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Chair

Mr. David Chatters

Standing Committee on Access to Information, Privacy and Ethics

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● (0905)

[*English*]

The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning, ladies and gentlemen. This is the Standing Committee on Access to Information, Privacy and Ethics. We have before us today a former member of Parliament, John Bryden, who is here to address us on information matters.

Good morning, Mr. Bryden.

Mr. John Bryden (Former Member of Parliament): Good morning.

The Acting Chair (Mr. David Tilson): I'm the acting chair, Mr. Bryden, and I'm filling in for David Chatters, who is the chair and has been ill. He sends his regrets that he's unable to be here.

The only question he had for me to ask you was, where's his $100?

Mr. John Bryden: Well, he's not going to get his $100 because I'm convinced this legislation will go through. The bet actually stems from the fact that I lost this bill as Bill C-206, and Mr. Chatters suggested at the time that I was not going to succeed. I said, “I may lose now, but I'll win again”. We'll see.

The Acting Chair (Mr. David Tilson): Well, Mr. Bryden, your name has popped up in the last little while. We had Commissioner Reid before us on information matters and we had Minister Cotler talking to us on information matters.

Members of the committee, I believe you all have the chronology, Bill C-201, and the task force report.

Mr. Bryden, if you could say a few words to us, then members of the committee will probably have some questions for you.

Mr. John Bryden: Thank you very much. I'm very pleased to be here.

Mr. Chatters' bets and my bets notwithstanding, I have to tell you that I'd all but lost hope that access to information reform would be going forward, even in the next decade. You'll see by the chronology that there's a long history of my efforts—a whole decade of trying to bring even minimal reform to the Access to Information Act. I'll go through that chronology presently.

Toward the end of the last Parliament I was convinced I had brought most of the major bureaucracy on side with access to information reform. I was convinced that I had brought most of the members of my party and most members of the House of Commons on side on access to information reform. When Bill C-462 was about to go forward, I was well persuaded that it would succeed. Unfortunately, the Prime Minister of the day, Mr. Chrétien, as you all well know, was forced out of office about a year earlier than would have normally been expected, and as a consequence, my bill came under the purview of the following Prime Minister.

I had great hope, nevertheless. And you will see as you go through the documents that at the time of my ad hoc committee, our second recommendation was that the leader of the House of Commons, the Prime Minister, should make a strong statement endorsing freedom of information reform, thereby setting the tone for transparency in government. That did not happen under Mr. Chrétien. I'd like to think it might have happened had he had more time, but it didn't happen.

However, I took great heart when Bill C-462 went before the House and got the unanimous consent of the House. I sat in the unfamiliar position of the opposition benches and looked across and saw the new Prime Minister stand in support of Bill C-462. I felt certain then that whatever happened, even if I could not return to politics, the new government would get behind access to information reform.

Pat Martin put my bill forward as the first item of business in this Parliament and then, as I understand it, came to an arrangement with the justice minister. The justice minister was to take up Bill C-201—now Bill C-462—and it would go forward. You can imagine my disappointment when a discussion paper was received by this committee instead—I have it before me here—that basically ignores many of the clauses in Bill C-462/Bill C-201 that would have opened government, and it proposes even more secrecy.

It wasn't even the content of the discussion paper—which I'm prepared to discuss in some detail if people are interested—that bothered me; it was the fact that the government was calling for yet further discussion. There has been discussion for ten years, and I can tell you that inside the bureaucracy some of the efforts have been superb. We're not dealing with a bureaucracy that doesn't want access or freedom of information reform.

The work of the task force that went on for two years was excellent and detailed. I don't agree with some of its findings, but the work was done. To have the government turn around and say it wanted further discussion gave me the feeling that if we have further discussion from ground zero, then we're not looking at any movement on this issue for another five to ten years.

Let me explain something to you. This is not a partisan position I'm taking. Wherever you go in the world, when you're dealing with the problem of freedom of information reform, there's always resistance. Much of that resistance you cannot see. I'm firmly convinced that 90% of the bureaucracy in this government believes in access to information reform. We may differ in detail, but I'm absolutely convinced that most people want it.

● (0910)

I'm also absolutely convinced that most politicians want it. The difficulty is that there are 10% out there who are afraid of it. They may be afraid of it for bad reasons and they may be afraid of it for sincere or, in their minds, proper reasons. But the reality is they are the ones who whisper in the ear of power. They're the ones who whisper in the ear of leadership, whether that leadership is bureaucratic leadership or political leadership, and they cause that leadership to hesitate and to seek more discussion.

Now, here's the difficulty. People like me come along on an issue only occasionally. The reason I was so interested in this issue is that it happens I'm a historian and journalist by profession. I have those two walks of life. So when I arrived as an MP in 1993, I was extremely interested in access to information reform because I had experienced the bill in two senses. As a historian in military intelligence matters I had run into enormous problems with respect to getting documents, problems that made no sense. The difficulty there is that if you bar the ability of those who write Canada's history to get at the facts of that history, you deprive the nation. It's the nation that suffers, because we need to get at the truth and understand our past. And we, especially, as Canadians have a brilliant past. We have done brilliant things, certainly in the area of interest that I am involved in, in military matters, yet many of those stories remain untold.

So it's very important to allow our historians and our writers to have access.

Then, of course, there's the journalist side of me. I was a journalist for 25 years. It was very apparent, even before I came up here, that there were tremendous limitations in the act because there were so many exclusions. The most obvious area of exclusion is crown corporations...not crown corporations—some of them are covered—but certain government agencies, a whole variety of government agencies. There are many exceptions to the Access to Information Act, and those exceptions have built up over time.

So there are two very obvious areas of reform that I wanted to be involved in.

The number of MPs in 1993 and 1994 who were interested in access to information reform, who actually perceived a problem, was very limited, in my view. There were only three of us. I didn't put it on the chronology, but we actually met I think in May 1994, in the spring of 1994, to discuss the problem of bringing reform to Canada's freedom of information laws and to open up government generally and bring better transparency to government. One of them is with us here now—Mr. Lee. There was Mr. Lee, me, and John English, who, as you know, is a distinguished historian. We divided the problem.

Mr. Lee was going to examine parliamentary privilege and seek reforms or the better use of parliamentary privilege.

Mr. English was going to undertake to work to merge the roles of the Information Commissioner and the Privacy Commissioner. Even in those early days we perceived that there were difficulties because there was a constant conflict between the two offices. We felt that bringing them under one umbrella would be a better way to facilitate getting information.

The job I offered to do was to bring access to information reform to the actual legislation, and if necessary, introduce a private member's bill.

So you see the chronology. We worked on that over the years.

Over that ten years I can tell you I've had wonderful cooperation and wonderful help from a variety of people. The first thing we did, though...and it's probably very unusual for this legislation, but because I wanted to overhaul the act entirely, that is, do a complete write-through, shall we say, involving numerous amendments, I undertook to do that write-through myself. So this bill is unusual insofar as it is actually written by me in close cooperation with a legislative drafter. That legislative drafter's name is Susan Krongold. She's in the room now, behind me. The only question she could possibly answer is how difficult it was to work with me. But we did sit down side by side, and I was able to use my expertise as a writer and historian to define what I thought needed to be done, and Susan made the appropriate changes in the legislation.

● (0915)

Thus came about the first bill in access to information. That was Bill C-264 in your agenda. My problem was, once it was written as a private member's bill, I couldn't get it forward because I couldn't control its being selected. It was a lottery for private members' bills in those days. So the Standing Orders were changed, and I solicited 100 backbench MPs to support the bill. With their support and the change in the Standing Orders, the bill came forward to the House.

The bill actually came as Bill C-264. You'll see that once it was in the House, the government showed a great deal of interest in it. I can tell you there was great cooperation, particularly from the Privy Council Office. They sent people over to talk to me about the bill, and there were also people from the justice department. They never suggested to me that I should change this or that to serve their ends. They simply offered their advice to make sure there was nothing Susan and I had done that didn't work—no fundamental error that would cause the bill to be bounced from the House or from committee. They were very helpful at this stage and made a number of recommendations that I incorporated in the bill.

