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Chair

Mr. Tom Wappel

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• (0900)

[English]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): The first item on the agenda today is identity theft, but before we get started, I'd like to thank Mr. Tilson for chairing the meeting on Tuesday. I appreciate it very much.

We have with us today Michael Jenkin, co-chair of the consumer measures committee of the Department of Industry, along with David Clarke, co-chair of the identity theft working group, consumer measures committee. Welcome, gentlemen.

I presume you have an opening statement, so please begin.

Mr. Michael Jenkin (Co-Chair, Consumer Measures Committee, Department of Industry): Thank you, Mr. Chair.

David and I will be pleased to answer your questions after a brief opening statement. I would also like to remind you that we've left you a package of information from the consumer measures committee, and I'll be referring to some of the documents in that folder in my remarks. It's part of our public information to consumers on identity theft and a few other issues as well.

So thank you, Mr. Chair, for providing the consumer measures committee with the opportunity to discuss its efforts in regard to identity theft. The consumer measures committee, or, as we call it, the CMC—everyone loves an acronym—is a forum of federal, provincial, and territorial officials responsible for consumer affairs. So it's not part of the Department of Industry; it's actually a separate federal-provincial body.

I'm the federal co-chair. There is a provincial co-chair as well, although that position is in the position of being filled. The previous incumbent left his position, and he's being replaced by another provincial representative.

Every jurisdiction in the country is represented on the CMC, both provinces and the territories.

[Translation]

The Consumer Measures Committee, or CMC, was established under the 1995 Agreement on Internal Trade, in order to facilitate the process for reconciliation of consumer-related measures and standards, and to provide a forum for discussion among the jurisdictions on issues related to such measures and standards. Since its inception, CMC has been active in examining a variety of different issues that are of concern to Canadian consumers.

[English]

Depending on the issue at hand, CMC has conducted in-depth policy research and analysis, developed consumer education initiatives, or agreed to the harmonization of legislative measures. For some issues we've done all three.

All our efforts are carried out with a view to protecting consumers and informing them so they can better protect themselves. Consultation with stakeholders and the public is an integral part of our work.

I might add that CMC serves as a very useful informal network for officials to share information on new issues that are arising and on new initiatives individual jurisdictions may be undertaking or may have heard about.

[Translation]

Identity theft is one of the issues on CMC's plate. It is a particularly appropriate issue for our forum, given that it is an issue that cuts across borders, and touches upon the responsibilities of a very diverse set of government authorities. At the same time, I should note that there are many facets of the issue that fall outside of the various CMC members' mandates, such as the criminal aspects of identity theft.

• (0905)

[English]

In 2003 CMC struck a working group of federal and provincial officials to examine options for improving the situation for consumers in regard to identity theft. That working group is co-chaired by a representative of the federal government, Mr. Clarke, who is with me today, and an official from Ontario's Ministry of Government Services. The focus of the work so far has been two-pronged, based on one hand on public information and education and on the other hand on examining policy options to improve the consumer protection landscape for Canadians.

I would like to deal with each of these in turn.

First of all, in regard to consumer information and education, CMC's efforts stem in large part from the concerns expressed by ministers responsible for consumer affairs at their meeting in January 2004 in Winnipeg, where—and here I'm citing from the communiqué from that meeting—“Ministers recognized the serious concern that identity theft poses for consumers, leaving victims with a poor credit rating, ruined reputation and money losses.” The ministers agreed, as a first step, to harmonize information efforts to bring consumers the most reliable and complete information on how to reduce the risk of being victimized.

Since then, CMC has been very actively engaged in efforts to inform the public, both consumers and business, about how to prevent ID theft and what to do if it occurs. First of all, CMC developed the identity theft kit for consumers; it can be found on CMC's own website, at cmcweb.ca. It can also be found on the Canadian Consumer Information Gateway, at consumerinformation.ca, and I might add that the gateway is a portal, providing consumers with access to information from federal, provincial, and territorial governments and from a variety of respected consumer non-governmental organizations.

[Translation]

The kit includes information to help consumers reduce the risk of identity theft, assess whether they have become a victim, and advises them on what to do if they do fall victim.

It is essentially a set of forms that ID theft victims may use to help organize the information they need, so that they can more easily deal with financial institutions, credit card issuers, the police and other officials in repairing the damage done.

[English]

The ID theft kit for consumers was developed in a process of extensive consultation among and within the relevant federal, provincial, and territorial government departments, with businesses and financial institutions and with consumer organizations. As a companion piece to the consumer kit, a one-page checklist—which I have here—was produced to summarize key information for consumers.

In addition, a number of CMC members expressed the view that it would be useful to develop a document that would be destined for businesses. The result was the business identity theft kit, released in 2004, which includes sections on how to reduce the risk of compromising consumers' information, what to do when a thief strikes, and how to tell consumers about a breach. That document is also on the left-hand side of your folder.

The business kit, again, was developed by CMC in consultation with businesses and consumers. It, too, is available on the web at the two addresses I mentioned as well, at www.cmcweb.ca and consumerinformation.ca.

I hasten to add that CMC takes advantage of opportunities to distribute its educational products when and where it can. We always participate in fraud prevention month, for instance. This year we sent copies of the checklist—that's the blue document—to police groups throughout the country that deal with fraud and speak to public groups and so forth. We received a tremendous response to that

initiative from police services, who asked for more material, which we supplied.

