HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

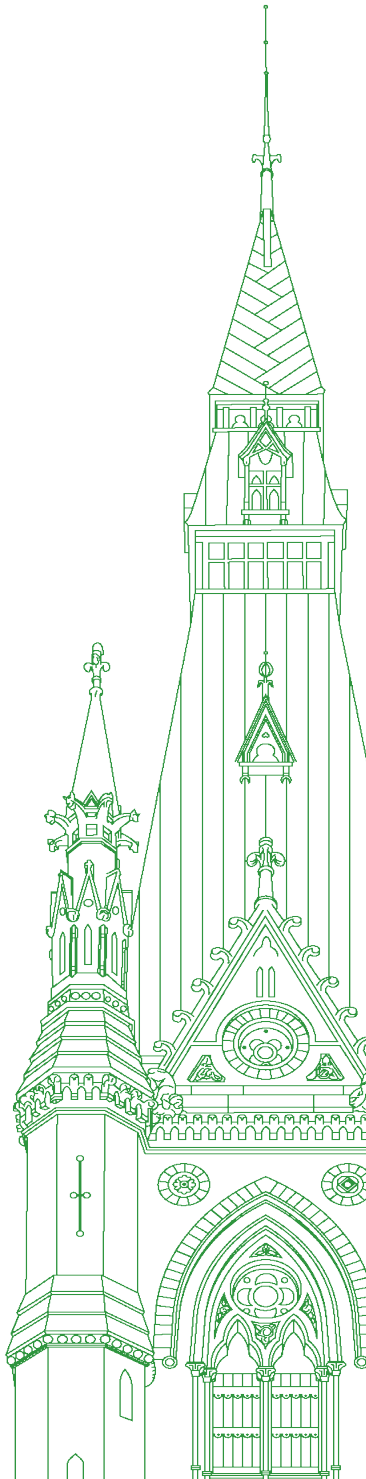
45th PARLIAMENT, 1st SESSION

Standing Committee on Access to Information, Privacy and Ethics

EVIDENCE

NUMBER 002

Monday, September 15, 2025



Chair: John Brassard

Standing Committee on Access to Information, Privacy and Ethics

Monday, September 15, 2025

● (1105)

[*English*]

The Chair (John Brassard (Barrie South—Innisfil, CPC)): I call the meeting to order.

Good morning, everyone. Welcome back.

This is meeting number two of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[*Translation*]

Pursuant to Standing Order 108(3)(h), the committee will proceed today to a briefing session with the Conflict of Interest and Ethics Commissioner, followed by a briefing session with the Information Commissioner.

[*English*]

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room, and I don't believe we have anybody on Zoom.

Before we continue, I'm going to ask all the participants to consult the guidelines that are written on the cards on the table. These measures are in place to help prevent audio and feedback incidents and to protect the health and safety of our participants, including the interpreters. You'll also notice a QR code on the card, which links to a short awareness video.

I'd also like to make a few comments for the benefit of the witnesses and members.

Please wait until you're recognized by name before speaking. For those participating by video conference—if there is anybody—click on the microphone to activate it.

I will remind you that all comments need to be addressed through the chair.

For members in the room, please raise your hand if you wish to speak.

After saying that, I'd like to welcome our witnesses for the first hour today.

From the Office of the Conflict of Interest and Ethics Commissioner, we have Mr. Konrad von Finckenstein, who is the commissioner.

Sir, it's good to see you. It's been a long time, but we're finally again in front of each other.

We also have with us Lyne Robinson-Dalpé, director, advisory and compliance, and Melanie Rushworth, who is here again and is the director of communications, outreach and planning.

Commissioner, welcome to the committee. You have five minutes for your opening remarks. Please go ahead.

[*Translation*]

Konrad von Finckenstein (Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Mr. Chair, as you mentioned, I am joined by Lyne Robinson-Dalpé and Melanie Rushworth.

I'm pleased to review the role and mandate of the Office of the Conflict of Interest and Ethics Commissioner.

We administer the Conflict of Interest Code for Members of the House of Commons and the Conflict of Interest Act for appointed federal officials. Given the committee's mandate, my remarks will focus on the act.

[*English*]

Individuals subject to the act are called “public office holders”. They fall into two categories.

Those appointed to full-time positions are called “reporting public office holders”. They must follow the act's general conflict of interest rules, plus its reporting and public disclosure provisions. This means they must give the commissioner's office detailed personal and financial information about themselves and, in some cases, their families. The office keeps most of that information secret. However, we are required by the act to disclose some specific information. We do that in a reductive form. It is posted on the registry that forms part of our website.

Those appointed to part-time positions are referred to simply as public office holders. They have to follow the act's general rules, but they do not have reporting requirements.

[*Translation*]

Confidentiality and transparency are both key to our work. Confidentiality encourages public officials to communicate freely and openly with us, and to ask us for advice when faced with a situation that may put them in a conflict of interest. Transparency means we are as open as possible with Parliament and Canadians. This helps ensure the credibility of the act and its administration.

[*English*]

Our work really supports three key objectives.

First of all, we foster public confidence that the actions of elected and appointed federal officials are free from conflicts of interest. Second, we enable the most competent and qualified people to move in and out of the public service without any problems by helping them manage their conflicts of interest. Third, we examine and report on allegations of conflict of interest that involve elected or appointed federal officials.

[*Translation*]

Our tools include one-on-one interface with public officials, live educational sessions, online training and investigations. A lot of the office's work is outlined in our latest annual reports that were tabled in Parliament in June. The report under the act identifies six legislative changes that could help it function more effectively and administer the act more efficiently.

[*English*]

First, we suggest you allow the lobbying commissioner to step in temporarily if there is no conflict of interest commissioner—i.e., if I get run over by a truck tomorrow, there will be somebody to do my job: the lobbying commissioner.

Second, add the notion of “apparent” conflict of interest to the general duties of public office holders to arrange their affairs in a way that avoids the appearance of conflict of interest.

Third, allow some assets to be designated as exempt assets if they pose no risk of conflict of interest. For instance, exchange-traded funds pose no conflict, but they are prohibited under the act right now.

Fourth, allow public office holders to participate in matters affecting the private interests of their friends and relatives if those interests are the same as those of other members of the broad class of which they are part. This would make the act consistent with the code.

Fifth, allow the commissioner to approve outside activities that don't conflict with a public office holder's official duties but are presently forbidden. An example is teaching at university in a subject they know something about.

Sixth, raise the maximum administrative monetary penalties to stress the importance of the reporting requirements of the act. Right now, they're extremely low and they look like traffic offences.

That's my presentation. I will be happy to answer any of your questions.

● (1110)

The Chair: Thank you, Commissioner.

As I said at the outset, it's been a while, so we have lots to get caught up on. We're going to start our round of questioning with six minutes. I'm going to go to Mr. Barrett.

You have the floor, sir. Go ahead.

[*Translation*]

Michael Barrett (Leeds—Grenville—Thousand Islands—Rideau Lakes, CPC): Thank you.

Good morning, Mr. Commissioner.

[*English*]

It's a pleasure to have you back at committee. It's been a year. A lot has gone on since then.

I'll get right to it. Canadians can see which companies a designated public office holder held shares or options in before entering office, but not the value of those holdings. Does that level of disclosure give the public enough information to assess a potential conflict, or would value ranges better serve the public interest?

Konrad von Finckenstein: The crafters of the act already decided it's important for the public to know what a person owns, and it leaves it up to the commissioner to make a decision as to what to do with those things. Most of the things they own that are of consequence are either disposed of or placed in a blind trust. It's only items that are below a minimum threshold that people can hold.

It seems to me that the legislature took this decision to say that we want to respect the privacy of people and we want to encourage people to come, and therefore they don't have to disclose everything they own and how much. They have to deal with it in such a way that there's no conflict of interest, and that's a choice the legislature took.

Michael Barrett: Would you suggest that a review of the act by Parliament should consider that question? You said that this decision to leave it alone at its inception was taken by Parliament at its last review. There are no value ranges, and so they go into the blind trust, but if it's a high-performing stock, the trustee is not going to liquidate that. They're going to leave it in there, and the public office holder knows what they put in.

Konrad von Finckenstein: First of all, it's in a blind trust. The public office holder has absolutely no idea what the trustee will do with it, and he cannot give him direction, so the trustees, most of them, will just hold it. They can trade. That's their privilege, obviously, and they will do that, but they also have to account later on to the person who placed the things in trust. The best course is to basically just be a passive holder, and that's what most of the trustees do, but they don't have to be restricted to that.

Second, the public office holder obviously knows what he placed in the trust, and if he makes decisions that could be germane to what's in the trust, in those cases, we establish what's called a screen. In effect, we make sure that a decision-maker does not make decisions regarding this very valuable asset that he has in the portfolio, which will be directly affected by his decision, and it is an asset that is specific; it's not covered by general legislation or covered by a class.

Michael Barrett: Would mandatory divestment and independent reinvestment remove the perception and simplify compliance?