Then I made a mistake. I sought unanimous consent for those changes, and I got it. But we all know as MPs that if you go into the House and there are only a handful of MPs and you seek unanimous consent on something and you get it, you're not necessarily getting the unanimous consent of the rest of the MPs in the House. In consequence, some MPs in the opposition who had originally supported the bill became annoyed that I didn't consult them. When the bill came to the House as Bill C-206—there was an election in the interim—I had essentially lost the support of the Bloc Québécois along with most of the support of the Reform Party.

However, I still believed the bill would go forward. I thought I had the support of my own party, which had a significant majority. When the bill came forward to the House for the vote on second reading on Bill C-206, memos and notes were circulated on the government side condemning the bill. Liberal MPs were even phoned by cabinet ministers at home and in their offices and told not to support the bill.

I was completely flabbergasted. The Prime Minister, Mr. Chrétien, was not in the country at the time. The bill had come forward when he was out of the country. So the bill went forward and it lost 44 to 178. So I lost not only the opposition support but also much of the support of the government side. Many of my MP colleagues, my Liberal colleagues, were very upset that they were called upon to vote against this legislation of mine, because even at that time I was well associated with it.

Subsequent to that, I obtained a cabinet document—a communication between the justice department and cabinet. Interestingly enough, it bypassed the normal process. It didn't go through the PCO, so the Privy Council Office wasn't aware of this document. This document was in the form of talking notes to cabinet, an analysis of Bill C-206. These talking notes totally misrepresented the impact of the bill. They went so far as to say that the Privacy Commissioner had said it was a threat to privacy. The Privacy Commissioner, it turned out, had never been consulted. I raised this as a point of privilege in the House. With great respect to the Speaker of the House, the Speaker couldn't come to any, shall we say, substantive ruling. The reason for raising it in the House was to get it on the record and get the documents on the record.

● (0920)

I tell you this story for a reason. In looking back on that particular incident, it is a good example of how there can be forces and movement at work behind the scenes to defeat this kind of initiative. These forces and movements may not be directly associated with the leadership in the bureaucracy or the leadership in the Prime Minister's Office.

After my point of privilege, the government undertook to study access to information reform in detail. That was the origin of the task force. As I mentioned earlier, I have to say that they did an excellent job.

Now the problem was this. When the task force was sitting, the task force was an internal task force struck for Treasury Board and the justice department. Consequently, there was no input and involvement from the politicians, from the members of Parliament. So we formed an ad hoc committee with some other members of Parliament on all sides of the House.

The purpose for the ad hoc committee was to simultaneously study the issues of access to information reform and come up with a recommendation. I had such enthusiasm from all parties of members who had actually joined this ad hoc committee that we were prepared to sit in the summer. We actually commenced sittings in the summer.

I sent out memos to crown corporations. I remember Canada Post expressed an interest in coming before the committee to discuss the possibility of coming under access to information. There were various other crown corporations that I had mainly approached.

Unfortunately, the government suddenly declared that all public servants should not be allowed to appear before the ad hoc committee on access to information on the grounds that it was not a standing committee. This was a committee of merely backbench MPs.

I should add that even though we were not a standing committee, the House rules provide for any MP to form a discussion group here in the House and to have the full facilities. Our ad hoc committee had the ability to use translation services, and it was a standing committee in every respect in the way it operated.

We were stopped from our ability to call the public servants. The public servants informed us that because of this stricture, they could not attend. We had limited hearings, shall we say, which still led to a report. The report is here. We can comment on it if you wish at a later time. It made 11 recommendations. After that, the task force produced its report.

When the task force produced its report, we again struck the committee and had a few meetings. Because time was pressing, the committee members allowed me to take the best, or what I thought in my judgment was the best, and the most non-controversial recommendations of the ad hoc committee, combined with what was already in the former Bill C-206, to create Bill C-462. That was the origin of Bill C-462.

Mr. Reid is quite an advocate for freedom of information. He and I don't necessarily see eye to eye. I only want you to know that. The reason is because when I framed Bill C-462, I was wearing two hats. One hat was as a member of Parliament, former journalist, and historian, who wanted access to as much as possible, and the other hat was the hat of a member of the government side, who has to respect the fact the government must function.

I tried to strike a balance in Bill C-462. It went forward, and now you know the rest of the story. It got unanimous consent in the House, and I really felt that we were home free.

I'll wind up now. We are now in a position where, for reasons that I cannot fathom, this government has decided not to go forward or not to support going forward on this private member's initiative, much of which reflects the very recommendations of its own task force, and it has called for further discussions.

● (0925)

I can only say that I think what you are seeing is a recycling of this whole problem where responsible leadership, whether it's in a government department, the PMO, or the PCO, always wants to hear all points of view. If we allow the work of the past to be set aside, the work that I've done, the work that John Reid has done, the legislation that you have before you or that was before the House, which can be changed, of course, then we'll begin again. If we begin again, then the new Prime Minister, the Prime Minister of today should he be re-elected as Prime Minister, or perhaps the Prime Minister of another party should he be the Prime Minister, will listen to all those people who will say that access to information reform is a good idea but there's a problem. Even though we have dealt with those problems, even though those problems have been dealt with by the task force, it will all recycle again. There will be no progress.

Let me say two final things. In the 10 years that I've worked on access to information reform, it's been taken up by the world. Approximately 50 countries have now come onside with their own freedom of information legislation, countries like Bulgaria, Romania, Hong Kong, Finland—there are all kinds of countries around the world. Britain has been very slow and very reluctant to come onside, but Britain came onside in January. I'll say in passing that Britain actually sent a delegation to my office to get my input on its own access to information bill.

We don't want to be in the situation where we're trailing the world in freedom of information reform. We don't want to buck the trend for more transparency around the world by increasing secrecy here. That would be the wrong thing to do.

Finally, the other thing I want to say is something that was very close to my heart as a member of Parliament. When government is in disarray, when the public for one reason or another is losing faith in the government of the day because of scandal or whatever else occurs, we mustn't allow the citizens of Canada to lose faith in Parliament. What I believe is so essential and so important and is above the actual contents of Bill C-201 or Bill C-462 is the necessity of backbench members of Parliament to show that they are a responsible part of the governing process in Canada. They must show that when the government of the day is in disarray, the public can still rely on Parliament to act in their interests. Access to information reform is enormously in the public interest and in the interest of the nation. I'm hoping that this committee, and the members of this committee as backbench MPs, will carry the torch.

I am sorry to have taken so long.

● (0930)

The Acting Chair (Mr. David Tilson): No, Mr. Bryden, you've given the members of the committee an excellent history of this bill. As a newly elected member—and I don't know whether I can still say that or not, but I guess I am still—you have given me an insight into the workings of this place. On behalf of the committee, I appreciate all of those comments.

I expect the members of the committee will want to enter into dialogue with you on some of the issues of your bill and the topic of access to information generally.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Just out of curiosity, and before I get into my questions, what are you up to these days?

Mr. John Bryden: I've gone back to writing books on military intelligence. I'm working on a book on wartime counter-espionage, which takes me to the archives in England and Washington quite a bit.

Mr. Tom Lukiwski: It's a pleasure to meet you, finally.

Thank you very much for your detailed chronological breakdown of the genesis of your bill and where it is today. I appreciate that very much.

I should say as an aside, before I get into my questions, that as a rookie MP I introduced a private member's bill in the last couple of weeks on identity theft. I know the amount of work I put into that, and I can appreciate the amount of work you've put into Bill C-462. I can empathize with you if you did not see the fruition of all of your years of work.

