great presentations and I know we're going to have some great questions.

We'll start with a round of seven minutes and we'll start with Mr. Erskine-Smith, please.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thank you, everyone, for your presentations.

I'd like to talk about exemptions. I'd like to first deal with third party exemptions.

Recommendation 4.17 of the Information Commissioner's March 2015 report entitled “Striking the Right Balance for Transparency—Recommendations to modernize the Access to Information Act”, reads:

> The Information Commissioner recommends a mandatory exemption to protect third-party trade secrets or scientific, technical, commercial or financial information, supplied in confidence, when the disclosure could reasonably be expected to:

She then lists a number of factors where there would be prejudice. This is moving from mandatory exemption for third party information to limiting it by an injury test. I'd be interested in your thoughts on third party information unlimited by an injury test.

I'll start with counsel, I suppose.

[*Translation*]

Mr. Antoine Aylwin: Thank you for the question.

First, the act already partly imposes something on injury tests in the provisions of section 20. It's also taken into account in provincial legislation in Quebec, in the provisions on protecting the interests of third parties.

That said, I'm not sure that it responds to all the concerns that third parties might have when it comes to access to their documents. Protection mechanisms already exist. For example, section 20 covers trade secrets. So, imposing the burden of proving injury on third parties for something that is basically a confidential trade secret, in particular, is perhaps something that goes too far for certain document categories.

In fact, it makes sense for some exemptions, but perhaps not all of them.

Mr. Marc-André Boucher: Exactly. I might suggest reviewing the definition of trade secret, which remains vague, even in *Merck Frosst Canada Ltd. v. Canada (Health)*. The court, itself, has said that it sometimes struggles with correctly defining what a trade secret is. A reform of the act should no doubt bring in legislative criteria that would help to better define what a trade secret is so that it is better framed in the future.

● (0920)

[*English*]

The Chair: Mr. Rubin, did you want to answer that?

Mr. Ken Rubin: It requires broader context because corporations are the major users of the federal act and of most provincial acts, which may be an indication of something.

Third parties, like corporations, are the ones who got special privileges written into this act, such as special notifications and other means. The act is far too close a way to it. The three-part test that the courts have adopted is still very broad. The thing is, if you're talking about amending the act and broadening coverage to the corporate side, even if it's through agencies that receive public benefits, you still have to have much better corporate disclosure. In the United States, you have the Securities and Exchange Commission, which allows much more disclosure of public corporate information. The basic problem is there's way too little corporate material.

When I try to get drug information or I try to get loan arrangement information, they cite commercial confidentiality. Yes, there are very limited means that corporations which supply material—

Mr. Nathaniel Erskine-Smith: I am going to cut you off because I want to ask another question. I want to pick up on what you are suggesting here with respect to loans.

Recommendation 4.20 states:

> The Information Commissioner recommends that the third party exemptions may not be applied to information about grants, loans and contributions given by government institutions to third parties.

I take that is your suggestion, Mr. Rubin.

Mr. Ken Rubin: No, it is more than that, sir.

The fact of the matter is, if I just got from Bombardier the limited thing, what the loan was, I wouldn't get all the details of all the side deals that were made in this case. I wouldn't get all the actual material back and forth about the loans, and the other special arrangements made.

The access act is broader than just a little superficial proactive disclosure of certain procurement policies.

Mr. Nathaniel Erskine-Smith: Okay.

I would like to put my question again to the counsel with respect to that recommendation, where third party exemptions may not be applied in these circumstances. What are your thoughts on that?

[*Translation*]

Mr. Marc-André Boucher: Things need to be put in context. Very often, we consider only large companies as being very powerful bodies corporate that already have an enormous amount of power. But I forgot to mention one thing that I find important. Under the Access to Information Act, once a federal inspector inspects something or a company submits information to a federal institution, the principle is that it immediately comes under the federal institution. By the simple fact that there is material possession, the courts have very often ruled that it was therefore subject to the act. Section 20 in its entirety is essential and important because it really is a measure that makes it possible to protect very sensitive information.

When I use *Merck Frosst Canada Ltd. v. Canada (Health)* as an example of trade secrets, there's something important to keep in mind. A company like Merck Frosst invests millions of dollars over years to develop a drug. These investments are very expensive. So it's important to protect its information, otherwise pharmaceutical companies will no longer make the same investments moving forward. This sometimes even hinders the development of some technologies. So I think it's essential that section 20 be strengthened.

Mr. Antoine Aylwin: I'd like to add something. I think the use of government discretion often involves financial investments or financial matters. The Access to Information Act is important if you fall under the exercise of this government discretion. If the commissioner recommends an exemption—I don't have the wording with me, so I can't comment in detail—I think there's this principle on one side. On the other side, there is the principle that Marc-André highlighted, which is that third parties, which aren't just large multinationals, are required to do business with the government and disclose information in order to operate and do business in Canada, given the regulatory framework we have. That's why we need to respect this balance.

● (0925)

[*English*]

The Chair: Thank you very much. That takes us up over eight minutes.

Mr. Jeneroux, you have up to seven minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, everybody, for being here. Thank you to you two gentlemen for being here by video conference, and to Mr. Weiler and Mr. Rubin for your passion on this issue.

I just want to start, Mr. Chair, by saying that I don't know; there are certain days when I wouldn't mind if Mr. Lightbound went back to work there. It is a spirited debate here sometimes, and he is welcome at times. We do appreciate him here as well.

I want to get to my questions. I just have a quick point of clarification for you two gentlemen, Mr. Aylwin and Mr. Boucher. Sorry, my headpiece wasn't working at the very beginning, so I just want to clarify your position on the elimination of fees.

Would you mind putting it on record what your thoughts are on that?

[*Translation*]

Mr. Antoine Aylwin: We didn't discuss the $5 fee for access-to-information requests, but I find that asking for fees for an access-to-information request is a bit of a contradiction of the spirit of the act. What this means, and what I'm referring to, is that people make huge access-to-information requests so that they only pay $5 once instead of three times. This becomes extremely difficult to manage, which leads to delays and so on. We could learn from the experience of plenty of other legislative authorities that do not charge for access-to-information requests. Just from the administrative perspective, I get the feeling that handling the money coming in, doing the charge, doing the accounting, all that costs the government much more than the $5 asked.

[*English*]

Mr. Matt Jeneroux: Perfect. Thank you for that.

We want to get your thoughts as well on the order-making powers. Professor Drapeau was here a couple of weeks ago. He said that it's something that wouldn't allow the commissioner to effectively have the level of accountability he felt necessary. We also had the assistant deputy minister in here, and she said, “I think we have the most concerns about security and safety, and health and safety issues.”

Could you comment on those two comments that were mentioned previously at committee?