The issue with the blind trust is that.... Let's take, for example, a prime minister who would have the Clerk of the Privy Council, which is a political appointment, and their chief of staff, which is a political appointment, as the overseers of that blind trust, and there's no public indication of when that screen has been used. There wouldn't be a need for a screen if the funds were simply divested and then reinvested by an expert financial manager.

● (1115)

Konrad von Finckenstein: You're right, but that's a pretty simplistic solution. Imagine.... You're suggesting that somebody who enters public service sell all their assets, incur a great tax liability, obviously, for that year, and only then leave it up to a trustee to do what the trustee thinks is best with the assets.

It's something that can be done. I certainly wouldn't recommend it, because I think it would very much discourage people from entering into public service. It would—

Michael Barrett: If I may, Commissioner—

Konrad von Finckenstein: —create a tax liability and also very much interfere in the personal—

Michael Barrett: If I may, sir, the objective here isn't to encourage folks to run for office or to avoid tax liability so much as it is to ensure that Canadians have confidence that the decisions taken by these public office holders are in the best interests of the public. There can be no appearance of a conflict, no perception that they're taking decisions that are going to enrich themselves. That's the root of my previous question.

These conflict screens can cover dozens or hundreds of companies. Does your office have any ability to independently verify that the screen is triggered when required, or is it simply up to the political appointees of the designated public office holder to inform you?

The Chair: I need a quick response.

Konrad von Finckenstein: Let me correct you on your assumption.

The act specifically sets out five purposes. The last two are to “encourage experienced and competent persons to seek and accept public office” and to “facilitate interchange between the private and public sector”. The second is to “minimize the...conflicts...between the private interests and public duties...and provide for the resolution of those conflicts”.

Part of my job is exactly that: making sure that the best people can get into the public service, and out of it, with the least amount of conflict of interest.

The Chair: Thank you, sir.

Thank you, Mr. Barrett.

[*Translation*]

Ms. Lapointe, I'm also going to give you a little more time, since the answer was a little too long.

Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Thank you very much, Mr. Chair.

It's a great pleasure to see you again after the summer. I hope that everyone had a good, restful summer, and that you're ready to get to work.

Thank you very much, Commissioner, for being with us this morning and for taking the time to come and explain to us what you have studied and what we should perhaps amend.

In your annual report, you recommended amendments to the Conflict of Interest Act and the Parliament of Canada Act. What process led you to suggest these legislative changes in particular?

Konrad von Finckenstein: It was my experience in this position over the last year and a half that led me to propose these amendments.

For example, I recommend that the employment rules for people who are appointed to a position or who are elected are changed. There's an example I always see: Someone who works in government and who has a lot of knowledge in certain fields wants to share it with students at a university, such as the Université de Montréal or the University of Ottawa. The university thinks that's fabulous, but it tells them that they have to become their employee in order to do so, even if they won't receive a salary. In fact, the agreement it reached with the union requires that all people teaching at the university be employees. However, that person can't become an employee of the Université de Montréal, because that would technically be a violation of the act even if there's no conflict of interest.

So why not give me the discretion to authorize such a person to share their knowledge and experience with university students?

Linda Lapointe: I want to make sure I understand what you're telling me, Commissioner.

As elected officials, if a university invites us to give a speech to its students or to teach a course, and we want to share our knowledge with them, we're not allowed to do so.

Is that correct?

● (1120)

Konrad von Finckenstein: I'm referring primarily to senior public office holders, such as deputy ministers or people who are part of a minister's team. These people are subject to the Conflict of Interest Act and can't accept an offer of employment from outside the government, which means that they can't share their knowledge with students at a university that would like to have them, even if there is no conflict there. That's not permitted at this time.

Linda Lapointe: Okay.

So you would like to see that changed.

Konrad von Finckenstein: Yes.

Linda Lapointe: Would you like us to review the act?

Konrad von Finckenstein: No, I would like to be given the discretion to determine whether or not there is a conflict. If the person concerned is willing to teach at a university without pay, solely to perform a public service, why not? Obviously, if there is a perceived or actual conflict of interest, this doesn't work.

Linda Lapointe: What process led you to suggest that to us? What did you look at?

Konrad von Finckenstein: I suggested it, but it's not up to me to change the act; it's up to you and the committee to do so. I felt it necessary to point out in my annual report that this issue comes up often and that I'm a bit frustrated that I can't do anything about it.

Linda Lapointe: Would you like to have more executive power?

Konrad von Finckenstein: I just want to be given discretionary power in this regard. The act leaves many things to my discretion, but in this area, I have no choice.

Linda Lapointe: Do you think this committee should undertake a focused review of the recommendations or a review of the Conflict of Interest Act?

Konrad von Finckenstein: I would like to see a complete review of the act, because I believe the last review was several years ago. Ms. Robinson-Dalpé, do you know when it took place?

Lyne Robinson-Dalpé (Director, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner): A study was initiated in 2013 as part of the five-year review of the act, which was supposed to take place only once after it was adopted. After that, no obligation was created to review the act on a five-year or other permanent basis. So it happened once, but that five-year review didn't result in any changes, since there was a general election and a change in government.

Linda Lapointe: Okay, thank you.

If I understand correctly, you would like us to review the act.

Konrad von Finckenstein: Yes, it needs to be updated.

For example, the act allows you to invest in mutual funds. That's not a problem. However, it prohibits you from investing in ETFs, or exchange-traded funds, because those investments are considered shares. However, it's essentially the same thing.

If you have $100 or $1,000 of investments in ETFs, your opinion won't change anything and you won't be able to influence the companies in question in any way, shape or form. However, I still have to tell you to put it in a blind trust or sell it, because it's prohibited. It's because ETFs weren't taken into account when the act was first drafted. So now it's not working. The financial market is evolving and creating new tools. People who have no political influence should be allowed to own those assets, but for the moment, I have no discretionary power in that regard. There are no rules or laws that specify exactly what is allowed or not; it simply prohibits anything related to public procurement and public companies.

Linda Lapointe: Thank you.

The Chair: Thank you, Ms. Lapointe and Mr. Commissioner.

Mr. Thériault, you have the floor for seven minutes. I'll give you an extra minute, since I've given more time to the members of the other two parties.

● (1125)

Luc Thériault (Montcalm, BQ): Thank you, Mr. Chair. No problem.

Good morning, Mr. Commissioner.

Good afternoon, ladies.

As far as the Prime Minister of Canada is concerned, it seems to me that we're currently in a situation we've never seen before, and I'm wondering about that. Brookfield Asset Management, a management company, manages $1 billion in assets. The Prime Minister was one of the senior leaders up until January of this year. According to the Statistics Canada database entitled “Inter-Corporate Ownership”, Brookfield controlled 916 businesses as of December 31, 2024. On your public registry, it says that Mark Carney divested himself of publicly traded securities as well as underwriting rights and other similar effects through the establishment of a blind trust. Your registry also indicates that you have agreed to put in place a conflict of interest screen and that this is an appropriate compliance measure.

Could you explain to me how this conflict of interest screen works in the context of this situation, which I think is quite unique. This is a far cry from Paul Martin and his shipping company.

Konrad von Finckenstein: First, this screen is allowed under the Conflict of Interest Act. Section 29 of the act reads as follows:

> Before they are finalized, the Commissioner shall determine the appropriate measures by which a public office holder shall comply with this Act and, in doing so, shall try to achieve agreement with the public office holder.

The Federal Court of Appeal ruled that the conflict of interest screen was an appropriate measure that we could use.

In the case of Mr. Carney, he divested himself of all his interests, which is a lengthy list. You have it in front of you. He put it all in a blind trust. However, he knows what this trust entails, naturally. We want to avoid a situation where he would make a decision knowing that it would increase the value of one of the companies he divested. For that reason, we set up this screen. The chief of staff and the Clerk of the Privy Council have to review every decision that the Prime Minister has to make and determine whether it will have an impact on a particular company. If it is determined that a decision is not a general decision, but one that has an impact on a particular company he has divested from, he will be told that he must recuse himself. However, if the decision is a general one that doesn't affect a specific company, he isn't required to recuse himself.

Luc Thériault: However, if a prime minister has to recuse themselves a hundred times because there may be a conflict of interest or the appearance of a conflict of interest, are they sitting in the right chair? I'm wondering about this, but I'm not asking you to answer the question.

Let's look at the issue of the global minimum tax. As you know, the Organisation for Economic Co-operation and Development, the OECD, and the G20 agreed to combat corporate tax avoidance by implementing a 15% global minimum tax on multinational businesses. Simply put, if a multinational accounts its income in tax havens to avoid paying tax, the country where it resides will levy a tax of at least 15%. Bill C-69, the budget omnibus bill passed in June 2024, included a global minimum tax act that came into force in 2025. The fiscal year started on January 1 of this year. However, in November 2024, two months before the Global Minimum Tax Act came into effect, Brookfield Asset Management moved its headquarters to the United States, thereby exempting it from this 15% tax.