I have a question on Bill C-462. I notice that in Bill C-462 you extend the legislation to the offices of members of Parliament. I'm wondering what you were trying to get at there. As you well know more than anyone, currently financial records from all members of Parliament are made public. I suppose the only other truly significant documents or pieces of information contained in MPs' offices would be a lot of the case work done at the constituency office level. That, of course, is exempted because of privacy provisions and concerns.

I'm wondering exactly why you wanted to extend this to the offices of MPs.

● (0935)

Mr. John Bryden: That arose primarily from the Radwanski kerfuffle. I was suddenly confronted with the problem that there we were, investigating Mr. Radwanski on the issue of expense accounts, and the same level of transparency didn't apply to MPs.

It's entirely a public confidence measure, and I believe as the legislation exists now, with the amendments that are in the legislation, MPs don't have to worry about the confidences of their offices, but in discussing the bill, this is something the committee needs to explore. You need to make sure that the transparency that comes to bear on members of Parliament and senators as a result of this change goes no further than what ought to be public information, because it is extremely important that MPs retain the ability to deal with their constituents and engage in some partisan politics.

Let me say one other thing with respect to that, though. That particular change, like the change of bringing the CBC under access to information reform because of the confidentiality of the interviews of journalists, created a lot of fear. I was approached by a number of members—and I should say on all sides of the House—who expressed concern about that. I now understand the reason.

The reason is that if you bring in that reform and make it retroactive, what MPs are worried about—and you'll find that this concern exists in crown corporations as well—is that MPs who have not carefully administered their financial accounts, who have left it to people who just haven't handled it properly, are afraid that the exposure will create a situation where they'll be asked questions they can't answer. They may be as honest and as true and as blue and as responsible as ever, but if you change the rule of the game later, you're going to create fear among the members of Parliament.

If I were doing this again, I would make an amendment to that, making it effective for MPs and senators only at the time the bill comes into force. I think the committee should also consider grandfathering some of the public agencies for that same reason.

Mr. Tom Lukiwski: Thank you for that.

If I interpret your remarks correctly, you are not really concerned about a lot of the information that would come forth. You're not accusing or thinking that perhaps some members of Parliament have something to hide. It's merely that this would be more for the public's consumption, to bring more confidence into the public's mind as to the role of the MP.

Let me just ask you this. I'm just curious. You may or may not want to get into this, and I don't know how relevant it is to the committee—if it is not relevant, perhaps we can move on. I wonder if this provision caused, in some part, the reversal of intentions from a lot of the MPs. You at one time had unanimous support for the bill, and then ultimately it was defeated. Do you have any comments as to exactly what occurred and why, and why the about-face so rapidly?

Mr. John Bryden: That goes back to Bill C-206. I think that's a case of my own fault, actually. Basically, I made changes. One of the changes I made was a contingency planning amendment that would have allowed the government to protect information pertaining to its plans in the event of the breakup of Canada. I introduced that particular amendment in the context of the referendum because I felt government should be protected in that type of planning. I got the unanimous consent, but I did not consult the Bloc beforehand, and the Bloc—very rightly, I think—felt that I had acted improperly and withdrew their support from the bill.

I don't think this business of MPs' offices is a major barrier to support for this, as long as you make it effective from the time of the bill forward, rather than making it retroactive.

● (0940)

The Acting Chair (Mr. David Tilson): Mr. Boulianne, please.

[*Translation*]

Mr. Marc Boulianne (Mégantic—L'Érable, BQ): Thank you, Mr. Chairman.

Welcome to our committee, Mr. Bryden.

To quote our Chairman, you've indeed provided us with an excellent history of this bill, undoubtedly thanks to your background as an historian. As a new MP, I think I have a clear picture of how the situation has evolved.

We see that you are passionate about reform and that you have worked on this issue. Your name often came up during our proceedings, along with that of Pat Martin. You made a number of recommendations and clearly, you believe in the reform process.

You also stated that 90 per cent of the bureaucracy believes in access to information reform and is working to that end.

However, it's quite another matter when it comes to MPs and to the committee. Generally, we tend to be skeptical. I would even venture to say that we are pessimistic where this bill is concerned. Instead of a framework document, we would have preferred to see the minister table a draft bill or bill. As matters now stand, we more or less believe in the process, and that's problematic.

When asked last week if he was optimistic or pessimistic about the chances of reform succeeding, Mr. Reid responded that he was pessimistic and that we would be better off with the status quo than with the announced reform measures.

Do you agree with his position? I'd like to hear you views on the subject. Can we be reasonably certain about this process actually going forward? If so, will it be more solid and effective than what is provided for in the existing legislation?

Mr. John Bryden: It's very important to undertake this reform immediately. The legislation has been in place for some time now and greater transparency would be in the best interests of all Canadians.

In my opinion, the Bloc members were a step ahead of us on this issue. Several of them, in particular Mr. Crête, helped me a great deal to draw up this bill.

[*English*]

I really don't think we can afford to wait any longer.

I don't agree with Mr. Reid. This committee has the power. I know the rules of the House. I know that if you make the recommendation to refer Bill C-201 to this committee and it gets the consent of the House, it will happen. Now, it may not happen in this Parliament, the bill may not go through this Parliament, but it is absolutely essential, in my view, that parliamentarians establish the principle that they believe in transparency, and that no matter what government is in power in this country the parliamentarians of this country will push for this bill. If I'm not here, then the bill still has to be pushed forward.

And I really do believe absolutely that it is not dependent on whether you are a Bloquiste or whether you are an NDPer or whether you are a Liberal. It's not dependent upon the aspirations of the Bloc as a sovereignist party. Whether we are a part of this country in Quebec or a part of this country in Alberta or a part of the entire country, we all have the same interest in this country, and that is, we must move forward with the kind of transparency these reforms would require.

[*Translation*]

Mr. Marc Boulianne: The Bloc Québécois agrees with you on the question of transparency. Every intervention made or action taken by our members is aimed at achieving transparency at all levels.

You also said that some steps have already been taken, but that we have come to an impasses of some kind. Why is that? Why do you think that ten years into the process, we seem to be spinning our wheels? We still don't have a draft bill on the table, and we're still at the consultation and discussion stage.

[*English*]

Mr. John Bryden: Well, it's part of the rules of the House. It took me two or three years to get Bill C-264, the first private member's bill. Remember, it's a lottery. I had the bill written in the first reading, but it still had to be picked. Unfortunately, I actually had to campaign to change the standing rules. I created the 100-signature rule, so that I could get 100 signatures for my own bill. Of course, the New Democratic Party later supported withdrawing that change to the Standing Orders, not knowing it was there in the first place for my access to information bill.

It's very difficult for a private member to move forward with legislation, but I really do believe that if the individual member has a bill that has the overwhelming support of all parties, the government cannot resist it. I was disappointed that Mr. Martin did not go forward with Bill C-201 when he had the opportunity, because the government would not have been able to resist it and you would have had the bill before you. Now, the bill would never have succeeded in the long run, because the life of this Parliament may be somewhat short, as we now know. Nevertheless, if you get it before the committee and move it forward, with each step you take in each Parliament, it becomes irresistible in the next Parliament. Just remember that whatever government comes in, whether it's a Liberal government, an NDP government, a Conservative government, or, if you'll forgive me, a Bloc government, any of those governments will have the same people whispering in your ear saying, don't move, don't move; this is a problem, this is a problem.

So it has to come from the backbench, and it's the members here who must move the project forward.

● (0945)

[*Translation*]

Mr. Marc Boulianne: Do you agree with Mr. Martin who stated, several days ago, that had the Member tabled the bill, we would be much further along in the process? The implication was that the bill would perhaps be adopted. As things stand, the minister is just now presenting the draft legislation.

[*English*]

Mr. John Bryden: I think Mr. Martin made a mistake; he should have proceeded with the bill as he had it. As I understand it, he was given an undertaking, and that undertaking was not fulfilled. We got this discussion paper, which falls far short.