[*Translation*]

Mr. Antoine Aylwin: Our vision for order powers lies in the determination of requests for review on access to information. I'll remind you that the process in Quebec provides 30 days to respond to an access-to-information request. Within 30 days, the access-to-information requester can ask for a review of the file, or a third party may request a review of the public body's decision to disclose its documents. The matter comes before the Commission d'accès à l'information, an administrative tribunal that renders a decision that orders the disclosure or non-disclosure of a document. The order power, which is how we see it, involves having an administrative tribunal—this does not have to be the Federal Court—which considers the matter quickly and may render a decision.

The model is changing. In Quebec, for example, the investigative function and the administrative tribunal function have been split in two. The same people do not carry out these two responsibilities, even though they are grouped within one commission, the same one that also processes all requests relating to the act respecting the protection of personal information in the private sector.

As you know, at the federal level, applying the legislation on electronic documents comes under one commissioner, while its application concerning public bodies comes under another commissioner. That might be another approach that you would also like to review.

In Quebec, all of this is grouped together, but the investigative and administrative tribunal functions are separated. This independent approach would mean that the person who determines the requests would not be the same one to order changes based on non-judicial investigations.

● (0930)

[*English*]

Mr. Matt Jeneroux: Great.

For Mr. Rubin's information, I'm trying to play nice today, so we'll get to the budget question potentially a bit later in my line of questioning.

Mr. Weiler, it was during the Western University Ignite Talks, I believe, you mentioned how adults are sometimes fearful of accessing their right to ATI requests. Would you mind explaining what you mean by that?

Dr. Mark Weiler: That's based on a report conducted in part by the Scottish Information Commissioner, who found roughly 50% of voluntary organizations avoided using their access rights out of fear of something. I think there are fears that do percolate and inhibit people from using it. That's why I think it's crucial that all FOI laws, or the ATI act, protect the identity of the individual person using their rights throughout the entire access procedure.

Mr. Matt Jeneroux: Probably my last question is about Canadians accessing information. I think it was your last sentence, maybe your second-last sentence. The commissioner, in part of her recommendations, wants to open this up to outside of just Canadians being able to make ATI requests. Maybe quickly, in about 30 seconds, you could elaborate on your position on this, Mr. Weiler.

Dr. Mark Weiler: I would entirely support that. I think that increasingly in the global society the Canadian government affects people outside of Canada's borders. The standard now is for people to have access to information from other governments outside of their home country. I can access information from the United Kingdom, Scotland, or Australia. It seems very odd that Canada has restrictions for people who aren't citizens or residents of Canada.

The Chair: That was very good.

We'll move to Mr. Boulerice, please, for up to seven minutes.

[*Translation*]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you very much, Mr. Chair.

I would like to thank the witnesses for being here today to discuss this vital issue for the quality of our democracy.

My Conservative colleague wanted to talk about the budget, but he hasn't yet. I would straight away like to highlight a point on page 208 of the English version of the budget. The new government said:

> To make it easier for Canadians to access government information, including their personal information, the Government proposes to create a simple, central website where Canadians can submit requests to any government institution. This will be backed up with a 30-day guarantee for personal information requests...

However, if the request takes longer than 30 days to fulfill, the government can simply send a letter explaining the delay. So that's the quality of the guarantee we're being offered.

The government proposes to provide the Treasury Board Secretariat with $12.9 million for these activities, but hasn't announced any funding for the Office of the Information Commissioner, which is racking up delays and hasn't managed to process hundreds of requests because it doesn't have the resources to do so.

I'd like to hear you talk about this reality of the new Liberal budget.

[*English*]

Mr. Ken Rubin: The Liberals are good at promising and not translating the promises of openness and transparency. Some $2 million a year is pretty pathetic, and when all it's going towards is a centralized, questionable web service for people to put in their applications with $5 and having to sign off on privacy claims, that system itself is broken with the 12 or so departments that are putting it in.

Why extend it? Why not do things more on the proactive disclosure side, let alone the commissioner side? God knows she'll need better staff and a whole new commission. The fact of the matter is, in that same budget you have $363 million given to the broken Shared Services, which can't handle even emails and data consolidation inside, and here we need, if we're going to have proactive disclosure, the technological means of better dissemination of information to the public.

I'll give you a concrete example. It's in today's *Globe and Mail*. For food-borne diseases, there's no national reporting system. That's a disclosure mechanism that could be of value to Canadians among many, many, many other proactive disclosure mechanisms.

Where are the millions of dollars for the real needs of disclosure? All they're doing is creating some sort of administrative system that's already broken and, I may add, gives the government a little too much insight into what every Canadian is applying for, and then they can make use of that. I'm sorry, it's the old CAIR system in disguise.

● (0935)

Dr. Mark Weiler: I would largely agree. I think a major problem is the $5 application fee, which makes it necessary to have a centralized website. If we abolish the $5 application fee and disallow people to order information from various departments, it could be done through email. In fact, in the United Kingdom, Australia, British Columbia, and Scotland there are no application fees; you just send an email. Take that $12.9 million and give it to the Information Commissioner so that they can do adequate oversight. I would be far more supportive of that than centralizing it.

To speak to the previous question about fear, I do think there is a concern of what the government is doing that motivates a lot of people's fears. The more centralization of the process for ordering information, I think, will only heighten Canadians' fears, so I would much rather see just abolishing the fee and letting people send emails if they want.

[*Translation*]

Mr. Alexandre Boulerice: Are there any comments?

Mr. Antoine Aylwin: Yes, thank you, Mr. Boulerice.

I have already commented on the fees that should be abolished. Moreover, I agree with what Mr. Weiler just said. Sending an email should suffice rather than creating a new procedure to contact the government. People are already familiar with this method.

The greatest challenge federally is to find the right person's contact information. I don't know whether you have ever looked at Info Source, but it is very difficult to use. The same cannot be said for Quebec's act respecting the access to documents held by public bodies and the protection of personal information. The website of Quebec's access to information commission lists all organizations and their contact information. It is really easy to use. I'm not saying that this is not the case at the federal level, but an investment is needed—and it would probably be less than $12.9 million—to make sure the contact information for the right people is available.

Otherwise, there is not, to my knowledge, a single access to information commission in the world that has the necessary resources to fulfill its mandate. My concern with the many outstanding files at the federal level pertains mostly to the end result. Even if all the files were processed, the recommendation issued would not be binding.

If someone is not satisfied with the result, they can take the matter to the Federal Court. In that sense, I think the priority should be reforming the system rather than trying to determine what resources are needed to make the current system work.

Mr. Alexandre Boulerice: At present, the commissioner's role is similar to that of an ombudsman, as was noted earlier. Everyone is talking about expanding the commissioner's powers. In British Columbia and Ontario, the information commissioner's decisions are binding.

Is that something you would like to see at the federal level?