Not only did that happen, but the Prime Minister also decided at the G7 to exempt the United States from this global minimum tax without going through the House of Commons. He made that decision after the head office in Brookfield was moved to New York.

Don't you think that poses ethical problems and the appearance of a conflict of interest? Is your screen able to shed light on things like that?

● (1130)

Konrad von Finckenstein: The measure you're talking about is a tax measure that applies universally. It covers all companies, including Brookfield. Taking such measures is part of the Prime Minister's job and, naturally, it will have an impact on companies like Brookfield.

Luc Thériault: However, at the G7 meeting, the United States was excluded from the global minimum tax. The head office of Brookfield is therefore not required to pay that 15% global tax.

Konrad von Finckenstein: When was that decision made?

Luc Thériault: It was at the G7 meeting. It was the Prime Minister himself who announced it. At the very least, it should have been agreed that we could raise the issue in the House first so that we could discuss it.

Konrad von Finckenstein: The Prime Minister's decision applies to a lot of companies. You know as well as I do that this decision was made because of friction with the United States and President Trump. It wasn't a question of favouring a single company. Brookfield probably benefited from that, as did many other companies. As I said, if it's a measure of general application, using the conflict of interest screen provisions isn't necessary.

The Chair: Thank you.

That's the end of the first round. I've given seven minutes to the representative of each of the parties. We'll now begin the second round.

Mr. Cooper, you have the floor for five minutes.

[*English*]

Michael Cooper (St. Albert—Sturgeon River, CPC): Thank you very much, Mr. Chair.

Commissioner, I want to ask you some questions about the Prime Minister's so-called ethics screen. First of all, the ethics screen is being administered by the Prime Minister's chief of staff and the Clerk of the Privy Council, correct?

Konrad von Finckenstein: Yes.

Michael Cooper: So we have the chief of staff, who is appointed by and works directly for the Prime Minister, and the Clerk of the Privy Council, who serves at the pleasure of the Prime Minister. These two individuals are hardly independent of the Prime Minister.

In the face of that, what assurance do Canadians have that the screen is being implemented and enforced properly?

Konrad von Finckenstein: Let's be practical. Anything that goes to the Prime Minister for a decision goes through either one of these men or both. They are in effect the keyholders of what gets on his desk and what he deals with. They are the logical ones to make sure he does not get involved in these things.

Michael Cooper: Well, sir—

Konrad von Finckenstein: I'm talking purely administratively. If you want to install figures, the key people who determine and who are the last persons to see what goes to the Prime Minister are these two people. They, of course, have a whole—

Michael Cooper: Well, sir, I understand that it's administered by the chief of staff and the Clerk of the Privy Council, both of whom serve at the pleasure of the Prime Minister. I'm asking you, in the face of that, what assurance Canadians have that the screen is actually being enforced properly. Are there any—

Konrad von Finckenstein: I've tried to answer that.

Michael Cooper: —independent mechanisms that your office has to ensure that it is in fact being applied properly?

Konrad von Finckenstein: It's because their interest is the same as the Prime Minister's. They don't want to see the Prime Minister, whom they serve, run afoul of conflict of interest. That would cause both political and legal problems. They are there to make sure that he complies with the law. It is their duty. They have been assigned that duty. Surely they're going to exercise it in such a way that there does not appear to be or that there does not arise a conflict of interest. That's their job.

Michael Cooper: Your answer is that the effectiveness of the screen rests on the Prime Minister's chief of staff and the Clerk of the Privy Council, right?

● (1135)

Konrad von Finckenstein: I rely on the integrity of the senior people in government acting in accordance with the law, because it's in their interest and in the interest of the Prime Minister they serve.

Michael Cooper: So the answer, sir, is that there are no independent mechanisms in place, correct?

Konrad von Finckenstein: No, not at all. Don't forget that it's not their decision. Each one of them has a whole body of people working under them. They have all been instructed. We have given them lessons on how to do it, etc. When in doubt, they will consult with us. They are very keen that nobody can raise a conflict of interest. That's their job.

Michael Cooper: Well, all I can say is that with no reporting, no transparency measures, and no checks and balances, we're just left to take the word of Mark Carney and his two top advisers. I would say that this falls short.

With respect to the ethics screen, Mr. Carney may participate in a discussion or a decision on a matter of general application or that affects interests of companies as a broad class of persons, unless those interests are disproportionate to other members.

Now, "disproportionate" isn't defined in the screen. What constitutes a disproportionate interest?

Konrad von Finckenstein: First of all, what's a class? A class is a whole bunch of persons who are affected and have one thing in common.

A perfect example would be farmers. That's a class. You can have a subclass of wheat farmers, etc. If one of them is disproportionate—wheat farmers are probably a bad example—and one member of the class owns 60% or so, the others will have less, as they have the other 40%. Clearly, that person who has a 60% interest in that group of companies is disproportionate, and the screen would apply.

I can't give you a specific, generic position because it depends on who we're dealing with, what the industry is and how widely or closely it is held.

The Chair: That's it, Mr. Cooper.

Thank you, Commissioner.

We are now going to Ms. Church. Go ahead, please, for five minutes.

Leslie Church (Toronto—St. Paul's, Lib.): Thank you very much, Mr. Chair.

Colleagues, welcome back.

Mr. Commissioner, I thank you and your office for your guidance and vigilance at all times. There are just a few questions from me.

First of all, when were the provisions that pertain to establishing a blind trust enacted? Was it at the outset of the act?

Konrad von Finckenstein: As I said, section 29 basically says that the commissioner can determine "appropriate measures" for public office holders. One that we came up with is this screen.

My colleague wants to add something.

Lyne Robinson-Dalpé: Section 27, which contains the divestment provisions, was also implemented at the outset of the act in 2007.

Leslie Church: It was in 2007. Thanks very much.

Commissioner, do you have a sense of how many blind trusts have been established, annually, currently or over time?

Konrad von Finckenstein: I don't have the number with me, but one of my colleagues will have it. It's not very many.

Melanie Rushworth (Director, Communications, Outreach and Planning, Office of the Conflict of Interest and Ethics Commissioner): I believe there are about 22, on average, established in a year.

Leslie Church: Would you be able to generalize the types of assets you tend to see inside these trusts?

Konrad von Finckenstein: Usually, what the office-holder puts in the trust is everything they are not allowed to have. It's mostly interests in companies. They can put in bonds, financial instruments and stuff like that. They put them in the blind trust and the title is given to trustees, but of course, they are not blind to what they have put in there. Therefore, in order to avoid that—people being able to put things in the blind trust and then take advantage by taking measures that increase their value—we have created this screen.

It's not very often that there's a situation, as my colleague pointed out.

Leslie Church: In your opening remarks, you mentioned how one of your objectives was to not discourage people from a variety of backgrounds from entering public office—particularly those with private sector experience. Would you agree that the profiles of the blind trust holders typically have some degree of private sector experience?

● (1140)

Konrad von Finckenstein: Yes, absolutely.

Leslie Church: Mr. Commissioner, could you describe the reporting requirements required of public office holders under the act?

Konrad von Finckenstein: Why don't you walk us through it, Lyne?

Lyne Robinson-Dalpé: Essentially, when a reporting public office holder is appointed, they are provided a confidential report that they need to disclose. In it, they have to disclose information on their assets, liabilities, outside activities and corporations, and any other information that the commissioner may use to provide guidance. This might be about family members who have interests in or dealings with the federal government or friends who have dealings with the federal government. All of that is provided in the confidential report. At that point in time, the office and adviser in the office will review the disclosure and establish which requirements are required.

In the case of assets or assets that are deemed controlled, a divestment is required. In some cases, a reporting public office holder must also step down from private companies in which they are a director, president or chair. All of these measures are reviewed with the reporting public office holder, and they have a period of time to comply with them.

Essentially, there's a lot of information that's very similar to what is disclosed by members of Parliament, but there are more concrete measures that are required for them to comply with the act.

Leslie Church: That's great.

The Chair: You have 30 seconds.

Leslie Church: Just in summary, then, what we have here is a tool that is maybe not frequently used but is commonly used, often with individuals with outside private experience coming into public office, and with a system of regular reporting attached to it. Is that correct?

Konrad von Finckenstein: Yes. That's correct.

Leslie Church: Thank you.

The Chair: Thank you, Ms. Church.

[*Translation*]

Mr. Thériault, you have two and a half minutes.

Luc Thériault: Thank you, Mr. Chair.

Let's continue the discussion.

I understand what you have to apply. What I'm looking for is the very essence of ethics, that is to say, ethics that analyze what is based on what should be. I expect your office to make suggestions based on what should be. Now, I'm all for people getting involved in politics, but not if, structurally, the foundation they have before getting there creates structural conflicts of interest.