I think the damage can be repaired, because if this committee were to take up the bill, the bill would, in matter of fact, have that much more force, because it wouldn't be just Mr. Martin, but the members of this committee. It would be wonderful if you did it unanimously too.

The Acting Chair (Mr. David Tilson): We're on to Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you, Mr. Chairman.

Thank you, Mr. Bryden, for reminding us about all the work you've put into this. I was a sometime traveller and associate of yours over the years.

As you point out, members from every party in the House, that's all parties—the Liberals, the Conservatives, the Reform, the Bloc, and the NDP—at some point or other failed to deliver up support at critical junctures. We all have to shoulder some of the blame.

In terms of where we go from here, the work that you, mostly, and some others have done around here, including Mr. Reid.... There must have been a truckload of people, to use that analogy again, who've worked on this.

I'd just like to get your advice as a parliamentarian about where we might go from here.

I'm going to offer you two alternatives. Number one, the committee could work through the framework discussion paper that the justice department has recently offered, with or without reference to what we're calling the Bryden Bill—which I don't think you'll mind our calling this. The second alternative is just to proceed and study the bill as it exists now in Mr. Martin's name, without reference to anything else, much in the way we would do it if the bill had been referred to us.

I say this while realizing that this Parliament might go on for another month or another year; we're not sure. Given that there seems to be a clock running here, with an uncertain time on it, which of those procedures would we best be advised to follow, if the committee wanted to dedicate itself to a reform initiative?

● (0950)

Mr. John Bryden: I think it's very important to go with the bill because the bill speaks to all MPs. The discussion paper is the discussion paper of government. You can take your choice. You can be led by government or you can be led by all MPs, by the backbench. I suggest going with Bill C-201.

Let me say also that should the chair or any member want it, I'm prepared to discuss the recommendations in the discussion paper. I find some of the recommendations very disturbing. Not only would the recommendations take this committee into new areas of secrecy that aren't even dealt with in Bill C-201, but they also dismiss some of the recommendations for transparency that were recommended by its own task force.

So I would suggest to you that if you were to go forward with the discussion paper, the committee would not be using its time well, and I don't think the government would come off looking very good on it.

Mr. Derek Lee: What about a hybrid approach where we went through the bill clause by clause and then made reference to every juncture where the government framework paper impacted on the bill?

Mr. John Bryden: I would say to you, what are you afraid of? What's wrong with taking a backbench MP's bill, a private member's bill, and examining it? Why do you have to qualify that examination?

This committee is the master of its own agenda. Each member might want to discuss particular clauses in the bill. Those clauses are laid down. If you want to talk about cabinet confidences, that's dealt with in the bill. If you want to deal with the 30-year rule the Americans have, that's dealt with in the bill. But you don't have to qualify it. Why restrict yourselves?

Mr. Derek Lee: I'm not suggesting a restriction. I'm talking about going through the bill, and every time the bill impacts on an element of the government reference paper, we would make reference to it at that point.

I'm saying this for a reason. There's more than one component here driving this reform initiative. It's not just Parliament; it's also government. It's necessary to incorporate government into the initiative because it is the government that is impacted the most by the legislation.

It would be naive for us to think we could drive a reform here with the government outside the door with a shotgun—I'm speaking figuratively—impeding progress or—

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): It would have to be registered.

Mr. Derek Lee: Yes, it would be a registered shotgun.

The Acting Chair (Mr. David Tilson): Let's move on.

Mr. Derek Lee: That's why I'm suggesting this.

Mr. John Bryden: Of course, but that's the process. If you want to talk about cabinet confidences, what's in the bill now on the recommendations for cabinet confidences is what was recommended by the task force. What is in the discussion paper is the complete opposite. The normal procedure in any committee discussing any legislation is to take that particular clause, bring the bureaucrats and the interested parties before the committee, and ask, why do you want this, or why do you want that?

I'd be very curious to know why the government has rejected the findings of its own task force. Just about every jurisdiction in Canada and the world believes cabinet confidences should be part of the legislation. Instead, the government has proposed in the discussion paper that the exclusion continue. It makes no sense to me, and I would dearly love to be here on this committee to hear the witnesses from the government explain why they want to retain the exclusion.

The Acting Chair (Mr. David Tilson): Mr. Broadbent.

Hon. Ed Broadbent (Ottawa Centre, NDP): Thank you, Mr. Chairman.

I'd like to join my colleagues in welcoming you before the committee. Frankly, I very much enjoyed your historical overview. I did not find it to be too long at all. I found it to be quite informative and useful.

I want to say at the outset that I was mystified when the Minister of Justice came before us and presented this discussion paper. I believe he is a man of integrity, but things happen in the political process.

After he had given his commitment as Minister of Justice to the substance of this bill, he persuaded my colleague not to proceed with it as a private member's bill on the grounds that the government would in fact bring in a bill substantively as strong in its provisions as that one. Then we got this incredible discussion paper that, as you have pointed out and I think as most members of the committee instantly recognized, would simply drag out this process and probably drag it out beyond the length of this Parliament. It would not only drag it out, but we'd be back to square one. That's a very real concern.

I'd like to add an option to the two options of my friend, Derek Lee. I noted with interest that he didn't present an option for your consideration. It's in fact before the committee. I've taken the liberty of asking the clerk to give you a copy of it.

Based on your own parliamentary experience, I'm curious about your response. This was a technical solution to what I and other members of the committee thought would clearly reflect a majority in all parties on a disposition, which was to consider the bill originally in your name and now in the name of my colleague, Pat Martin. The real priority for us as a committee was to deal with the bill and not this bloody long discussion paper all over again.

I should pass on to you that we've had table officers comment on its admissibility. We have been assured that this could work in the House. Would you care to comment on it ?

● (0955)

Mr. John Bryden: From my own experience, I certainly think it should work, but there is another important principle here. We must bear in mind that it's a kind of moral principle, a parliamentary moral principle or ethical principle, if you will.

This bill received the unanimous consent of the House as Bill C-462. Mr. Martin was very careful not to make changes to the bill. Parliament has already expressed itself on this bill, as has the Prime Minister. I would submit to you that there is a moral obligation on the part of the Prime Minister to support this legislation, as indeed there is a moral obligation on the succeeding Parliament to bring in the same legislation at the same level.

It's not in the standing rules. It's not there, but it's what we understand to be our duty as parliamentarians. If we respect Parliament...if Parliament gives its unanimous consent to something in a standing vote and the next Parliament comes along and there are a few changed MPs, it doesn't matter because Parliament has expressed itself.

I believe we have a responsibility to go forward with Mr. Martin's bill. I am disappointed that the government didn't follow through when Mr. Martin offered the opportunity.

Hon. Ed Broadbent: On the same point, to have this committee consider the substance of the bill, following at one point the unanimous support it would receive in the House, do you conclude from this, however, that no clauses in the bill should be amended?

Mr. John Bryden: Oh, no.

Hon. Ed Broadbent: Okay. I wanted to be clear on that. I didn't think you would.

Mr. John Bryden: Can I make a comment?

Hon. Ed Broadbent: Yes, indeed.

Mr. John Bryden: Very briefly, were this committee to go forward on the bill or the legislation, I am equipped and able to fulfill the entire function of a deputy minister on this bill.

I brought a copy with me, which I can't give to you because it's my working copy. But I can give every member of the committee a consolidated copy, with some help from staff, that shows the existing bill on access to information, the proposed amendments of Bill C-201, and an explanation of each one of the amendments, exactly as you would get from the Department of Justice or any other ministry were you moving forward with a government bill. We can move forward with this.

I'm a private citizen right now, so I don't know how much I can help you, but I can certainly give some direction to the research staff.

Hon. Ed Broadbent: I think if we get to that point, and I hope we do, I'm sure such help would be welcomed by the staff.

I want to get back to the issue that has already been raised, which is the issue of MPs' offices being subject to the provisions. I think you would agree that there is a distinction to be made between having access to institutions of real power in terms of decision-making authority that directly affects citizens' lives, like the executive branch of government, and having access to all its appendages, if I can put it that way—commissions, crown corporations, and so on.