Mr. Marc-André Boucher: Yes, I am very much in favour of the commissioner having quasi-judicial powers. That is already the case in Quebec.

At the federal level, department heads move around and they do not necessarily have expertise, whereas the commissioner does. Why shouldn't we use that expertise and give the commissioner real powers? That way, once the matter reaches the Federal Court, the spadework would already have been done and it would truly be a judicial review. Even the court could draw on the commissioner's expertise. The court should also consider the commissioner's decision, which would be more than a mere recommendation.

● (0940)

[*English*]

The Chair: I know there are some folks who want to answer, but we're well past seven minutes. Maybe we will have an opportunity to come back to that.

We now go to Mr. Saini, please, for seven minutes.

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you very much, everyone, for being here today.

Dr. Weiler, it's nice to see someone from my hometown. I understand you're leaving today, so I hope I can get a ride to the airport.

In your submission to the Information Commissioner during her open consultation, you mentioned that one of the aspects of updating the Access to Information Act would be the creation of a new officer of Parliament to ensure compliance with the act. I'm wondering why you feel it necessary that an officer should be created as opposed to granting the commissioner powers to ensure audit compliance, as she has mentioned.

Dr. Mark Weiler: That was in the context of having separate legislation for the proactive disclosure of information. I take a very firm position that proactive disclosure of information relating to government interests should be separate from the Access to Information Act. I see the Access of Information Act as protecting—

Mr. Raj Saini: You would call that the mandatory—

Dr. Mark Weiler: Yes, and for the exact same reason the Information Commissioner of Canada has an oversight role in protecting the individual's rights to access unpublished information the government holds in custody, there should be something equivalent for this kind of a mandatory publication of information act.

The idea is publication schemes can come in multiple flavours. One flavour is a public interest test where if a threshold is crossed, the government has a proactive responsibility to publish information in the case of where there's an environmental hazard or something.

Mr. Raj Saini: Would it be if you found that the government received a lot of requests on the same topic?

Dr. Mark Weiler: It could be. I would leave that to the decision of the cabinet of Parliament to debate.

In issues where a group, or a government, decides what should be proactively published, that should be separated out from the Access to Information Act. That act itself should have oversight to ensure the government is publishing information when it has a duty to do so. For example, if there are public interest overrides that require them to publish, we need someone to check in on that to make sure the government is doing it. That is a separate role from the Information Commissioner protecting individual rights to access unpublished information.

Mr. Raj Saini: Another question I have for you is about the right to refusal. Prior to this meeting, we heard several witnesses who said there is a need to have some sort of right of refusal to process requests in order to handle vexatious or frivolous requests. Do you feel that is necessary and, if so, how do you feel it should be structured in order to also maximize the ability to access information?

Dr. Mark Weiler: I think vexatious requests are so infrequent that I wouldn't want to invest too much time in handling those very extreme cases, because it comes along with a significant risk of governments invoking a claim that a very substantial application for information is vexatious.

In Ontario, we have what is called the continuing access clause. It allows people to order information on a scheduled basis. The idea is that you have an interest in some information, and you might want updates every six months. That could be perceived as being vexatious, when it's just saying, “I am interested in this particular topic, and I want to know what documents the government has every six, eight, or ten months.” I think there is an obligation for governments to work with those people to help clarify what they are looking for so that it becomes less adversarial. I would be very cautious about vexatious requests.

Mr. Raj Saini: I'll just pick up on the topic that was discussed earlier regarding fees.

In the Newfoundland and Labrador model, what they have done is given a certain amount of time per request free of charge. They would deal with any third party request on a specific topic free of charge up to a certain amount of time—I think it's 15 hours—but for personal requests there would be no charge.

Do you think there should be a limit per request, as in the Newfoundland model, saying that we can give up to 15 hours per request free of charge, and for anything beyond that there would be a charge? Would that be something fair, do you think?

● (0945)

Dr. Mark Weiler: Currently, it's five hours that the government has.

An hon. member: Is that federally?

Dr. Mark Weiler: Federally, yes, it's five hours.

I haven't experienced it to be a particular problem. Now, as an experienced user of the Access to Information Act, I know how to narrow down what I am looking for, so it generally doesn't take five hours. I work with the ATIP officers to ensure that it is narrow. I don't want to be getting thousands of pages of documents, because I have to go through them. I think having some limit is reasonable.

The Chair: We still have a couple of minutes left if somebody wants to pick up on this.

Mr. Bratina, go ahead.

Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.): I'll start with Mr. Weiler.

Whatever we do with the information we have, we prepare a report. What do you think we should be doing with regard to reviewing our decisions and improving on them—an annual review situation? We want to make sure we progress and move forward. We are obviously going to be presenting recommendations, which to some extent will be accepted, but then there needs to be a review process. What would you say to that?

Dr. Mark Weiler: Do you mean an overarching level five-year review?

Mr. Bob Bratina: Yes.

Dr. Mark Weiler: Obviously, having some review is important. Five years seems quite reasonable.

I think those reviews have to be informed by actual information data. What I think is crucially important is for the information system to collect more data about itself, about what it is doing, so we can really speak and review from a position that is informed by the data.

For example, I would require governments to track how long it takes to search for information, how long it takes to consult on redactions, how long it takes to prepare for sending it out to the applicants. Feed that information regularly to the Information Commissioner so that her office is positioned to come from a very informed point of view in reviews like these.

Mr. Bob Bratina: There should be measures in place.

Dr. Mark Weiler: Absolutely, there should be measures, and we should be collecting data on the information system itself in a more detailed manner.

Mr. Bob Bratina: Do I have another half a moment?

The Chair: Oh boy.

Mr. Bob Bratina: Okay, good. I'll come back.

The Chair: I just don't want to get started on something great. We'll come back to you, Mr. Bratina, I'm sure, at one particular point in time.

Now, we move into the five-minute round.

Mr. Kelly, you have five minutes.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you, Mr. Chair, and I thank all of our witnesses for appearing today.

If I may just comment and pick up on something Mr. Rubin said in his opening remarks, he wanted to talk about broad concepts in access rather than technical fixes or the minutiae of legislation. We are, as legislators and as a committee, here to deal in law, making new law and dealing with technical matters. Having said that, we've heard from many witnesses already about issues relating to culture around disclosure, and a technical change doesn't change culture overnight. If there is a cultural opposition to disclosure, you can't instantly solve that with a fix.

I'd like a brief word from each witness on how best to address cultural change in approaches to access, if indeed there is a need for a change in culture.

Mr. Ken Rubin: Since you pointed to me, I agree with you that legislators can be limited in what they do, but other countries, as I've pointed out, have done better, and have done things that put disclosure in a whole different light.