Take, for example, a company that owns 916 companies for an investment of $1 trillion; the Prime Minister introduces a bill, Bill C-5, in areas that belong to Brookfield: the railway is covered by Bill C-5; the natural gas processing plant is covered by Bill C-5; the pipeline is covered by Bill C-5; Westinghouse, a company that builds and operates nuclear plants, is covered by Bill C-5; involvement in the oil sands is covered by Bill C-5; and port facilities are also covered by Bill C-5.

It seems to me that there is an appearance of conflict of interest here, and even more so when a bill like this is passed under a gag order, without any discussion to assess its impact.

Don't you think that the Prime Minister right now, even though he doesn't know how much his assets in a blind trust will prosper, is nevertheless aware, in a way, that Brookfield and the people who benefit from it will increase their assets? I think this demonstrates a structural and ethically unacceptable position. We can't sit in a seat when we are making decisions knowing that, in any case, it will serve us well.

Does everyone have to get into politics? I think people have to make a choice. In such a situation, I expect the Ethics Commissioner to be able to give us additional tools to avoid conflicts of interest.

There you have it.

● (1145)

Konrad von Finckenstein: You gave a selection of projects as examples. That's all. The decision was made to focus on these five projects of national interest.

First of all, the fact that only five have been selected doesn't mean they're going to happen.

Second, it doesn't say who's going to do them.

Third, we don't know what subsidy or support the government is providing.

Fourth, we don't know who will choose the companies or which ones will be chosen.

In all these cases, we have to look at the interests of companies like Brookfield and so on. However, when it comes to the actual selection of projects, we haven't arrived at a point where we're making a decision that would benefit no one.

Which of those five projects will be the first and second choices? Now, once the project has been decided, it will be necessary to determine who the main actor will be, what the company will be, and so on. At that point, the people responsible for the screens will make decisions as to whether one of these companies, particularly Brookfield, is involved. What will its involvement be? As a leader or stakeholder? As a member of a class? All of those decisions will be made at that time.

Now, the selection itself is not a conflict of interest issue, and the screens don't apply.

The Chair: Thank you, Commissioner.

Mr. Thériault has finished the second round of questions.

We'll start the third round with Mr. Hardy and Mr. Sari for five minutes each.

Mr. Thériault, you may have time to ask other questions.

Afterwards, I would also like to ask the commissioner a question.

Mr. Hardy, you have the floor for five minutes.

Gabriel Hardy (Montmorency—Charlevoix, CPC): Thank you, Mr. Chair.

Thank you for being here, Commissioner.

I'm new to politics, but I believe that, indeed, most people need to get involved and enter into politics to bring about change.

That said, I think that people now have less trust in politics. I believe that the Standing Committee on Access to Information, Privacy and Ethics is there precisely to ensure that people have confidence in our institutions.

It's a bit unusual to have a multi-billionaire running the country. Do the current laws and structures make it possible to assure the public that this person is there for the right reasons, and not to help his company temporarily before going back to the private sector afterwards?

Konrad von Finckenstein: I believe the current Conflict of Interest Act works. However, as I mentioned in my annual report, improvements can be made. The issue is not the direct conflict of interest, but rather the appearance of the conflict of interest, the perception of the situation.

For that reason, in my annual report, I suggested adopting a definition that people in government should adhere to. It covers not only conflicts of interest, but also the appearance of conflicts of interest. It's kind of hard to define and enforce, but I think it's essential for fostering the political trust you're talking about.

As such, we must remember that there was the Oliphant commission concerning allegations of conflict of interest between the Right Honourable Brian Mulroney and Mr. Karlheinz Schreiber. In his report, Commissioner Oliphant recommended having a definition dealing with apparent conflicts of interest.

Ms. Robinson-Dalpé will read the recommendation to you.

Lyne Robinson-Dalpé: Of course.

> The definition of "conflict of interest" in the Conflict of Interest Act should be revised to include "apparent conflicts of interest," understood to exist if there is a reasonable perception, which a reasonably well-informed person could properly have, that a public office holder's ability to exercise an official power or perform an official duty or function will be, or must have been, affected by his or her private interest or that of a relative or friend.

Gabriel Hardy: When there is a conflict of interest or the appearance of a conflict of interest, the public wonders how these things can happen. In this case, a multi-billionaire prime minister who was at the helm of companies a few months ago is now making decisions very quickly on the advancement of the country. In addition, he seems to be indirectly helping the businesses he owned and the ideas he had at the time. There is the appearance of a conflict of interest.

Under the current act, it seems to me that someone should be responsible for analyzing the situation again. It should be someone other than a member of the Prime Minister's Office or a personal adviser.

● (1150)

Konrad von Finckenstein: That's your opinion. Just because the Prime Minister is rich doesn't mean that he's in a conflict of interest.

As I mentioned, banning direct conflicts of interest isn't enough. We also have to look at whether there is the appearance of a conflict of interest and whether we need to adopt measures to avoid them.

First and foremost, we need to change the act to make it better. We also need to adopt a definition, as suggested by Commissioner Oliphant.

Gabriel Hardy: Let's take the case where projects are accelerated. I guess the more projects there are, the more potential conflicts of interest there are.

How many people are responsible for analyzing each of the projects and flagging problems?

Konrad von Finckenstein: It's very difficult to answer your question.

First, we look at whether or not the project is in the national interest. Then we look at the players involved. In every decision made to carry out the project, it is important to be aware not only of direct conflicts of interest, but also of the appearance of a conflict of interest.

Gabriel Hardy: How many people are we talking about? For example, if there are 12, 15 or 20 potential conflicts of interest, how many people take the time to analyze that? Is it done quickly enough for us to intervene, or do we have to wait five years to realize that the problem has already occurred?

The Chair: Answer very quickly, please.

Konrad von Finckenstein: It depends. If we adopt such a definition, we must also adopt upstream processes. Perhaps we need to increase oversight and approval of things.

Gabriel Hardy: Thank you.

The Chair: Thank you, Mr. Hardy.

[*English*]

Mr. Sari, you have five minutes. Go ahead, sir.

[*Translation*]

Abdelhaq Sari (Bourassa, Lib.): First of all, I want to welcome everyone back to the House of Commons.

I'd like to thank the witnesses for their presentations.

Mr. von Finckenstein, I heard your comments, and I read the letter you sent to the committee. I think that, right now, in our country, we need to encourage experienced people to move into positions of power and decision-making, because the context is changing, both economically and technologically. So we obviously need experienced people in our offices and in our government.

That said, our committee will have to make recommendations to the House. I would like to ask you a question so that you can guide us in our study and help us see things better. How do you see this committee conducting its study? Should we focus on a few recommendations or should we review the process as a whole? I'm asking you this because you talked about a change in context; I'll come back to it later.

Konrad von Finckenstein: The recommendations I made relate to issues that are currently of concern to me. I think it would be worthwhile to make legislative changes to address those concerns. However, if we were to conduct a review of the Conflict of Interest Act, I believe we should do so in a comprehensive manner, taking into account the new world we live in. For example, we should look at the role of social media and its implications for the act. While I think targeted amendments to the act are needed to improve it, this isn't the ideal solution. The act is outdated, and it's high time it was reviewed.

Abdelhaq Sari: You mention the need to improve the act because of changing circumstances. These circumstances are changing much more quickly than in the past. Do you think the amendments to this act should make it much more flexible? I've heard some really pointed questions today about specific cases. However, the act is not actually designed for that. I would say that it is designed to address the appearance of a conflict of interest in a broad sense, across the entire legislative process.

● (1155)

Konrad von Finckenstein: Ultimately, it's up to you—Parliament—as well as the government, to decide how to amend the act. My task is limited to identifying the current shortcomings and providing you with my recommendations to address them. However, Parliament could obviously choose to make other amendments. For example, it could look at reorganizing the offices. Why is there an Office of the Commissioner of Lobbying and an Office of the Conflict of Interest and Ethics Commissioner? Could they be combined to save money? I think all these issues need to be considered.

Abdelhaq Sari: You talked about a comprehensive review of the act. Do you think such a review would be very broad or rather limited? Should this review be very broad and cover the entire act?

Konrad von Finckenstein: I'm sorry, I don't understand your question.

Abdelhaq Sari: My question is about a possible review of the act.

Konrad von Finckenstein: Okay.

Abdelhaq Sari: Should such a review focus on parts of the act or should it focus on the whole? I'm repeating the same question I asked at the beginning, because we're hearing talk of urgency on the one hand and a lack of urgency on the other.

Should a potential review of the act be expanded or targeted?

Konrad von Finckenstein: If we could make ad hoc changes like the ones I recommended, I would be very happy, but I don't think that would be enough in the long term. More could be done.

The Chair: Thank you, Mr. Sari.

Mr. Thériault, you have the floor for two and a half minutes.

Luc Thériault: Commissioner, I'll go back to the conflict of interest screen. You thought it was a good idea to set up one, because the situation was unique. We can agree that this is the ultimate expression of an appearance of conflict of interest. This is an individual who comes from the private sector and wants to become not only a minister, but the prime minister, the one who makes all the decisions and oversees the direction of the state. If he were just a minister, it would be different.