So there is one line of reasoning that could lead one to demand the fullest kind of information about what's going on, including the decision-making process within those institutions, that's conceptually of a different order from those in the legislative branch, who don't have direct authority, on a day-to-day basis, over the lives of the citizens of Canada.

I understand there is some concern by MPs that their own freedom of action, their own independence, could be affected by this clause. Although I understand the argument—I'm not sure I agree with it, but I understand it—that clause seems to be a real barrier to passing the bill. Given your role in its development, do you see any major problem if that clause were taken out?

● (1000)

Mr. John Bryden: No, not at all. And let me say that it's not up to me to decide on any amendment, but it's now up to this committee to make its recommendations.

Hon. Ed Broadbent: No, I know it's not. I just want your opinion.

Mr. John Bryden: No, I don't think the MPs' and senators' clause is a barrier to the passage of the bill in any sense. And if this committee were to decide not to go forward—because there are arguments, just as you suggest, to not doing it—it should be the backbench MPs who make this decision and not the government.

This is why it's so necessary that the MPs should be in charge of this reform, because if the government were to try to do this either way, the government would be subject to terrible criticism, but if the MPs want to do it, then it would be up to them.

Hon. Ed Broadbent: Thanks very much, Mr. Chairman.

The Acting Chair (Mr. David Tilson): Mr. Bains.

Mr. Navdeep Bains (Mississauga—Brampton South, Lib.): Thank you very much.

Again, thank you very much for coming out today, and I do really appreciate all the hard work you have put into it.

We've talked about the bill and we've talked about the chronology of the bill, how it's evolved, and your input into it. I want some feedback from you with respect to your understanding of the discussion document or the framework on reform that was presented by the justice department.

Do you perceive it to be value added? Do you perceive the questions that are being raised in the document to be legitimate? Do you think that could prompt any changes in the bill going forward?

Mr. John Bryden: All input is valued. One must always be aware that freedom of information legislation is really secrecy legislation. You have to strike a balance. I don't believe the bureaucracy, or indeed the government, really wants to perpetuate secrecy in favour of transparency.

Unfortunately, however, I don't know how this particular discussion document got on the minister's desk. Of the 17 recommendations, 13 are for more secrecy. It also introduces new concepts of secrecy. All of this is unnecessary.

As I mentioned earlier, if you want to discuss the cabinet confidences, you can discuss them in the context of Bill C-201. If you want to discuss whether the records of ministers' offices should be in the Access to Information Act, you can do it in the context of Bill C-201. I'll say in that context that this was again a surprise to me, because the reason I put that particular item in Bill C-462, now Bill C-201—the change in definition of the government institution that embraced ministers' offices—was because of the quasi scandal, if you will, involving the expense accounts of ministers' offices. It involved the former Minister Allan Rock and the former Minister Sheila Copps. It mentions here in that item that the Prime Minister intervened and said that ministers have to reveal their expense accounts. But it was the previous Prime Minister, not this Prime Minister.

To me it is an absolute given that the Access to Information Act should cover exempt staff of a minister's office. Again, this is where real reform comes in, because the minister's discussion paper makes the assumption that exempt staff need to be exempt from the Access to Information Act because they engage in partisan activity. I would submit to you, why should they be engaging in partisan activity when MPs cannot? Now just think about that. You as members of Parliament are not allowed to use your House of Commons expenses, your House of Commons accounts—the money you get from the House—for partisan activity. Yet it would appear that ministers are allowed.

So we need to re-examine that whole issue. The problem is that this discussion paper has come out without thought. I think it's too bad. I think the minister, Mr. Cotler, has not been well served by whoever drafted this one.

● (1005)

The Acting Chair (Mr. David Tilson): Thank you very much.

Mr. Hiebert.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you.

Again I express my appreciation for your years of commitment to this topic and your thorough discussion this morning.

I have a number of questions. First, you mentioned a change that you would make to your own legislation had you had the chance, and that's dealing with the timing of its application to members of Parliament. I'm wondering if you could quickly list for us other areas of possible change that you would make, in retrospect, to this legislation such that we could perhaps as a committee, if it came to that, spend more time on these areas.

Mr. John Bryden: There are not many changes I would suggest. I'm quite satisfied with the way it is now. However, in reflecting on what I've seen with the sponsorship events, the events where the government took issue with Canada Post and the administration of Mr. Ouellet, and with VIA Rail, I have come to realize that much of the hidden opposition to freedom of information and access to information reform comes from people in crown agencies. They are afraid of the legislation because it will reveal inadequacies on their part that arise from a lack of proper record-keeping.

In the case of Groupaction, we saw that the Auditor General was very upset about records not having been kept. In some crown agencies, because of the lack of transparency, proper records were not kept. Even though the operation is honest, as honest as possible, if proper records aren't kept, then you are subject to questions you cannot answer. Of course, these people are going to be fearful of access to information reform.

My recommendation to the committee would be to scrap section 24, the list of crown corporations that are exempted—schedule II, I guess it is. But make the disclosure of those corporations retroactive. Give them about 15 years and make it effective now. The objections to the passage of this bill from those circles will vanish, along with the objections of members of Parliament and senators. Don't change the rules overnight. Give people a bit of a chance. Show a little mercy. That's my attitude.

Mr. Russ Hiebert: Is there any other opposition to it you would expect? You've talked about members of Parliament, members of crown corporations. Is there anyone else you would expect to stand up and raise a flag saying they couldn't let this pass? I'm trying to anticipate any opposition.

Mr. John Bryden: The problem is that opposition to this type of legislation in any country is always hidden. People will come up to you, tell you it's a great idea, and then do everything possible to torpedo it behind your back. This is why it takes the will of backbench MPs, rather than the will of government, to move forward with this.

I don't know where the opposition exists. There is some well-intended opposition that's afraid of this legislation. They're afraid they'll be embarrassed because they didn't keep proper records. Also, there are probably people out there who don't want this legislation because they genuinely have things to hide.

I'll point out one other reform with respect to the discussion paper. The discussion paper proposes that section 21—the government operations section of the Access to Information Act, the section that requires secrecy in order to protect the operation of government—be amended to extend to consultants' advice the same protection currently given to the advice of recommendations developed by ministers.

If that recommendation were followed, or was in the legislation, the Groupaction issue would never have occurred, because the Groupaction documents would not have been available. You would never have known that there was no second report. There would be no way of knowing, because the government, with this protection, would never have had to disclose it . We have this incredible situation where we have a sponsorship inquiry going on at this moment, where we have testimony that is of great concern to all of us. The whole process, however, would never have existed if this recommendation of the government had been in the Access to Information Act, because we never would have known.

● (1010)

The Acting Chair (Mr. David Tilson): We'll have to wait for another round to go through this issue.

Ms. Jennings.

Hon. Marlene Jennings: Thank you, Chair.

Thank you very much, Mr. Bryden, for coming here and giving us your insight and wisdom and experience with the entire process, and for your views regarding both the government's task force report and recommendations and your fresh look at Bill C-201.

The question I want to ask you does not deal precisely with Bill C-201, which was formerly your bill. It has to do with the process of getting that bill, if it's the will of the House, before this committee.

If this committee decides that's the option we wish, that we wish to concentrate on updating access to information legislation and we believe it would be appropriate to use the scenario Mr. Lee suggested—of the three scenarios he suggested—that it's Bill C-201 at second reading.... There's a motion before this committee. That motion would have this committee report to the House:

> That notwithstanding the Standing Orders or usual practices of the House, Bill C-201, an Act to amend the Access to Information Act and to make amendments to other Acts, be deemed to have been read a second time and referred to the Standing Committee on Access to Information, Privacy and Ethics.

My concern with that is first that the House recently amended the Standing Orders with regard to private members' bills and has just announced that the order of precedence will be replenished very soon, allowing then any backbench MP to bring forward Bill C-201, as Mr. Martin did when the House came back after the elections.