Sweden started off with a culture of openness 250 years ago. They didn't reimpose, as Canada did, a culture of secrecy. We seem to have this hang-up that cabinet records and policy advice, and things like that are sacrosanct, which they are not. In a modern day, for sure they're not. Central to all of this, I think you need several measures. You can't solve and change a culture of secrecy by just giving access to records. You have to open up meetings. You have to open up new forms of records for disclosures, such as a system for monitoring airborne diseases and bacteria with respect to food, and on and on it goes. You cannot expect just because an information commissioner says “I'm going to fix the problem by giving myself order powers to make me more effective administratively, but I'm going to keep in place all the exemptions”, that you're going to change the culture of secrecy. You have to engage in basic changes, and that means engaging in a multi-strategy. I've given a lot of thought to this because I've been patient. I'm not the Queen; I'm not 90, but I feel it's important that we don't just stick our head in the sand and say that we can just do one or two changes and all of a sudden disclosure will happen. It doesn't work that way.

● (0950)

Mr. Pat Kelly: Mr. Weiler.

Dr. Mark Weiler: I'll say the Access to Information Act creates an institutionally mediated information retrieval system. The key words are “institutionally mediated” and “information retrieval system”. It's an information retrieval system that government employees are involved in implementing, and I think the key to creating a culture of openness is to make that information retrieval system itself more transparent. Who's involved in retrieving the information? Who's involved in consultations? Who's involved in authorizing whatever is released? Are communications officials involved?

Behind any access to information application sometimes there can be a massive institutional bureaucracy that is coordinating that, but the end user just gets a letter in an envelope. You don't realize what's going on behind the scenes. That creates a shelter of safety, or a curtain, behind which this institution can hide. I think we need to make it more transparent so that people know what's going on behind the scenes, and people who are involved in retrieving the information on the government side are aware they are being supervised by the public.

The Chair: Mr. Kelly, you have about three seconds left. I now you're quick, but I don't think anybody's quite that quick.

We'll move over to Mr. Lightbound, for up to five minutes, please.

[*Translation*]

Mr. Joël Lightbound (Louis-Hébert, Lib.): Thank you, Mr. Chair.

Thank you all for being here today and for your excellent presentations. It is especially nice to see my former colleagues again, knowing that they can't give me any more work.

This week, the Newfoundland and Labrador commissioner told us that, pursuant to the changes that province made to its act, when the commissioner issues a recommendation to a federal institution, it has 10 days to comply. Otherwise, the institution must apply for a judicial review of the commissioner's decision.

I would like to hear your thoughts on this model, which, in a way, lifts the burden of going to court from the individual and, instead, places it on the institution.

My question is for Mr. Aylwin and for Mr. Boucher.

Mr. Antoine Aylwin: Actually, that is the mechanism in Quebec, although the timelines are different. When the access to information commission orders a public organization to disclose information, it must comply or appeal to the Court of Quebec. The access to information commission's decision can then be reviewed.

We represent public organizations and we know how it works. I am not very familiar with the process in Newfoundland and Labrador, but the way it works here is that there is a hearing where each party can make its respective representations. The person making the decision steps back, makes their decision, and then issues a written decision with reasons. If one of the parties is not satisfied, it can appeal. This applies to both parties. If the commission decides that the documents must not be disclosed, the requester can appeal to the Court of Quebec, or the public organization can appeal, as the case may be.

Mr. Joël Lightbound: That's perfect.

My second question pertains to timelines, which you also mentioned in your presentation. The commissioner recommends a maximum of 60 days for an institution seeking an extension beyond the 30-day limit. In other words, the institution must apply to the commissioner for an extension beyond the 30-day limit.

In Newfoundland and Labrador, the time limit is 20 days. If the institution wants an extension beyond that, it must seek permission for any additional period of time.

I would like to hear your thoughts on this, and any comments from the other witnesses.

● (0955)

Mr. Antoine Aylwin: There are two models. Actually, there are more than two, but let's stick with these two. The first model has a firm deadline: either the organization responds within 30 days or it is deemed to have refused to comply. The requester may then take the matter to court for a review of why the documents were not released. Under another model, which falls between the two, there is a limit of 20 days or some other time limit, with a maximum 10-day extension. In Quebec, it is 20 days plus 10 days, but this has to be indicated. I'm not sure there is actually much difference when the time limits are so short. There is, however, no need to request permission. Once again, there is ultimately a firm deadline.

My concern, especially at the federal level, is the volume of extension requests that the Office of the Information Commissioner of Canada would have to process. We know there are already over 1,000 extension requests for access to information files that have not been processed. Will the commissioner's office actually be able to process so many extension requests in a timely manner? My sense is that creating such a mechanism would not be a good investment of resources by the government. I think a firm deadline would be useful, but perhaps parameters should be set to keep access to information requests manageable and to ensure that they could be processed in a timely manner. That would have to be adopted at the same time.

Mr. Marc-André Boucher: I completely agree with my colleague. This is especially important since, when an information request is submitted to the commissioner, a recommendation is issued. In Ontario and Quebec, however, the matter is very often already at the quasi-judicial stage. To my mind, the requirement for quick action, which is characteristic of administrative tribunals, is truly indispensable.

[*English*]

Mr. Joël Lightbound: I have a quick question and I'd like a quick answer, too.

We heard from Mr. Drapeau, who mentioned the role of coordinators. He suggested that coordinators be appointed by Governor in Council so that they have more independence, and they would treat the bulk of the demands.

We've heard other opinions about how to give more independence to the ATI coordinators within each institution.

I'd like to briefly have your take on it.

I'll start with Mr. Weiler.

Dr. Mark Weiler: I'll just say that the ATIP coordinators are absolutely fantastic, in my experience. Anything that gives them strength and power I would support, recognizing that we have to be careful of it, but the more support, the better.

Mr. Ken Rubin: I have suggested an arm's-length arrangement. At this point I think you need a central pool, because many of the issues are complex and involve several departments. Access coordinators not only need independence, but they also need to facilitate access. Right now they're gatekeepers for fees, for time extensions, for spending their time blanking out information. Their mandate and role is really for management; it's not for us as the users, primarily.

You need to have a different philosophy, a different independence, and a way for them to really do a job that helps us.

The Chair: Okay, quickly, for our colleagues in.....

Mr. Antoine Aylwin: It's going to be quick. We have nothing to add.

The Chair: Super.

We now go to the next five-minute round, for Mr. Jeneroux, followed by Mr. Massé.

Mr. Matt Jeneroux: Great. Thank you.

I have a question that will probably take up the majority of my five minutes, so I'll just ask it. Perhaps, Mr. Boucher and Mr. Aylwin, you could start.

Given the obvious conflict of interest of having a minister's office review access to information requests prior to their release, as is our current practice, should ATIPs be given to ministerial exempt staff prior to their release, in your opinion?