However, you aren't the one who implements this screen. You aren't the one who is continually in contact with these two individuals in cabinet. Don't you think the screen should be implemented by someone outside of cabinet?

Also, before giving these people the opportunity to implement this screen, did you check whether they themselves had a conflict of interest?

Konrad von Finckenstein: If we had an outside person, we would have a lot of problems with—

Luc Thériault: I thought that the conflict of interest screen was also managed by the Office of the Conflict of Interest and Ethics Commissioner, not just by people close to the Prime Minister who report to him and are hired by him.

Did you also check their own potential conflicts of interest before giving them the responsibility to implement the conflict of interest screen?

Konrad von Finckenstein: At that point, I would be in a conflict of interest myself. I can't be both judge and stakeholder. If my office is involved in administering the screen, I have to make a decision if there's a conflict of interest.

Luc Thériault: How does your screen work? I have a problem with this so-called conflict of interest screen. I don't understand how it can reassure the public as a whole. The way the measure is worded and the mechanics of it seem to me to be completely inadequate.

Konrad von Finckenstein: That's your opinion.

● (1200)

Luc Thériault: That's not my opinion. I'm just not getting answers to my questions, Commissioner.

The Chair: Thank you, Mr. Thériault.

[*English*]

That concludes our questioning.

I have a couple of questions that relate to the specifics of the reporting mechanism, Commissioner. Does a public office holder have to declare either deferred stock options, stock units or any future bonuses tied to any of the previous companies that they were affiliated with? Would that be part of their ethics disclosure?

Lyne Robinson-Dalpé: Yes, it is.

The Chair: Here's the question that I have, Commissioner, and it's along the lines of what Mr. Thériault was asking. When these screens are set up, wouldn't that cause a reasonable person to conclude that the public office holder is, in fact, benefiting from those deferred stock options, units and future bonuses, despite the fact that the blind trust is being set up? Now, if that public office holder, for example, were a prime minister whose major policy platforms were housing, infrastructure, EV mandates and all that stuff, wouldn't that cause a reasonable person to conclude that they are, in fact, benefiting—blind trusts and screens notwithstanding—as a result of the major policy decisions that are being made in this country? Wouldn't that cause a reasonable, thinking person to conclude that there is, in fact, a conflict, and that the person is benefiting as a result of these decisions?

Konrad von Finckenstein: You have just enunciated the major argument as to why people don't like the idea of an apparent conflict of interest, because it is possible to view things that way or in other ways. You can also put it the other way around, saying, “He has earned those deferred benefits already. He's getting them in the future from one of the largest companies in the country, so how can he personally be...? Where is the conflict of interest? There is no way that the decision will have an impact on the deferred money that he's getting in the future.” That's why, when you talk to a panel about a conflict of interest, you have to take the balance of how people see it. Is it possible to give the apparent conflict of interest...or is it really just that, unfortunately, it looks like that, but effectively, there is nothing that influences the personal interest of the person involved? There are appearances of conflict of interest, as I meant in the decision that was read out. As Mr. Oliphant suggested, you ask, “How does a reasonable person outside, knowing the situation fully well, regard that?” This “fully well” is key: You have to understand how a deferred benefit works, how it was earned, etc.

I don't know how to answer your question, Mr. Chair. It's the best I can do.

The Chair: Thank you, Commissioner. I really appreciate the time you spent with us today.

Ms. Rushworth, thank you for being here.

Ms. Dalpé, I understand that this may be your last appearance before this committee, in advance of your retirement, so I want to wish you well, great health and great happiness in that retirement.

I'm going to suspend for a couple of minutes. We have the Information Commissioner coming up next.

The meeting is suspended.

● (1200)

_____(Pause)_____

● (1210)

The Chair: I call the meeting back to order.

At this time, I'd like to welcome our witness for our second hour today. From the Office of the Information Commissioner of Canada, we have Caroline Maynard, who is the Information Commissioner.

It's been a while, Ms. Maynard. We want to welcome you back to Ethics.

You have up to five minutes for your opening statement. Go ahead, please.

Caroline Maynard (Information Commissioner, Offices of the Information and Privacy Commissioners of Canada): Thank you.

[*Translation*]

Thank you for inviting me today.

I have had the honour to serve as Canada’s Information Commissioner since 2018, and I always welcome the opportunity to speak to this committee. For returning members, some of what I will cover in my opening remarks may already be familiar.

Canada’s access to information legislation gives Canadians the right to know how their government operates. The Supreme Court of Canada has described this right as “quasiconstitutional”.

Every year, Canadians exercise their right of access by submitting over 200,000 requests for records under the control of government institutions. These requests often touch on topics at the heart of our democracy: How tax dollars are being spent, how programs and services are administered, how government contracts are awarded and to whom, and what measures are being taken to strengthen our economy, to name just a few.

[*English*]

As outlined in the background materials I have provided, my role is to enforce the Access to Information Act using the full range of tools and powers at my disposal. For the past seven years, I have investigated thousands of complaints related to access requests. I have issued orders to institutions since I was given that power in 2019, and I have pursued litigation to enforce the law and uphold Canadians' right of access.

When the act came into force in 1983, it was considered groundbreaking, but over the decades, governments have failed to keep it up to date. Neither the act nor the system that supports it reflects the realities of how information is created, shared and used in today's world.

Let me give you a picture of what that means in practice. In many institutions, responding to access requests requires searching through thousands of electronic records that have not been properly managed or going through boxes or cabinets of documents that have not been adequately archived. All too often, manual redactions, duplicate removal and other labour-intensive processes relying on outdated technologies impede the efficiency of these searches.

These performance deficiencies, combined with a persistent culture of secrecy, often result in institutions failing to meet their obligations under the act. We now have both an act and a system that are unfit to meet the information needs of Canadians.

Last June, the government launched a legislative review as required by the act. I hope it moves swiftly and results in meaningful changes to both the act and the system that supports it. I truly look forward to playing an active role in this review and any other reviews Parliament chooses to undertake, with the hope that they will result in a full and comprehensive overhaul of the act. Canadians deserve an access law worthy of this great country.

At a time of growing misinformation and public skepticism, Canada must be a leader in transparency and accountability for the sake of our democracy. This also means that the access to information and privacy function must be properly resourced within each institution to uphold this legal obligation.

● (1215)

[*Translation*]

As the government carries out a comprehensive expenditure review to ensure that public spending is responsible, cost-effective and delivers real results for Canadians, institutions must carefully assess the risks that come with any reduction in access to information capacity. Access to information is not a service. It is a right, enshrined in law.

Next week marks right to know week—a time each year when we shine a spotlight on Canadians' right of access. It is the perfect opportunity to remind ourselves that modernizing the Access to Information Act to increase transparency is one of the most powerful ways to strengthen the trust between citizens and their government and to protect our democracy.

The Chair: Thank you, Commissioner.

We'll start with Mr. Barrett.

[*English*]

Mr. Barrett, because of the time, I'm going to keep it at six minutes. We went a little over the last time, so we're not going to do that this time, okay?

Thank you.

Michael Barrett: Commissioner, it's a pleasure to have you back here.

Before I get into some of my questions about your work, I'd like to ask you for your thoughts about ours. Our committee issued a report last year, and I wonder if you have any comments you'd like to share with us about it.

Caroline Maynard: As you saw in the submission I made, I agreed with most of the recommendations made by this committee after your review. I think that the government needs to review those reports made by your committee and my submissions, including what they receive from the public during the consultations. I'm hoping that they will start from there and not start from scratch.

Michael Barrett: Thank you very much.

In your 2024-25 annual report, you wrote that some "institutions...neither [implemented your legally binding] orders nor... [went to] Federal Court", "breaking the law" and forcing you to seek writs of mandamus.

Are you finding that certain federal institutions have broken the law by ignoring your orders? Can you confirm whether the Department of National Defence is the worst offender?

Caroline Maynard: I have issued eight mandamus applications because of eight orders that were not contested in court. It is the institution's right to not comply with an order as long as they challenge it in court. When they refuse to do so, I'm forced to take action myself. Out of those eight writs of mandamus, I think that the Department of National Defence has received about six. I have to say, though, that the good news is that the Department of National Defence is doing much better. I don't know if it's because of these mandamus applications, but this year we've received the lowest number of complaints against National Defence. It's not even in my top five institutions that are not meeting the act this year.

Michael Barrett: So, they are breaking the law less.

Caroline Maynard: Yes. They're respecting the act.

Michael Barrett: There is something to be said for progress.

You launched an investigation into ArriveCAN over allegations related to the destruction of records that were subject to the act.

Is destroying or deleting records that are subject to access to information requests a breach of the act? Do your preliminary findings suggest that the law was broken in this case?

Caroline Maynard: With respect to ArriveCAN, I'm sorry, but I won't be able to talk to you about the investigation. It's still ongoing. This is a very complex investigation, as you just mentioned, including very serious allegations. It's part of our priority this year to finalize that investigation. I will be happy to report on that investigation later this year.