We've seen the House, through unanimous consent, deem a bill to have been read a first time, read a second time, and referred to committee at second reading. But normally, deeming bills to be passed at a certain stage without debate is done through the unanimous consent of the House.

So my concern is that if this committee were to do this, it would be setting a precedent, which at this point, because we're a minority government, is not really a problem. But should there ever be a party that's elected—and hopefully there will be—as a majority government, that government could then use that as a precedent to simply move its bills right into committee and then out of committee—because there would be a majority both in the House and in committee—in order to scuttle real debate on legislation.

I'd like to have your view on that as a possible precedent.

● (1015)

The Acting Chair (Mr. David Tilson): That is a most relevant question, except it took three and a half minutes to ask it.

Mr. Bryden.

Mr. John Bryden: Some of my replies are rather lengthy.

The government can always abuse its power when it has a majority. I don't think this is a question of precedent; this is a question of responsible government. I would hope that no matter what party takes power, it would not abuse the process. It could do that right now. I don't think it has anything to do with what's before us.

Hon. Marlene Jennings: So you're not concerned that this would negate the current rules?

Mr. John Bryden: We have a responsible democracy here. If the government abuses its power by doing this type of thing that you fear, the media would scream, and hopefully the government would pay subsequently in the polls.

The Acting Chair (Mr. David Tilson): You'll have to wait for another round, Ms. Jennings.

Mr. Laframboise.

[*Translation*]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Earlier, my colleague reiterated what the federal Information Commissioner has said about the bill put forward by the minister. Mr. Reid argued that the bill, as drafted, was worse than the existing legislation. I understand what he's saying. When the minister tabled the proposed reform legislation, he told us to take our time and to hear from all of the witnesses. We got the impression that he wanted to buy some time, so that part of the bill and the costs associated with it could be considered. He wanted to increase fees charged to businesses and for major requests for access to information and in fact, to ask the Office of the Information Commissioner to generate some revenue to finance its...

The real problem is the lack of staff at the Office. The bill does nothing to address that problem. I'd like to hear your views on this matter. You're aware that the Liberal Party's actions surrounding the sponsorship scandal have led to an increase in the number of requests for information. Many of these requests cannot be processed owing to a shortage of personnel. The bill calls for greater transparency, and I'm all for that, except there are no guarantees that greater transparency will be achieved or that the government will spend the money needed to resolve complaints. It's all well and good to provide for transparency, but we still need to be able to settle complaints within a reasonable period of time. The government doesn't want any delays. It wants to increase fees to discourage people from filing complaints. But more importantly, it seems to be saying that the Commissioner and his staff are not doing their job properly and that the Commissioner will be replaced by someone else. In fact, the government appears to have made up its mind since the Commissioner has already received a letter informing him that his mandate will not be renewed.

We feel the government is trying to stall us. I'd like to hear what you think about the fees. Do you think fees need to be increased, to discourage people from filing complaints?

[*English*]

Mr. John Bryden: Very deliberately, I did not put any amendments dealing with fees in Bill C-462 and Bill C-201. The reason is that the fee debate is a very complicated one. There are many sides to that issue. When you approach access to information reform, even Bill C-201, it's only the beginning. You can pass Bill C-201, and you can go on to the issue of fees, as indeed you should, because it's a very difficult issue. You can go on to the issue of too many requests, and that's a very difficult issue. You have to go step by step. Do what is absolutely necessary now and deal with the more difficult things later.

Unfortunately, one way of delaying progress on the reform is to persuade committees like this, or to persuade Parliament, that you have to solve all the problems at once. You cannot solve all the problems at once—one at a time, those that are most urgent.

On the question of Mr. Reid, and me, for that matter, if you do not move forward in the next year or so, you will lose all the accessibility to the expertise that I have and that Mr. Reid has. The fact that Mr. Reid's mandate has not been renewed does impact on this committee, because if Mr. Reid is not available to give close advice to this committee on an actual bill before the committee, then progress will be enormously delayed.

● (1020)

[*Translation*]

Mr. Mario Laframboise: Weren't you tempted to include in your bill a provision on response timelines? That would have forced the government to spend the money to guarantee citizens a response to their request within a certain period of time. Did you not intend to go that far? Did you not want to include such a provision in your proposed legislation? Do you prefer a graduated approach? Is that why you haven't provided for a response timeline in your bill?

[*English*]

Mr. John Bryden: That's right. You are correct.

Bill C-462 and Bill C-201 deal with the content, the principles of the legislation, the principles of access to information reform. I left out the actual technical application. In other words, there are the mechanics of access to information—the timelines of responses, the cost of reproduction, and whatever fees may be charged. But that is something this committee can deal with separately, even as regulations.

The actual issues of whether cabinet confidences should be in the act or out of the act are the policy issues the bill deals with rather than the technical issues. I didn't want the bill stalled by debates on how much to charge people for access to information. I wanted this committee initially to deal only with the grand policy issues, if you will.

The Acting Chair (Mr. David Tilson): We'll have to proceed with Mr. Epp.

Mr. Ken Epp (Edmonton—Sherwood Park, CPC): Thank you very much, Mr. Chairman.

Mr. Bryden, welcome home.

Mr. John Bryden: Yes, it is home.

Mr. Ken Epp: Of all of the members of Parliament who lost their seats and didn't come back, I suppose you're in the group that I wish would have been able to come back. There are others who I wish wouldn't have come back.

Hon. Ed Broadbent: That's no way to talk about your colleagues.

Mr. Ken Epp: Anyway, be that as it may, I appreciate the work you've done and the impetus you have largely provided to get us moving in this direction.

I have a couple of specific questions.

One of the things you're suggesting is that the offices of the Information Commissioner and the Privacy Commissioner be combined. I looked in Bill C-201 and I didn't see this in there, yet you mentioned it even in your presentation here this morning. I've always thought that just as Parliament works well if there is a governing side and a healthy opposition, in a sense the tension between these two commissioners is healthy in that it helps to balance the issue of privacy with the issue of the right to know. If you combine those, I somehow think the whole thing would be weakened.

That's just a thought on the other side. I would like you to come up with a defence of the statement you made that they should be combined.

Mr. John Bryden: Well, the situation as it is now is adversarial. What tends to happen with both Mr. Radwanski and Mr. Reid, the commissioners I know best, is that because it's adversarial, extreme positions are taken on either side of the privacy and freedom of information issues.

I believe a better route is to have an ombudsman to find the balance between the two, because always in freedom of information issues you want the government to function. It's so important for the government to be able to function effectively, but you also want to have the maximum amount of transparency.

My experience of the adversarial situation, which has been the situation so far, has not necessarily been a good one. I don't know that it's led to finding the correct balances, and there are ample precedents for information and privacy commissioners. That's the way it was originally, in fact, and that system seems to work very well.

But this is indeed something that this committee has to explore. I'm only one person, and I have a certain prejudice on this issue, but I certainly think it needs to be re-examined.

● (1025)

Mr. Ken Epp: Another question I have has to do with cabinet confidences and crown corporations. They claim now, for example, that we can't get access to the books at the Canadian Wheat Board, which I think is absolutely necessary. Farmers are going broke while the money that is being spent on their behalf is even beyond their scrutiny.

So you have this issue of necessary privacy or confidentiality in order to preserve the general Canadian good. There are some things that undoubtedly have to be kept secret; you made mention of that when talking about the privacies required in an MP's office. Our caucus meetings are necessarily in camera so that we can have a free and open discussion without people jumping to conclusions about what we're saying. I think that's very important, and it's lacking in our Canadian political system, in that there are some things that are just off bounds; you can't even talk about them because it's not politically correct.

I would like to know how you could balance that. Again, in your bill and in Bill C-201 there are references to the 30-year waiting period when all documents should be opened. That seems quite reasonable to me, an exception being that if, even after 30 years, international affairs could be jeopardized by the disclosure, then that's a problem. But there are a lot of things I think should be accessible almost instantly, even from cabinet.