● (1000)

[*Translation*]

Mr. Antoine Aylwin: The answer to your question depends on what the next step would be after the public agency's response.

Ministerial responsibility does, after all, rest with the minister. It is the minister who is accountable for their department's actions. Unless an access to information system is adopted that is parallel to government activities, as we have just discussed, the responsibility lies with the minister. They are accountable for the documents that must be disclosed.

The reason I am talking about the next step is that, if there is then an independent, adjudicative process, which makes binding decisions, I think this would provide a balance of protections, which would in turn enable us to achieve our objective as regards access to information.

Mr. Marc-André Boucher: To add to what my colleague said, I would simply note that the minister is always responsible for the federal institution. They are responsible for disclosure. It would be helpful to include a mechanism or something that would give the minister some oversight over the requests submitted. Too often, they are processed in a purely administrative way. At the very least, it would be helpful to create an informal process that would allow the minister to monitor certain requests.

Mr. Antoine Aylwin: Returning to Mr. Weiler's comments, I would say that perhaps the issue here is one of transparency. When it is the minister who decides not to disclose a document, that should perhaps be indicated. As a matter of ministerial responsibility, if it is the minister who decides not to disclose a document, the response should indicate that.

[*English*]

Mr. Matt Jeneroux: Mr. Weiler or Mr. Rubin.

Mr. Ken Rubin: Well, I don't think exempt staff in the minister's office should be part of the process, but let's face it; we hope shortly to have ministers' offices and the PMO covered by the act, so they're involved.

I'll give you the example of Minister Dion and the Saudi Arabia case, wherein he claims he couldn't interfere with the access process, nor could his staff. Well, yes he can interfere, not to create more exemptions, but he can order his staff, in his discretion—particularly if it's a discretionary exemption, as in these documents for national security—to release more.

The minister's office can play a very positive role, not an interfering role in the sense of repression and so on. I agree with the gentlemen, the corporate lawyers in Montreal, that the fact of the matter is you still need a review process. Without a review process, without transparency, it looks rather fishy.

Mr. Matt Jeneroux: Mr. Weiler.

Dr. Mark Weiler: I'll just add that, at a request level, we need to make the chain of custody and review involved in the administration of the Access to Information Act transparent to both the applicant and the Information Commissioner. This is so that we know who's reviewing it. We know that full chain of custody, of review, of authority to withhold or disclose, and we make that internal process transparent.

Mr. Matt Jeneroux: Do you mean names of staff?

Dr. Mark Weiler: I mean names of staff and titles, so that when you get the document that says, “Here are your documents”, you know who has touched all those documents from the point of information retrieval all the way up to authorizing or withholding disclosure.

Mr. Matt Jeneroux: Great.

The Chair: That's about the end of your time anyway, so we'll move to Mr. Massé, for up to five minutes, please.

[*Translation*]

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): Thank you, gentlemen, for taking part in this exercise. Your input is greatly appreciated.

I would like to hear your views on information management by the federal government.

Mr. Weiler, as a librarian and subject matter expert, have you had the opportunity to explore how the machinery of government works in the departments as regards tools and processes? If so, have you identified any issues? Could you offer any proposals, lessons learned, best practices, methods, or tools that could be implemented to improve access to information? This is also important because there is so much information in different formats and on different platforms, spread throughout the machinery of government, right across Canada. I would like your input.

I would also like to hear Mr. Rubin's comments, if he has any.

● (1005)

[*English*]

Dr. Mark Weiler: In information professions, there's a term called “description”. It's also called “metadata”. These are technical terms for information that describes information in complex information systems. A major function of “description” or “metadata” is to make it easier for people to find that information, and be very specific. Currently, paragraph 5(1)(b) of the Access to Information Act requires governments to publish a description of all classes of records under the control of each government institution.

Unfortunately, I think it's at a very abstract level. It appears in what is called Info Source. What the government is currently publishing are descriptions of program alignment architecture, which are an important part of the puzzle, but an incomplete part.

I would encourage Parliament to dramatically expand paragraph 5 (1)(b) to include the mandatory publishing of record retention schedules. These are documents that describe what the government has, including record classification schemes, organizational charts, job descriptions of all employees in the department, as well as user guides for all software applications used within the departments. These are all tools that describe how information is organized within an organization, and they are critical to identifying what information a person very specifically wants.

I think the better able we are to describe that information, the better it is for users, who will then be able to be very specific in what they're seeking and not have these very broad fishing expeditions where they don't know what they're looking for.

That's what I would recommend.

Mr. Ken Rubin: It's very important because ever since the act came in.... I heard Newfoundland took a few years to bring their record management up to speed in order for them to do duty to documents. Federally, our record management system is in shambles. Look at the Auditor General's report about the information management system of Shared Services Canada.

I've heard many people inside the system say that now that we've gone to electronic records, they don't even know how to find their own records anymore. It's a serious problem. I guess the answer is, in part, to bring in a duty to document. People go oral because they want to hide things, but also because they don't know how to get the material. You also need mechanisms to monitor that. An information commission is one mechanism.

You have archivists. In Quebec they can actually penalize people if there are certain records that aren't kept properly. That's what I mean by companion legislation; without one, you can't have the other. If you don't have proper record-keeping, if you have sloppy record-keeping, you're not going to get the records. If we don't even have a system—and we don't right now have a good record retrieval system—we're in crisis in this regard. I'm sorry to say the technology being used now is not very good.

This is the problem we really have to deal with. I don't necessarily agree that the problem is making a distinction between unpublished records and published records, because all you need is good management and retrieval, and transmission in a usable format.

[*Translation*]

Mr. Rémi Massé: I don't know whether Mr. Boucher or Mr. Aylwin would like to add anything.

Mr. Antoine Aylwin: I would add that these aspects should be considered as part of the entire access to information process. Regardless of what you might change in the act, if it is difficult to find documents, you could not impose short time frames. That is something to consider.

Mr. Rémi Massé: That's fine.

I will share my time with Mr. Bratina or Mr. Long.

[*English*]

The Chair: There actually isn't any, but what I will do is come back and make sure any unfinished thoughts are wrapped up, and give everybody an opportunity to ask questions.

According to our official list, we now go to Mr. Boulerice, for the last three minutes of the questioning round.

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

I would like to ask, if possible, for your thoughts on extending the application of the Access to Information Act to crown corporations. It is not simply a question of the scope of application, but also of the quality of information that can be obtained.

I remember that a journalist in English Canada had requested a study conducted by Canada Post on the possibility of obtaining banking services at post offices. It was a huge study, yet 701 of its 811 pages were completely redacted, blacked out.

I would like to hear your views on extending the application of the act to crown corporations, and also on the censorship noted. It is impossible to find out what was in the study, which pertains to services to millions of Canadians.