With respect to the allegation of destruction, it is a criminal act if it's intentional and if it's meant to remove the information so that somebody can't access it. I cannot tell you at this point what our findings are with respect to ArriveCAN.

Michael Barrett: In your 2024-25 report, you said that "nearly 30% of...requests" across government missed legislated timelines in the previous year. In plain terms, does missing the deadline on almost one-third of requests mean that the government, writ large, is failing to adhere to the law?

● (1220)

Caroline Maynard: It is.

Michael Barrett: What do you think is the remedy that's needed?

Caroline Maynard: Currently, the act is requiring institutions to respond within 30 days of an access request or to ask for an extension. For 33% of these requests, that timeline is not being met. There are all kinds of factors. Consultations with other institutions' taking way too long is one of them. Mismanagement of information, resulting in huge amounts of information having to be accessed and huge numbers of documents having to be processed, is another one. There's a lot that needs to be done to the system. As I said in my submission in 2020, a lot needs to be done to this act to modernize it. Reducing consultations to a certain amount of time would be one of the ways to reduce timelines, as well.

Michael Barrett: I think you said the government's plan for modernization is not sufficient; I think those were your words. On the stick that might need to be used here, because I don't think there's any amount of carrots that would move the needle, what do peer countries do? What is the harshest or most effective measure that's used for compliance in other countries? Are we an outlier here? It seems extraordinary to have a government that seems to be flouting this very important law.

Caroline Maynard: I've met with other colleagues from around the world, and unfortunately, we're not the only ones having issues implementing the act. Whether or not we have a good, or perfect, act, it's in the implementation that we can really see if a country is doing well.

Sanctioning public servants is not happening in any other country, because it's really difficult to know which person is ultimately responsible for the decisions.

Michael Barrett: The buck stops with the minister at the end of the day.

Caroline Maynard: That's what I think; I think the head of the institution should be responsible.

Michael Barrett: Thank you, Commissioner.

The Chair: Wonderful. Thank you, Commissioner.

Ms. Church, you have six minutes. Go ahead, please.

Leslie Church: Thank you, Mr. Chair.

Welcome, Commissioner.

I'm interested in getting a better sense of the lay of the land. Can you share your experience and characterize how the volume and maybe the size of the production has changed in the time that you followed access to information?

Caroline Maynard: One of the issues is that when the act was adopted in 1983, we were dealing with paper files, and it was easy to print what was really an official document and save it somewhere. Now we're dealing with a digital world in which people are using emails to make decisions, and people are using texts, Teams and videos.

I don't think that the act was meant for this amount of information, and basically, people have been negligent in managing their information. There are a lot of institutions that don't have a maximum size of inbox, so people can keep everything and they don't have to clean up, which is ridiculous. There are files that we see where somebody is looking for relevant information in 30,000 pages of documents. This is really not responding to the needs, like I said earlier, and we need to find a way to make public servants more responsible for managing their information. Maybe we need to use artificial intelligence to remove duplicates. There are all kinds of technology out there, but right now they're not being used, and we are seeing files that are not reasonable in size in terms of requests.

Leslie Church: You mentioned the designation of an official document or an official record. Can you describe what that encompasses?

Caroline Maynard: The act refers to “any record”, so if a document is not removed from your inbox and there's an access request, you have to provide that document; it's part of the record.

The policy under the Treasury Board of Canada is that you can remove transitory documents, and you should keep documents that have business value. That's really dependent on different decisions; some people will keep all the drafts that led to a decision, especially if they show the way the decision was made.

It's really a case-by-case situation, but right now I think a lot of people are keeping everything just to make sure that they don't...you know, where there should be better policies and better directives, or maybe a legislative definition of an official document, so that people know what they're supposed to do and what their responsibilities are.

● (1225)

Leslie Church: People are keeping more than they ought to out of a heightened concern around compliance. Is that what you're saying?

Caroline Maynard: Sometimes, yes, and you also have allegations that people are not keeping enough. We do have some cases where a decision is made and you have difficulties understanding why documents have not been created for those decisions, and that's also concerning.

Leslie Church: You raised the point about technology, and that's obviously part of the challenge here, just with the number of platforms and the types of technology we're using for information storage for basic communications in government. What do you think are some of the ways that a government could better use technology to improve information management or access to information?

Caroline Maynard: I'm not an expert, but I am sure there are ways to integrate artificial intelligence or technologies that will identify relevant information instead of every record that deals with one word.

We had an example in my office. Somebody asked for one word, and pretty much all the documents we created had that one word. You cannot process that. We have to find ways to work with technology to remove duplications. We have to find ways to better manage that information. That's not my expertise, but I'm sure that the government should definitely hire more IT specialists to determine those. There are some countries that have already implemented some of those technologies. We should be looking at the best practices out there.

Leslie Church: Are there countries you would point us to right now for those best practices on advanced technology solutions?

Caroline Maynard: I know that Australia is one of the countries that is using AI a lot more than I've heard from other places. Yes, that's the first country that comes to mind.

Leslie Church: You also raised the objective of combatting misinformation and disinformation. Can you speak a bit to that and to how you see the access to information regime helping us address that issue?

Caroline Maynard: I always say that the access request that doesn't need to be made is the best access request, because if the information is out there, if the information is reliable, if there's a policy on proactive disclosure.... Canadians need to know that they can rely on the information they're reading and accessing, that information they obtain, whether it's through journalists or through their member of Parliament, but right now, if it's difficult to obtain even the reliable information from the government, where should they turn? Where are they going to turn? That's where misinformation comes....

We are doing such a great job. The public service is providing advice based on facts and statistics, and that information should be out there. We shouldn't have to respond, to ask for it.

The Chair: Thank you, Ms. Church.

Thank you, Commissioner.

[*Translation*]

Mr. Thériault, over to you for six minutes.

Luc Thériault: Thank you, Mr. Chair.

Welcome, Commissioner.

You have a very important role. I confess that I was not very familiar with the Access to Information Act. I read a lot about it, and while going through your report, I was stunned to see that not much has actually changed since 1983. When you're in opposition, you make a lot of requests and try to be all virtuous, but once you're in government, all of a sudden you take the same political stance on access to information. It's like a game that happens from one term to the next, from one government to the next. Unless I'm mistaken, that's what I understood. I wondered what was causing that, structurally, and what could be done to counter it.

Supposedly, in each department, there is a person responsible for the access to information issue and, unless I'm mistaken, that person reports to the minister. If that person reported to you, do you think that would already be an improvement?

● (1230)

Caroline Maynard: Currently, Treasury Board is responsible for administering access to information, but each institution must have an operations unit that is in charge of implementing procedures to respond to access requests. I don't know if an independent institution could get access to the institutions' documents. It would be difficult.

To go back to the beginning of your question, I would say that the Access to Information Act was put in place to provide access to information, with certain limited exceptions. Since 1983, people have seen the act instead as a way to prevent access to information. Rather than asking what information should be given out, we ask what information should be protected or exempted. The application of the act did not allow it to achieve its ultimate goal.

Could having a central unit in the government allow for better administration of access to information? It's possible. Some provinces, such as Alberta, have a central unit, but they still have to check with the ministers responsible for the institutions. Ultimately, the decision rests with the head of the institution. I'm not sure it would change things. What needs to change is the culture within government. We need to adopt a culture of transparency that would make people realize that it's a good thing to share information and to ensure that political parties have the information they need to have a public debate. It's good for democracy. However, right now, I think people are afraid. They hide behind the Access to Information Act, and that's why there are limits and why it's not a perfect process.

Luc Thériault: I want to make sure people understand. What you're telling us is that I could make a request to a department and that it could provide me with the information. Now we're being told to make a request under the Access to Information Act, when it's clear that it will take forever.

Is that correct?

Caroline Maynard: You could make a request, but it would be considered an informal request. In addition, people often apply the act anyway or find ways to withhold certain information. That is allowed, but in principle, once again, they should want to give you as much information as possible so that you can understand the decision, what has been put in place or the services in question. Often, they withdraw information, so you lose trust in the process and wonder why they're hiding that information.

Luc Thériault: It's a culture of opacity, not a culture of transparency.

I'll go back to my original idea. I suppose people have to manage access to information. This legislation is a big deal. It is a law that, as you said, is essential for our democratic values. In today's world, it must enable us to combat misinformation and disinformation. This is important. It's a powerful law, after all, even though it may not be powerful enough for your taste. That will be the subject of another question later.

In short, I can't believe that departments don't have someone who handles these requests. If that person reports to a department or a minister, I don't think the culture changes much. That's why I thought that, if this person reported to the Office of the Information Commissioner of Canada, it would be a bit different. That would be a step that would bring us closer to the intent behind the Access to Information Act. In fact, when I have the floor again, we can discuss the changes that need to be made to the act.

Thank you.

● (1235)

The Chair: Thank you, Mr. Thériault, for staying within your speaking time.

[*English*]

Thank you, Commissioner.

Now we'll start the second round.

Mr. Cooper, you have five minutes.