You mentioned—

The Acting Chair (Mr. David Tilson): Maybe you can get to your question, Mr. Epp. We have to move on.

Mr. Ken Epp: Yes, I should get to my question.

I'd just like to know whether you've done any rethinking on the length of the period we close these documents and then automatically open them.

Mr. John Bryden: I think the 30-year rule is a good one. You'll find in the act there are a lot of exceptions for public safety, public health, international affairs.

The reason you have to have the 30-year rule, which wasn't mentioned in the discussion paper, is that the National Archives is completely tied in knots right now. Ten years ago, when I went in to do my research for the books I was writing then, I could get a response in a month or two when I requested a ruling on documents that had not previously been opened—and remember that I'm dealing with 50-year-old documents. Now the backlog means it takes over a year. This is totally unacceptable. You have an enormous bottleneck in the ability to access records at the National Archives now, and I just think this needs to be changed.

Mr. Ken Epp: Thank you.

Thank you, Mr. Chairman.

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Broadbent.

Hon. Ed Broadbent: Thank you, Mr. Chairman.

I want to use this opportunity, if I may, to ask you a question based on your interest in access to information and the accountability of concentrations of government power, if I can put it that way. I want to ask about an institution, the NCC.

I've been away from Parliament. I ran, after 15 years, as you may know, coming back to this wonderful institution, and in the process found out that we have the National Capital Commission, a very powerful entity in the region, that operates—and I'm not passing any judgment on the personnel right now, including the chairman—under an inherited process of decision-making that has been, for me, one of incredible secrecy.

I respect and agree with your general distinction. You have to have leeway for people in government to have free and frank discussions, on the one hand, and that means, by definition, some curtailment of the right of access to everything that's going on. On the other hand, the general preference in a democratic system is accessibility, so it applies to the NCC as well.

I'd just like your opinion on this. It affects people on the Quebec side of the border, it affects people on the Ontario side of the border, and indeed it represents a national interest for those outside this immediate region. So my general view would be that their discussions, for example, apart from detailed contract discussions and personnel matters, should be generally open to the public. Do you have a view on that?

● (1030)

Mr. John Bryden: Oh, absolutely. If you bring Canada Post, the CBC, the National Capital Commission, and the Atomic Energy of Canada before this committee, ask them. Ask them why they shouldn't be under the Access to Information Act. There are ample protections in the existing act, and if those protections aren't sufficiently ample, this committee can make the necessary changes. But you need to actually sit them where I sit and ask them to tell you why they have to be under a blanket of secrecy. I think you will find that they cannot give you good answer.

Hon. Ed Broadbent: That's providing information, but I'm also talking about the meetings themselves being open to the public. When the NCC is meeting, apart from when they're discussing contracts, apart from when they're discussing personnel, should people who either come from anywhere in Canada or who already live in the National Capital Commission region be able to sit and observe the discussions?

Mr. John Bryden: I would think yes, but of course you would achieve that if you brought them under the Access to Information Act and had the content of the discussions accessible under the act. There would be no point in having confidential or in camera meetings if the contents—

Hon. Ed Broadbent: Oh, they might find a reason anyway.

Mr. John Bryden: Well, perhaps.

There are lots of models there for public bodies like municipalities and other governments to have in camera meetings when it's to discuss personnel or contracts, but otherwise, the meetings certainly should be open. I don't think you're ever going to change that unless you change it legislatively, and the Access to Information Act is the legislative tool to do exactly that.

Hon. Ed Broadbent: Thank you.

I just want to serve notice, Mr. Chairman, that because of some comments made by my colleague, Derek, which I'm considering, on alternative arrangements about my motion, I want to inform the committee that when we proceed on dealing with either the bill or the minister's discussion paper, I would hope we can do it unanimously. Therefore, I want to hold back my motion that I had intended to move today. I don't intend to move that today because I want to have further discussions. That's all.

The Acting Chair (Mr. David Tilson): I've been looking at the list. We still have some more people who wish to speak today. As well, I think there's another committee moving in here at 11 o'clock, so we probably wouldn't have time anyway, even if we wanted to, but thank you very much.

Ms. Jennings.

Hon. Marlene Jennings: Thank you.

I want to continue our discussion on the issue of a motion such as Mr. Broadbent's. I'm really interested and pleased to hear that Mr. Broadbent does not wish to proceed with his motion without assurance that he would have unanimous consent of the members of this committee—if I understood correctly.

Hon. Ed Broadbent: I would like to get it, or some other process.

Hon. Marlene Jennings: My point was that normally when the House departs from the regular standing procedures, if it's the government, it proceeds by way of motion, which is then debated, and so on. Every MP has an opportunity to discuss it, and then it's voted on.

If it's done in an ad hoc fashion, it's by unanimous consent, and that, I believe, protects the individual MP's right to put a brake on, rightly or wrongly, pushing forward a particular motion or bill, whether government or private member, that they feel should be subject to the normal Standing Orders, debate, procedures, and so on, because it allows any one MP to say no.

The Acting Chair (Mr. David Tilson): It might be appropriate, Ms. Jennings, if we left this until—

Hon. Marlene Jennings: No.

The Acting Chair (Mr. David Tilson): We're starting to get into a debate on a motion.

Hon. Marlene Jennings: It's not a debate.

The Acting Chair (Mr. David Tilson): Let me finish. We're starting to get into a debate on a motion that hasn't even happened yet. I'd rather we stick strictly to a dialogue or questions with Mr. Bryden on his bill, or the general topic of information, as opposed to the process of this committee.

Hon. Marlene Jennings: May I respond to your comments?

● (1035)

The Acting Chair (Mr. David Tilson): Sure.

Hon. Marlene Jennings: And it's not taking up part of my time, I assume. Thank you.

First, Mr. Bryden comes to us as someone who I highly respect, who I had the privilege of working with from 1997 to 2004.

Secondly, I was someone who participated in at least one of the ad hoc committees, and participated very actively. Therefore, I don't think anyone can put into question my support for major reform of access to information. At the same time—I'm not a backbencher now, but I was a backbencher for most of my eight years—I am truly concerned with the issue of an ad hoc change that we've always had in the past suddenly becoming a precedent where unanimous consent is no longer required.

The Acting Chair (Mr. David Tilson): Ms. Jennings, you are—

Hon. Marlene Jennings: May I finish, sir? I simply wish to—

The Acting Chair (Mr. David Tilson): Ms. Jennings, I'm telling you that we're not going to get into the debate on Mr. Broadbent's motion as to whether it's in order or it isn't in order. You're quite free to talk to Mr. Bryden about topics of information, but if you're going down the path of getting into Mr. Broadbent's motion as to whether it's an appropriate motion or not, we're not going there today. We'll go there another day, but not today. I've told you twice, and I don't want to have to tell you a third time.

Hon. Marlene Jennings: May I ask Mr. Bryden to respond to that issue in writing to the committee then, if he feels comfortable in addressing the issue in writing?

The Acting Chair (Mr. David Tilson): I suppose Mr. Bryden can make any comments in writing that he wishes, and we'll receive it or not receive it.

Hon. Marlene Jennings: Thank you.

How much time do I have left?

The Acting Chair (Mr. David Tilson): You probably have a minute.

Hon. Marlene Jennings: What do you mean I “probably” have a minute?

The Acting Chair (Mr. David Tilson): Oh, all right, you have a minute.

Hon. Marlene Jennings: Thank you. As you see, I like preciseness.

Mr. Bryden, if this committee was seized, regardless by which means, with Bill C-201, you've mentioned two sections to which you would recommend substantive changes: section 24, regarding the retroactivity of disclosure in order to deal with concerns of crown corporations, or whoever, that in good faith may not have been maintaining records because they were not required to maintain records at that time; and you also talked about, if I'm not mistaken, section 21 or section 22.