● (1010)

[*English*]

Mr. Ken Rubin: Some crown corporations got covered under the Federal Accountability Act by Mr. Harper's crew, but they made a special deal, and they gave them even more exemptions than the current exemptions for commercial, and time restrictions, and so on. That's part of the problem.

Part of the problem is that we need even further groups covered. Canada Health Infoway is, in a sense, an informal corporation with public funds, and a lot of public funds, but you can't find out much about it.

If you're talking about extending coverage to businesses or corporations that are closely tied to the government, we haven't done a very good job. We need to have a level playing field and bring other corporations into the same disclosure regimes.

Dr. Mark Weiler: I would add that with any crown corporation, the key thing is that the ATIP offices be adequately funded. Without adequate funding they'll struggle, and that will be reflected on people trying to use their rights.

[*Translation*]

Mr. Alexandre Boulerice: I would like to turn briefly to another matter.

The new government has a tendency to put off making decisions. We can see this on the democratic reform and health files. When the Treasury Board president announced consultations on an action plan for 2016-18, we can't help but think that the changes might not be made until a year before the next federal election, if they even materialize.

What do think of dragging things out so much in this way?

[*English*]

Mr. Ken Rubin: That's why I say you need a multi-transparency approach, because the people need to participate. One way you do it is through consultations and not just through accessing records.

In the case of the Access to Information Act, and this committee is partly in the dark too, they have not announced exactly, to 2018, how they're going to handle that. That's detrimental to everybody in the system.

In the case of Bill C-51, the minister has said he will hold consultations, but has not announced it.

I've recently received some access documents with everything blanked out except those three approaches. Part of the problem in this country is we don't take seriously anymore.... We used to produce white papers and do much more discussion. We don't take consultations that seriously. Yes, there's a defence process under way, pushed by certain interests, but how do you engage the public?

I think it's really—and electronically too—important, and we're doing a miserable job. The problem is we're hiding when people are putting these things forward for the next two or three years, just like the budget figures they tried to hide beyond two or three years. You have to put these things forward if people are going to feel comfortable and not cynical about wanting to participate.

The Chair: Thank you very much. That ends that.

We have completed the official rounds of questioning.

Colleagues, I do want to have some time to discuss our schedule and how we're planning to meet our objectives.

I want to allow anybody here who has any unfinished questions.... Mr. Bratina, I know you did, and Mr. Long. Perhaps you could ask maybe one or two questions and keep it as concise as possible and try to wrap up in the next five minutes.

Mr. Bratina.

Mr. Bob Bratina: Mr. Boucher and Mr. Aylwin mentioned exemptions, trade secrets. You gave the example of a pharmaceutical company that may have processes that needed to be protected in an agreement with the federal government. If through accident or malfeasance those trade secrets became public, what would the fallout be? Would there be lawsuits? What would happen in the extreme case of a trade secret becoming public?

● (1015)

[*Translation*]

Mr. Marc-André Boucher: That is an excellent question. To be honest, even if there were a lawsuit, the act provides immunity that protects the government if the documents are disclosed inadvertently or in error. The only way of making the federal administration accountable would be to clearly demonstrate bad faith. Bad faith is very difficult to demonstrate, nearly impossible, from a legal standpoint. It is an uphill battle.

You are quite right. Immunity should perhaps be reduced or, at the very least, a mechanism should be implemented to compensate aggrieved companies. They have often invested millions and millions of dollars in research to obtain certain information. Very often, companies can invest in research for years without any results. When they are successful, when a medication is produced, it is essential that these companies see a return on their investments.

The issue of immunity is too often ignored. I would suggest an improvement in this regard, an amendment to provide for some kind of process, not only in cases of bad faith, but also in cases of information being disclosed in error.

[*English*]

The Chair: Mr. Bratina, are you satisfied then?

Mr. Bob Bratina: That's fine. Thank you very much.

The Chair: Okay, we can move to Mr. Long for a couple of minutes. Quickly, please, sir.

Mr. Wayne Long (Saint John—Rothesay, Lib.): Thank you, Chair.

Thank you to all the presenters this morning. It was very informative.

Mr. Rubin, how's your organic farm?

Mr. Ken Rubin: We've had a late spring.

Mr. Wayne Long: I read with interest a lot of articles on you, and your quote. You say you dig for dirt, you raise hell, and you quash secrecy.

Mr. Ken Rubin: True enough.

Mr. Wayne Long: Another comment you made was that what you don't know can hurt you.

I listened to your presentation and your comments with a lot of interest, but you seem to have a tone, with respect, that all governments are bad, that all governments want to hide everything. The new government is six months old. Certainly we talk and are committed to proactive disclosure, but would you not agree that you're a little quick to judgment?

Mr. Ken Rubin: Listen. I was around when Trudeau senior was around, and I was around before then, and I haven't seen most governments change in terms of their transparency level and so on.

I treat people, any information, as an important feature, because when you uncover food guides that are lobbied by the food industry, when you uncover waste in terms of technology partnership programs, when you uncover asbestos which has been used by the Canadian government for years and years, these are things that should not be hidden.

It's not a matter that everybody is doing wrong, but the fact is we have such a high level of secrecy that we don't seem to have accountability. I've given a lot of thought to it, and I've evolved further in trying to put forward kinds of measures that will create a real disclosure atmosphere.

Technical fixes are not going to get us anywhere. And yes, you've been around for six months. Six months is too long without introducing a proper transparency bill.

Mr. Wayne Long: Thank you.

The Chair: Thank you very much.

We have some excellent analysts here. Just for the edification of the committee, I have already discerned that the legislation was implemented in 1983. I believe that is when it came into force. There have been two fulsome studies, one in 1987 and one in 2009, if I remember correctly. I am not aware of any amendments to the legislation as a result. There might have been one somewhere along the line.

The wheel is continuing to turn, and hopefully we don't have to reinvent too much stuff.

Mr. Jeneroux, I think you said you had one last quick follow-up.

● (1020)

Mr. Matt Jeneroux: Yes, it's just a quick one.

Thanks for the history lesson, Mr. Chair.

Mr. Rubin, just so we have a fulsome understanding of how you make these requests and how often, can you give us a sense of how many requests you have made a year, on average, over the last number of years? I am not sure if it goes up and down.

Mr. Ken Rubin: It is certainly over a thousand a year. It is for public interest groups, for certain issues that I am involved in for trade unions, for co-operatives, for citizens who are having problems. I make a lot of requests.

All I can say is that sometimes people appreciate that, and I don't think it is a matter of penalizing people who try to uncover safety problems, waste, and so on.

I encourage more people to do this. We have only 70,000 or so requests a year, which is pathetic. We should have over a million. Look how many people there are. If we had an effective act, that is what we would be having.