Michael Cooper: Thank you, Mr. Chair.

Commissioner, to be clear, your orders are legally binding. Is that correct?

Caroline Maynard: They are.

Michael Cooper: Now, you indicated—and your report outlines—that non-compliance on the part of government departments and institutions has been an issue. Therefore, those government departments and institutions that are not abiding by your orders are breaking the law, are they not?

Caroline Maynard: Well, if they're challenging them in court, they're not.

Michael Cooper: No.

Caroline Maynard: They're allowed to challenge them. But if they're not challenging them and they're not respecting them, they are breaking the law.

Michael Cooper: There are government departments and institutions that have chosen to ignore your orders and therefore are breaking the law.

Caroline Maynard: It was an issue at the beginning. It seems to be less of an issue now. I think people have understood that we now have been using the mandamus application to force them into it.

Michael Cooper: You indicated in an answer to Mr. Barrett that your office has been forced to bring not one, not two, but eight applications for writs of mandamus to force non-compliant, law-breaking departments and institutions to abide by the law.

Going to Federal Court is costly. It's resource-intensive, is it not?

Caroline Maynard: It is.

Michael Cooper: Can you provide a number or some description of the degree in terms of what your office has incurred from a resource standpoint in order to effectively drag government departments and institutions, kicking and screaming, to comply with your lawful order?

Caroline Maynard: Currently, the act doesn't make me monitor these decisions and these orders. If somebody complains to my office that the order was missed, the only recourse I have currently is to make an application for mandamus, which we've done. We have increased our number of litigators. In terms of cost, it's salaries and time for us.

Sadly, in a sense it's time for the requesters as well, because so far, none of these mandamus applications made it to a hearing. The institutions always responded before we were able to get a judge to listen to our application. Basically, it's just been extra time for the institutions to respond.

Michael Cooper: But it's fair to say that it is resource-intensive.

Caroline Maynard: Yes.

Michael Cooper: Okay. Thank you for that.

On March 7, 2025, you wrote to the then president of the Treasury Board, Ginette Petitpas Taylor, expressing concern about this pattern of non-compliance. You requested that the minister issue "clear and unequivocal guidance to institutions subject to the Act [of] their legal...responsibilities, including complying with [your] orders".

Did the minister issue such guidance?

Caroline Maynard: She did.

Michael Cooper: She did. Okay. Thank you for that.

Is it fair to say that your office faces a persistent and severe funding shortfall?

Caroline Maynard: Well, this year we were looking at a deficit of $600,000, based on the collective agreement that was negotiated and that we didn't receive money for. Because of the review that the government has launched, we've decided to absorb that deficit.

I can't say that we're in a situation where we don't have sufficient funds, but we are definitely at just enough. We're managing our resources as best we can, based on the current situation in the government.

Michael Cooper: Thank you.

In 2024, you submitted an off-cycle proposal to the minister to request $400,000 in permanent funding to maintain current resource levels. What happened with your request?

● (1240)

Caroline Maynard: It didn't go anywhere.

Michael Cooper: The minister did not respond?

Caroline Maynard: The ministers did not respond, no.

Michael Cooper: Okay.

Shifting back to your orders for the right to go to the Federal Court for a review for those departments and institutions that apply for a review, the standard at the Federal Court is of a *de novo* nature. Your predecessor, Suzanne Legault, stated that there was "no incentive for institutions to provide sufficient reasons to establish that information warrants not being disclosed during investigations", and for those reasons recommended removing the *de novo* standard. Do you agree?

The Chair: Give a quick response, please.

Caroline Maynard: It's a very tough question, because there are positives and negatives to both judicial review and *de novo* review.

I would be happy to provide you with some submissions on that in writing, if you want.

The Chair: There will be another round. We can come back to it or we can take the submissions, Mr. Cooper.

Caroline Maynard: Because it's complex.

The Chair: Okay. Thank you, Ms. Maynard.

[*Translation*]

Mr. Sari, you have five minutes.

Abdelhaq Sari: First of all, I want to thank you, Ms. Maynard. You are really welcome at this committee, because this topic is really fascinating and interesting, especially to me. I myself have had experience with access to information requests to several levels of government, on both the provincial and the municipal sides.

As a preamble, I will say that the amount of information processed by government devices is increasing exponentially. In addition, the number of access to information requests is starting to increase at the same time as the amount of information to be processed, communicated and authorized is becoming very large, particularly with the collaborative tools we use on our devices. I would really like to hear your opinion: Is this the main reason for non-compliance with the Access to Information Act?

It takes a while to receive and process a request and then respond to it, and the 30-day deadline is not always met. I've experienced it several times in my life. It's not unwillingness on the part of the person handling the request. Rather, it's the process itself that is becoming increasingly complicated, particularly when there are redactions, which is often.

Caroline Maynard: Currently, the Access to Information Act provides that the institution has 30 days to request an extension. The problem is that, quite often, 30 days is not enough time for access to information units to get enough information to determine how many additional hours will be required, given, as you say, the number of pages.

Often, units within a department do not even respond to the access to information unit within 30 days. It is therefore very difficult for them to make appropriate and reasonable requests for extensions, and that is often what leads to complaints to the Office of the Information Commissioner. The number of pages and documents is certainly an issue, but it's hard to know whether the Access to Information Act or the mismanagement of those documents is at fault.

Abdelhaq Sari: In terms of mismanagement, like any other government, we want to be efficient. I'll go back to my colleague's question about the use of technologies, particularly artificial intelligence, which isn't often mentioned in your reports and recommendations. Should we focus much more on that to improve things? Since 2010, the amount of information has increased exponentially, as well as the information shared about any decision-making process. While there used to be hundreds of thousands of pages on a decision-making process, today we're talking about millions of pages.

Should your office be recommending AI?

Caroline Maynard: What I understand about artificial intelligence is that you can't use it as a tool if you haven't properly managed the information in the first place. As I said earlier, this tool can be used to eliminate duplication or to find information. However, if we have so much information and it's so poorly managed that we don't even know where it is, AI won't be much use to us.

First, we have to properly manage the information, and then we can use artificial intelligence.

● (1245)

Abdelhaq Sari: I'll go back to your letter of May 13, 2025, to Treasury Board. Can you briefly explain why it is urgent to review the Access to Information Act?

Caroline Maynard: My letter was simply to remind the President of the Treasury Board that the Access to Information Act provides for a legislative review every five years and that it has to take place this year.

I was also reminding him that the process should take place as soon as possible. We've conducted a lot of consultations and received reports from a number of experts. We're well aware of the issues with the act and the system.

I hope that the legislative review process will be carried out quickly and lead to concrete results.

Abdelhaq Sari: Did the experts who took part in the review process also include information technology experts?

You can answer with a yes or no.

Caroline Maynard: I don't know if they were consulted specifically.

Abdelhaq Sari: Thank you very much. I appreciate your answers.

The Chair: Thank you, Mr. Sari.

[*English*]

Madame Maynard, I know you've been very consistent in the requests for review. For as long as I've been here, anyway, I've heard you say that often.

[*Translation*]

Mr. Thériault, you have the floor for two and a half minutes.

Luc Thériault: Thank you, Mr. Chair.

When an elected official has to play their role, that is, hold the executive branch accountable, the Access to Information Act is one of the main tools. It was implemented for a reason.

However, what I'm hearing is that there are flaws in how information is processed. There's misclassification, and there are undue delays, so the act should be amended.

Tell me what your preferences would be then. What should be changed? Maybe you could give us an order of priority. It's okay if you mix up two or three priorities, but what should change? What do you think should be looked at? I'm sure you have thoughts on that.

Caroline Maynard: Yes. In 2020, I tabled submissions on various elements, such as expanding the act's application to include ministers' offices and the Prime Minister's Office, because they aren't currently subject to the act. None of the information from those offices is accessible. I've also suggested expanding it to private entities that work for the government on behalf of the government. Taxpayer money is being used to deliver services to Canadians, and the information should also be made accessible.

At this time, my office doesn't review cabinet confidences. The Office of the Information Commissioner can't see them. I don't think they should be excluded from the act either, because an exemption, an exclusion, is often applied to certain documents. No one, whether it be me or a judge, can currently see the documents and ensure that the act is applied properly. I'm not saying that the documents should be accessible, but there should be a process for reviewing those documents to ensure that the act is applied as it should be.

Restrictions should also be set on consultations between institutions. Currently, institutions have 30 days to provide a response, but there is no prescribed deadline for the institutions that are consulted internally. That leads to a lot of delays in enforcing the act.

Apart from the exemptions, the exclusions, a number of elements should be reviewed.

Luc Thériault: Thank you, Commissioner.

The Chair: Thank you, Commissioner and Mr. Thériault.

We will now begin the third round of questions.

Mr. Hardy, you have five minutes.

Gabriel Hardy: Thank you very much, Mr. Chair.

Commissioner, thank you for being with us today. If I understand correctly, your directives are binding. Departments are required to follow your directives to give everyone access to information.