Mr. John Bryden: Section 21.

Hon. Marlene Jennings: Could you just expand a little bit on that? For the benefit of the members of this committee, and anyone else who is watching, why would you recommend changes to that particular section?

Mr. John Bryden: On section 21, I think it's a grievous oversight on the part of the government to have proposed this change. It does occur in the task force mix. Task force recommendation 4-11 would change paragraph 21(2)(b) in order to protect the advice of consultants.

Right now paragraph 21(2)(b) protects the advice of government officials when consulted over an issue or when they're asked to do a study and present a report. The task force in just one paragraph—and it would be really interesting to know where the input for that one paragraph came from. Unfortunately, the task force report itself is a government document, as you know, so the papers are presumably not ordinarily accessible to the rest of us, but the effect of that proposed change to protect the advice of outside consultants, as proposed by the government in the task force and here in this discussion paper, would, in my view—and you should check this—have made it impossible to get the Groupaction files, or any other files of outside consultants, marketing consultants, whomever the government is seeking outside advice from, who may be cheating. This is where transparency works; however good your bureaucracy is, your bureaucracy isn't perfect. This is why you have audits—an Auditor General and audits—to catch the oversights where the bureaucracy hasn't done due diligence and somebody is cheating.

The other avenue, however, is the Access to Information Act, where the public—the MPs, the journalists, and everyone else—has a chance to look at these contracts. If I remember correctly, the way the Groupaction issue came to Parliament's attention was because someone discovered that not only were these reports inferior in content, but there was an instance where a report couldn't be found. Someone had been paid $500,000 for it. I think somebody failed Mr. Cotler enormously by allowing him to come before this committee with a recommendation that flies absolutely in the face of what the current Prime Minister is trying to achieve by the Gomery commission.

● (1040)

Hon. Marlene Jennings: Thank you very much.

The Acting Chair (Mr. David Tilson): Thank you.

Mr. Russ Hiebert: Along those lines, Mr. Bryden, I find it shocking that the government would try to shut down the very sorts of information that exposed the sponsorship scandal while they're in the middle of it. Could you please elaborate on how this recommendation by the justice minister would have prevented this scandal from being exposed to public oversight?

Mr. John Bryden: It's just as I mentioned. Had this recommendation been part of the act, then the Groupaction report would never have been available. You could have asked for it, but it would have been covered by the protections of section 21.

I think that's a whole area that needs to be explored another time. It's not in Bill C-462/Bill C-201 because I spotted it in the task force originally. I would have to go back to my notes—I kept quite an elaborate diary on everything we're doing here—but I know I signalled to the government of the day, a different government now, that this particular recommendation of the task force was unacceptable in the context of the Groupaction scandal that was already emerging. I was on that committee.

Mr. Russ Hiebert: Apart from this particular reference to the discussion paper by the justice minister that would shut down these sorts of avenues of information, you mentioned that of the 17 recommendations there were 13 others you would oppose. I would ask you to provide that list to this committee so that we could review it, if the opportunity comes for us to look at either the discussion paper or your bill.

I would also ask that you provide a copy to the committee of the working document you referenced earlier in your testimony that outlines the recommendations you would make and the impact it would have on the existing legislation.

I note that in our audience we have a member with a keen interest in this issue. Mr. John Reid is with us, and I would ask that you explain, for our benefit, as you started to earlier in your testimony, some different opinions you and Mr. Reid would share on changing the Access to Information Act.

Mr. John Bryden: This goes back to the point of having separate privacy and access to information commissioners. Mr. Reid is an excellent advocate for openness of government. As a responsible parliamentarian, while I want to have as much openness as possible, I also probably pay more attention than Mr. Reid to the secrecies the government may want to maintain. I try to strike a balance.

I think we would be a good pair before this committee because you would see us dispute every now and then; I don't always agree with Mr. Reid on some of these issues. But I don't know whether you want to see that happen now. If I may suggest, this committee should find some avenue to recommend to the government to retain Mr. Reid for some time after the end of his term of office, so perhaps Mr. Reid and I can come before you again in the months to come.

The Acting Chair (Mr. David Tilson): That sounds like a commercial.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you very much, Mr. Chair.

Mr. Hiebert has asked a couple of the questions I wanted to ask on the discussion paper itself, since you mentioned there were several disturbing aspects of the paper. But we'll get that information in written form, I suppose.

When Minister Cotler came to this committee he provided a series of requests for consultation that would, in effect, I suppose, delay the passage of this legislation for at least this session of Parliament, if not considerably longer than that. Although I have a good sense of what your thoughts may be on that request for public consultation, I wonder if you can expand on that a little bit. Is it required, and if not, why not?

● (1045)

Mr. John Bryden: Committees have public consultation when they consider legislation. You don't need to have public consultation before. The government has had a task force out there for two years that did an exhaustive job. When it comes to cabinet confidences, for instance, does this committee have to go to the public to discuss them? They've already been discussed by the government, and the government has the expertise to discuss them. All you need to do is bring the government before this committee to ask why it disagrees with what's in the legislation. If it creates a good argument, then you'll change the legislation.

Let me say further that I'm not advocating haste in passing this legislation or moving this legislation forward. I'm advocating that this legislation be dealt with. If it takes you a year or two years to deal with it, that's fine, but what's proposed by the government now is, “Don't deal with the legislation; just have interminable consultations”. In my view, that's totally unnecessary.

The Acting Chair (Mr. David Tilson): Mr. Lee.

Mr. Derek Lee: I just want to clarify something, Mr. Bryden. In your remarks you refer to the framework document proposal that paid advice to cabinet from consultants be excluded or protected. If I have that right—and I stand corrected if I'm wrong—you have drawn an analogy, for reference purposes, to the Groupaction reports.

As I recall, the reports you referred to were from an agency to describe work completed. If that's the case, work by contractors shown in reports, reported to government, would not fall under the rubric of advice to cabinet. They're quite distinct things. Advice by a consultant to cabinet is one thing; a report to a government department on work done by an agency, not constituting advice necessarily, is a different type of thing.

Could you clarify that, just to help us here? My perception is that they're two quite different things, and routine reports by contractors to government wouldn't be included in the rubric of advice by consultants to cabinet.

Mr. John Bryden: Subsection 21(1) says:

> The head of a government institution may refuse to disclose any record requested under this Act that contains
>
> (a) advice or recommendations developed by or for a government institution or minister of the Crown,

That could be internal recommendations.

> (b) an account of consultations or deliberations involving officers or employees of a government institution, a minister of the Crown

It's paragraph 21(1)(b) that concerns us here. The discussion paper recommends that section 21 be amended to extend to consultants' advice the protection currently given to the advice or recommendations by public servants.

Now you have to get expert advice on this, but my interpretation is that when you go to an outside consultant for advice, you get that advice for a fee, usually by a contract. So it is advice by contract. There's no way of getting private advice without paying for it. So I do not believe your suggestion—that this wouldn't apply because Groupaction was a contract—works in this instance.

If you go to the Auditor General's report on the three Groupaction reports in question, you'll find what was asked for in those three contracts was advice. They were to examine the number of organizations that might benefit from the government...they might be well advised to sink their money into profile.

So I believe the proposal of the government in its discussion paper would apply—

Mr. Derek Lee: Paragraph 21(1)(b) would have prevented access to those reports.

Mr. John Bryden: I suggest that if you have doubts about that, this committee should examine it and get the government to explain just exactly what it means.

The Acting Chair (Mr. David Tilson): Thank you, Mr. Lee.

I think we have to leave this room for another meeting, but I want to thank you on behalf of the committee for coming this morning. It's been a most interesting session. No matter what happens with the procedure, I expect the majority of the committee, if not the committee unanimously, supports the general philosophy. I'm sure we'll be asking you to come back to help us again. Thank you very much.

The meeting is adjourned until Thursday at 9 o'clock.

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