Mr. Matt Jeneroux: Thank you.

The Chair: Thank you, Mr. Jeneroux.

Mr. Erskine-Smith promised me he had a yes or no question.

Mr. Nathaniel Erskine-Smith: This is a yes or no question.

The commissioner has recommended, in recommendation 4.2, that all exclusions be repealed and that it be a system of exemptions.

Do you agree? Yes or no?

Mr. Ken Rubin: Yes, but I'd rather have her not have exemptions.

Mr. Nathaniel Erskine-Smith: Okay, thank you.

Mr. Ken Rubin: No, that is not a fair question, sir.

Dr. Mark Weiler: Yes.

The Chair: To our colleagues in Quebec....

Mr. Antoine Aylwin: I didn't get the question, sorry.

Mr. Nathaniel Erskine-Smith: The question is, in 4.2 of the commissioner's recommendations, she recommends that all exclusions be repealed and that we have a system only of exemptions. Do you agree? Yes or no?

Mr. Antoine Aylwin: I'll choose no.

The Chair: That sounded more like a definite maybe.

Mr. Nathaniel Erskine-Smith: They are lawyers. It always depends.

● (1025)

The Chair: I want to thank my colleagues for their collegiality around the table today. There were great questions.

I want to thank our witnesses, and of course the people who helped with the video conference, and everybody who supported the meeting today. It was very helpful and informative.

I am going to suspend the meeting for a couple of minutes. Then we'll come back and discuss how we are going to proceed with our agenda.

Thank you.

● (1025)

(Pause)

● (1025)

The Chair: Colleagues, we will resume.

As we all know, we have adjusted our work schedule a little, and we have some goals and objectives as a result of that adjustment that are going to require us to give some instructions to the analysts. As this is going to be the first report of any substance that we will be issuing from this committee, and most members of the committee are relatively new, as we are going through this process, I think we need to take a look at where we want to be and start working backwards to make sure we have enough time to achieve the goals the committee has agreed to.

At this point, I would like to turn it over to our analyst, if he is okay with that, to give a proposal of how he envisions this unfolding and some of the questions he has, so that he is able to do his work, the excellent work the library does in providing us with our reports and recommendations. Then we can discuss how we, as a committee, want to proceed in our deliberations to make sure that we can achieve our objectives.

I'll turn it over to you, and we'll go from there.

Mr. Michael Dewing (Committee Researcher): Thank you very much, Chair.

As you said, we usually work backwards from a tabling day. The House rises in June, so assuming a tabling day in June, the committee would need time to review, and then even after a review there's a bit of production that goes on, some proofreading and so forth. Prior to your review, obviously you need a few days beforehand, and before that there's translation, and before that there's our writing it, and before that there's our hearing the last of the witnesses and getting direction.

Obviously, we're at the direction of the committee. Assuming a tabling date in June, we were looking at writing during the break week of May 24. If we were to write that week, we would then submit it to translation, say, on Thursday, May 26. We'd get it back from translation on June 2. It would then be distributed to committee members to review, in which case that review could begin on the June 7, and I don't know how much time will be needed to review recommendations and so forth.

The other question we have is, how would we go about recommendations? Often the analysts prepare them based on the testimony. The way we're thinking of it now is using the themes that have been established by the commissioner, a structured report that way, have recommendations based on those themes, and then it would be up to the committee to debate them. That's one way of proceeding.

The Chair: Fantastic. Is everyone clear on what's being proposed here?

I'm now going to ask our clerk to give us an update on where we are with our witness list. What we've just heard here tells us that we only have a few more meeting dates before the May long weekend break, which is, I think, what was proposed here, and we need to find out if we can get all of the witnesses in that we want in that time frame.

Michel.

The Clerk of the Committee (Mr. Michel Marcotte): For our next meeting, right after you're back from the week in your ridings, we'll have the main estimates, the first hour with Daniel Therrien, the second hour with Mary Dawson. We don't have to adopt the votes that day; we can do that later.

The following Thursday, it's the President of the Treasury Board, Mr. Scott Brison. I figured you might want to spend a full two hours since it's going to be the only occasion we have to see him. He might also have things to say to you, especially since his big speech was March 31, where he announced the plan for the coming year.

Then the following Tuesday we'll have the second part of the main estimates, the first hour with Suzanne Legault, the second hour with Karen Shepherd, and then at the end of that meeting, we'll adopt the votes and adopt a motion, if the committee agrees, to report to the House.

That brings us to Thursday, May 12, our next real meeting on this study with witnesses, besides the Treasury Board. So far, Mr. Gogolek has confirmed. Duff Connacher from Democracy Watch is available either on the 12th or the following Tuesday, the 17th. We are still trying with CBC. We know they have a very different position from the Canadian Association of Journalists, but they were evaluating if they would like to come and appear.

● (1030)

The Chair: That, colleagues, leaves us with potentially one, maybe two spots on the 12th, one, maybe two spots on 17th, three spots on the 19th, and then that leaves us with the 31st, which is the last day we would be able to provide instructions to the analysts or review an interim report or the final report before it was sent to translation over the break week, if we were to adopt that plan. Then we would come back and we would either continue on with the witnesses, if it was an interim report; if it was going to be a final report, then we would start deliberations about the report. That sometimes can happen in one or two committee meetings; sometimes it takes two or three weeks of committee meetings to go through because we as parliamentarians at the committee can wordsmith it, we can decide what the actual report is.

The analysts generally prepare a very good document, but my experience has been there's always some discussion and debate about what should be added, what should be taken out, and so on. In my past experience as a parliamentarian for 10 years, I've always found working from a list of recommendations and working backwards to create the text that supports the recommendations that the committee can agree upon has usually been the most productive way, but we don't have to do it that way. The analysts can prepare the report with the recommendations as well, and we can go through it, if that's your preference.

I'm looking for instruction from the committee.

Mr. Massé.

Mr. Rémi Massé: This is not in terms of scheduling per se, but I'd like to get additional witnesses. One would be Shared Services Canada. Mr. Rubin alluded to it a bit.

[*Translation*]

I would like to hear from them, because they are involved with another department in a process to establish an information management system. A significant amount has been invested in this in the past number of years. I would like to question them on the direction they have taken, the progress they have made, and the next steps.

There is a lot of talk about access to information officers. If we could hear from an access to information coordinator, who could tell us about their experience in concrete terms, we could gather a bit more information.

[*English*]

The Chair: We could certainly look at that. Hopefully we'll find the right person to contact. We'll go back to the testimony to see whether the right person is mentioned, or contact Mr. Rubin.

Mr. Lightbound.

Mr. Joël Lightbound: Mr. Chair, I just want to make sure that I get it right. You said that we'd have the 12th, 17th, and 19th for witnesses; however, my understanding was that our analysts would write during the break week of the 24th. It would be best if we were to have some time before May 24 to discuss what recommendations we want to see in the report, if we are to proceed your way.