● (1250)

Caroline Maynard: Yes, if I issue an order, it has to be complied with.

Gabriel Hardy: Are there any institutions that aren't following your recommendations or that aren't following your directives properly?

Caroline Maynard: The act allows them to go to court if they don't agree with the order. They have to do so within a certain period of time. However, if they don't, they are supposed to comply with the order. As explained earlier, there have been a few cases where they neither complied with the order nor went to court. I had to take action myself by going to court to force them to comply with the order. That has happened a number of times.

Gabriel Hardy: Has it happened a number of times in recent years?

Caroline Maynard: It has happened a number of times at National Defence and a few times at other institutions.

Gabriel Hardy: Okay.

What happens when you decide to seek recourse against them? I imagine that they will have to act at some point. Are they basically just trying to slow down the system by giving you a response after taking their time?

Caroline Maynard: As I was saying earlier, the cases that went to court didn't end up before a judge, because the institution responded to the request before we obtained a court order. Cases were resolved that way.

Gabriel Hardy: Do you think that's part of a strategy? Instead of following a clear, precise, accessible and transparent system, time is wasted, and a mechanism is used to slow down the process and try to determine which documents to give, in order to benefit from it at the end of the day.

Caroline Maynard: The Access to Information Act provides that you have to submit your information within 30 days. If you haven't done it in 30 days, you can file a complaint with the Office of the Information Commissioner. Once the office has made a decision, it is presumed that the institution will respect it or go to court itself. The mandamus process is expensive and time-consuming, so it can certainly be seen as a tactic to buy time.

Gabriel Hardy: Okay.

Whether we like it or not, access to information is the crux of the matter. We live in an era when information is highly accessible and consumed. Everyone wants to know what's going on. We're living in an era when people have less and less trust in our policies or our governments.

Do you think your office should be given more funding to ensure that it is able to do its work in the right way and that Canadians trust in our systems?

Caroline Maynard: Certainly, the access units and my office should have enough funding to respond to requests and enforce the act. That said, the government should be providing information even before an access request is needed in the first place.

We strongly promote the production of voluntary information, by default. Information should be available on websites. People should have access to that information to fully understand decisions and policies, without necessarily agreeing, but at least understanding what's going on.

Gabriel Hardy: People want debates and transparency.

Do you feel that's what's happening right now? Is the funding going in that direction, or is it the other way around?

Caroline Maynard: It's hard to say.

I'm often told that it's very expensive to publish information in the federal government because it has to be done in both official languages. In addition, some people are afraid to provide information. There's a culture of secrecy.

Nevertheless, if senior officials in the various departments promoted transparency and understood, as you say, the importance of people trusting their departments and the government, it should be increasingly available and accessible.

Gabriel Hardy: That will be the future crux of the matter. Access to information is obviously very important.

Do you get the impression that in departments, in our institutions or in politics in general, more documents are being kept than before? This problem was raised earlier: There are still a tremendous number of documents, emails and so on.

Is that what we're seeing, or is it the opposite, that documents are lost, forgotten or erased too quickly?

Caroline Maynard: Unfortunately, at the Office of the Information Commissioner, we see things repeating.

If you had spoken with the commissioner who preceded me, she would have raised the same issues and concerns. This is becoming increasingly important because there are more and more requests. This year, 200,000 access requests were filed.

Gabriel Hardy: Speaking of documentation—

● (1255)

The Chair: Thank you.

Gabriel Hardy: Is that my last question? Is that it, Mr. Chair?

The Chair: You're over time, Mr. Hardy.

Ms. Lapointe, I believe you're going to share your time with Mr. Saini.

Linda Lapointe: That's right. Mr. Saini will go first.

The Chair: Okay.

Mr. Saini, you have the floor for five minutes.

[*English*]

Gurbux Saini (Fleetwood—Port Kells, Lib.): Madam Commissioner, I'm a new member, so excuse me if I don't....

How competitive is our legislation compared to that of other developed countries, like England, Australia, New Zealand and the United States? Is our compliance less than or on par with the other countries, and what do we need to do to bring those levels up?

Caroline Maynard: There is one institution that reviews the legislation, which will rank it compared to that of other countries. I think Canada is now 58 out of 109, so we're in the middle. Our act is not the best in terms of its accessibility and transparency and the level to which the institution that it's applicable to....

One of the places I like to compare us to is Scotland, which has very progressive legislation. The commissioner there has the authority to monitor how institutions are doing, which I don't. There's also legislation that allows the office of the information commissioner to do outreach and education, which I also do, even though it's not in my act. I think it's important for people to understand what their rights are and how the legislation is applicable.

The implementation of legislation is really hard to monitor because it's within the administration of the government and each institution is doing it differently, so we have institutions that are doing really well and others that are not doing as well with the same act. So far, there are not a lot of tools out there to say which country is doing better than others.

Interestingly, in Brazil, they don't have an independent commissioner, but every access request is on their website. The time it takes to respond to every access request is available.

There are some tools out there, and every time I see something like these, I tell TBS, because I want it to compare and see what best practices exist. Clearly, Canada can do better. We used to be doing really well, but at this point, we're not meeting up with the current principles in legislation.

[*Translation*]

The Chair: Ms. Lapointe, you have two minutes and 10 seconds.

Linda Lapointe: Thank you for being here today and for your answer to the question my colleague asked you about other countries. You talked about 200 requests a year. What can you tell us about the evolution of access to information, having been in your position since 2018?

Caroline Maynard: In terms of the evolution of access to information, requests are increasing by about 20% every year. Every year, there are more requests, and every year, my office receives between 3% and 5% of complaints.

Linda Lapointe: Can you tell us where the requests are coming from? Is it from individuals, businesses, elected officials?

Caroline Maynard: Based on the Treasury Board report—they're really the ones with the data—the majority of requests come from businesses and commercial entities, but they also often come from immigration officers, who are considered businesses.

As a result, many requests are made by the Department of Immigration, Refugees and Citizenship. That covers a lot of people in Canada.

Linda Lapointe: I understand that a lot of access to information requests are related to immigration. That's interesting.

You were talking about the difficulty of processing requests. The act has been around since 1983. Has it been revised or updated?

Caroline Maynard: The only significant update that took place was back in 2019. As for the act itself, the exclusions weren't reviewed, but I got the power to issue orders at that time. Before 2019, commissioners were only allowed to make recommendations.

Linda Lapointe: Earlier, you and some of my colleagues talked about information in various places, including emails. Everyone used to work with paper documents. How do you deal with all of that information? We've talked about it a bit, but let's imagine that someone is looking for fairly broad information. Is there a way to make a request? Indeed, if the information is very broad, it will lead to an enormous number of documents to be reviewed.

● (1300)

Caroline Maynard: Yes, a very vague access to information request certainly isn't ideal. Institutions often try to deal with the person requesting the information and explain to them that, if they submit their request as is, they will receive two million pages. The institutions will try working with the requester to reduce the scope of the request. That's sometimes impossible, though, because they won't want to change it. However, the act currently has a provision that enables institutions to ask for my permission to not respond to a request that's made in bad faith or that would be unreasonable, given that the volume of information in the response would be too high.

The Chair: Thank you.

Mr. Thériault, you have the floor for two and a half minutes.

Luc Thériault: That's kind of you, Mr. Chair.

Ms. Maynard, you started listing amendments earlier. The people listening to us may not read your report, so I'd find it interesting if you could give us the whole picture.

Could you complete your list?

Caroline Maynard: There are a lot of things that could be improved in the Access to Information Act. Section 21 is often invoked; it deals with the advice and recommendations of public servants. It is often used in a somewhat abusive way, according to our office and our investigations. Other acts have provisions that provide for a list to exclude certain information, such as facts and statistics. We'd like to draw a comparison with those other acts to help the people who enforce the Access to Information Act to better respect the intent behind that section.

Of course, when we talk about judicial or *de novo* review, there are important things to know. The Office of the Information Commissioner can currently act as a party in a hearing before the Federal Court. I think it's important to maintain that, because complainants often aren't represented and don't see the file. We see the file when we conduct an investigation. It's important for the Office of the Information Commissioner to retain that power and to be able to represent access-related interests, not to mention the complainant's interests, and to defend the application of the Access to Information Act, even if a file goes before the Federal Court. It's particular.

The Chair: You have 30 seconds.

Luc Thériault: In terms of the increase in complaints, you said there were 200,000. Do you have an explanation for that?

Caroline Maynard: There were 200,000 access requests.

Luc Thériault: Yes, and a lot of people make complaints.

Caroline Maynard: As was mentioned earlier, people want to know what's going on and ask questions. I think that's one of the main reasons.

Luc Thériault: Okay.

The Chair: Thank you, Mr. Thériault.

Commissioner, on behalf of all committee members, thank you for your testimony today.

I'd also like to thank the clerk, the analysts and the technicians.

[*English*]

That concludes our meeting for today.

We'll see you Wednesday at 4:30.

The meeting is adjourned.