The Chair: I'm sorry. You're right, Mr. Lightbound. I looked at the calendar incorrectly.

Mr. Raj Saini: That's why Mr. Lightbound's presence here is imperative.

● (1035)

The Chair: That's right. We cannot send you back.

Some hon. members: Oh, oh!

Mr. Joël Lightbound: I'm not going back to past years.

The Chair: You're absolutely right. That was my mistake. I misread the calendar.

Mr. Joël Lightbound: We'd have only the 12th and the 17th, and then the 19th would be devoted to a discussion among us to....

The Chair: We could do an hour of witnesses, if we wanted to, as well, and then use the last hour to give final instructions and have a discussion with.... It's up to you.

My guess is that when the committee first sees the first substantive report, we're going to have a lot of questions. I expect that, and it's a good thing.

As I said, it's up to you. We're planning for the unknown. That is what we're basically doing.

Mr. Nathaniel Erskine-Smith: Just as a suggestion, on the public safety committee we had just one day of estimates, and we had CBSA, CSIS, CIC; we had a number of organizations present to us over those two hours. I'm not sure that we need two days to do the estimates with the four commissioners. That would give us an additional full day to deal with witnesses.

The Chair: I think the issue with the commissioners was not about planning. I think it was about the availability of the commissioners.

Mr. Nathaniel Erskine-Smith: Do you mean that the four of them cannot be available on one day all together, for any of the days we have available over the....?

The Clerk: I could recheck with them, but when we went around, we did some tours, we had some negotiations going on with the four commissioners' offices, and that was the outcome. I could re-verify this.

Mr. Nathaniel Erskine-Smith: I would appreciate that.

The Clerk: The last time, the committee did the four commissioners in one two-hour meeting, and apparently it was said to be a lot; hence, the tendency here is to have them in two meetings.

Mr. Nathaniel Erskine-Smith: That would be my suggestion.

Mr. Pat Kelly: At least you'll cut the time, too. We could add witnesses on those two days.

Mr. Nathaniel Erskine-Smith: I agree. I don't think we need four hours for the four commissioners.

Mr. Joël Lightbound: Otherwise, when's the limit by which we need to vote on the estimates?

The Clerk: By May 31 we have to table a report in the House.

Mr. Joël Lightbound: We couldn't do it on May 31?

The Chair: If there were a problem....

The Clerk: We need to vote at the latest on the 19th.

The Chair: I'm pretty good at being in two places at once, but that's a tall order.

The Clerk: The voting itself won't take 10 minutes.

Mr. Nathaniel Erskine-Smith: I think Mr. Kelly's point is a sound one. If they're not available on the same day, we can do one hour with two of them and have an hour of witnesses. I don't know what the consensus of the committee is, but four hours seems a lot for four commissioners.

The Chair: On the other hand, I'm also not getting the sense that we have a whole lot of people left on the witness list to exhaust.

The Clerk: I need instruction from the committee on who to call. There's a long list of people, but there are also lots of institutions with no names, such as universities and things like that.

Mr. Rémi Massé: I'll provide some names for Shared Services and others.

The Chair: I can give you some further instruction on that as well, Michel.

Also, if I remember correctly, the commissioner, Madam Shepherd, said that she wanted to appear after all the other witnesses have appeared.

Do we want our final day of witnesses to actually be May 19? Do we want to hear from the commissioner for an hour and then finalize our report with the analysts and give further instruction?

Michael and Chloé, is it possible for you guys to give us a report on May 17, so that we can have a couple of days to review it, or how do you see this happening? My understanding is that you want to send a report to translation on May 24 or 25, during the break week. We would come back after the break week, on May 31.

We would need, I think, to look at least at a preliminary report before it went to translation. Or do you want to just send your report to translation, working from the basic instructions, and that would be our working copy upon returning?

Mr. Michael Dewing: I believe that generally the draft report has to be distributed in both languages.

The Chair: It does. So all we would provide to you on May 19 would be drafting instructions.

A voice: That's right.

The Chair: That's right. You're absolutely right.

Would it be possible to have a list of...?

Mr. Raj Saini: Do you think one week is enough time?

Mr. Michael Dewing: It would be one week to write and one week to translate. If it needs to be done sooner, we can do it.

● (1040)

Mr. Raj Saini: You're going to write on the week of the break, and then it's going to take another week for translation.

The Chair: That's right, and to have translation done before we get back on May 31 is probably doable.

Mr. Raj Saini: But I'm asking.... He doesn't seem....

You don't think he can do it.

An hon. member: He's saying that we could proceed on the 2nd.

Mr. Michael Dewing: I think we could probably.... You might want to have a debate on the day before, and I was factoring that in. Often, in my experience, we would give time over the weekend to have a look at it, but we could write it and get it to translation earlier and, say, get it back before June 1 so that you could look at it on June 2.

Mr. Raj Saini: Would we physically, or in whatever way, get it by June 1?

Mr. Michael Dewing: We could do that.

The Chair: We would want to look at it for a few hours before we come to committee. I think that's what we're trying to get at here.

That gives us the day of May 31 when we need to find something to do. I'm assuming we still have the other study on hold, which is the privacy one.

I'll instruct the clerk to fill that day with witnesses for the privacy review. Is that okay?

Mr. Nathaniel Erskine-Smith: I'm sorry, what day?

The Chair: We'll already have a report drafted and in translation. There's no point in hearing witnesses on access to information at that point in time, so we may as well resume with the privacy study on May 31. Then we will set aside June 2, 7, and 9 for consideration of the draft report. If we're done sooner, then we can resume with the privacy study at that particular point in time.

Does that sound reasonable, colleagues?

Mr. Joël Lightbound: It does.

The Chair: Michael and Chloé, do you have everything you need?

Okay.

I will work with the clerk, and we will try to fill up the witness slots with the most salient witnesses we can, in the time we have.

Mr. Nathaniel Erskine-Smith: There's one.... For the purposes of working together as a committee, we have the 85 recommendations as a starting point, realistically, and I think we're going to try—and if you guys are able to, try to do this as well—checking off items you're going to agree with, items that you have questions about, items that you disagree with. Then, when we have that discussion, there's immediately going to be consensus, so that we can immediately tell the analysts the things we all agree on, and we can narrow to what we're really having the conversation about.

It would be helpful on our end and I think probably helpful for the committee.

Mr. Matt Jeneroux: I think that's reasonable on our end. I think you probably get a sense of where our questions are, and certain things that we have more questions about. You can probably do some of that now, if you want to.

The Chair: All right, fair enough. Everybody is good.

Thank you very much. We'll see you next week.

The meeting is adjourned.

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