Identity theft continues to be a priority consumer issue for us. A section on identity theft has been included in the latest CMC consumer awareness projects targeted at seniors and youth. In addition, consumerinformation.ca currently has identity theft on its front page “Focus on...”, so that consumers, as soon as they hit the first page of the site, have their attention drawn to that particular item. In some cases, individual governments have also adapted the materials we've prepared to suit their own needs.

That's an overview of some of the information efforts we've taken to let consumers know about identity theft.

● (0910)

[Translation]

In regard to policy research and analysis, as you may be aware, CMC carried out a consultation on identity theft in 2005. That paper is available on our website at www.cmcweb.ca.

[English]

And I understand the clerk circulated a copy of that consultation document to you earlier on.

[Translation]

This was an effort that carried over into 2006, with follow-up discussions with some stakeholders. The consultation posed a number of questions in regard to possible measures to improve consumer protection.

[English]

These included some matters related to how businesses, financial institutions, consumer reporting agencies, and others handle or should be required to handle consumers' personal information in a way that would reduce the risk of identity theft and how to help when consumers become victims. CMC reviewed and analysed the issues raised in the consultation and took the opportunity to discuss them all, based upon the responses received and upon the various jurisdictions' specific concerns, mandates, and individual priorities.

Three major areas of focus for CMC discussion following the consultation were, first, a requirement that consumer reporting agencies implement security alerts on credit files when consumers request them. The effect of such a measure would be to ensure that those organizations that use credit reports—lenders, landlords, retailers—will see the fraud alerts on the consumers' report and take responsible steps to verify the identity of the person seeking the credit or service. Provinces saw this as an important issue, and we've already seen Ontario and Manitoba move forward with measures in this regard.

The second item was a requirement that consumer reporting agencies freeze consumer files at the request of consumers who have been the victims of identity theft. While this was a concept that interested jurisdictions, we heard a great deal of concern from business stakeholders about the potential effect such measures could have on consumers' access to credit when they need it. The technical feasibility of the implementation of credit freezes was raised by the industries as a concern as well. CMC determined, as a consequence, that it would not be appropriate to move forward with credit freezes at this time.

The final major issue in the consultation was mandatory notification of consumers in instances of security breaches within organizations. This was also an issue that prompted considerable discussion among CMC members, and interest, but given that the PIPEDA review was taking place, it was ultimately felt that CMC was not the appropriate forum at this stage for moving forward with recommendations for legislative change. Individual jurisdictions agreed to make any views they might have on the matter known to your committee during the review, and I understand at least one jurisdiction has written to the committee in regard to its views in that regard.

With regard to some more technical issues touching on the consumer reporting industry, which include credit reporting, it was felt that it would be better to deal with those in the context of a separate consultation focused exclusively on the laws governing that sector. These issues include what information may be included on a consumer's file and for how long, as well as the procedures for addressing consumers' concerns about the, and the document is being prepared for public distribution right now.

[Translation]

For now, let me note that CMC continues to be engaged on this issue. As I noted, identity theft is a matter that cuts across borders and engages the responsibility of many actors, in both the public and private sectors.

Coordination among and within governments is a challenge, one that CMC recognizes, but which we will continue to address.

On behalf of all members of the federal, provincial and territorial Consumer Measures Committee, I would like to thank you again for this opportunity to appear before the Standing Committee on Access to Information, Privacy and Ethics. I would be glad to answer your questions.

Thank you, Mr. Chairman.

[English]

The Chair: Thank you, Mr. Jenkin.

Mr. Clarke, do you have any opening remarks?

Mr. David Clarke (Co-Chair, Identity Theft Working Group, Consumer Measures Committee, Department of Industry): No. I defer to Mr. Jenkin.

The Chair: Very good. Thank you.

All right. We'll start our list. Does anyone from the Liberals wish to ask any questions in the first round?

Yes, Mr. Peterson, go ahead.

• (0915)

Hon. Jim Peterson (Willowdale, Lib.): Thank you very much for being here.

The Privacy Commissioner appeared two days ago, and maybe I could just take you through some of the things she said.

Everyone is interested in identity theft, but no one is responsible for doing anything about it. Do you agree with that statement?

Mr. Michael Jenkin: Certainly federal-provincial ministers have indicated some concern to take some leadership on the public information aspects of this issue. And in our own federal-provincial committee, as I think you've seen, we've certainly taken some leadership there.

It is fair to say as well, though, that this is a complicated issue. The definition of identity theft in fact is not entirely clear all the time. Quite a wide range of issues can be involved. There are certainly a wide number of players involved: both levels of government, the private sector, public advocacy organizations, and organizations such as the privacy commissioners themselves who report to Parliament. So I think it's fair to say, yes, that it is a complex set of issues and there are a lot of actors to coordinate.

Hon. Jim Peterson: You've shown that you can cooperate, federally and provincially, through your committee.

She also called for stronger legal sanctions against those who engage in identity theft. Would you agree with that?

Mr. Michael Jenkin: Well, I'm here speaking as an official of a federal-provincial committee to explain what we've done. I'm not really here to give an opinion on what the government should be doing one way or the other.

Hon. Jim Peterson: Why not? You know a lot about it. Why aren't you prepared to share that information and advice with us? We're looking for help.

Mr. Michael Jenkin: I can certainly explain to you what we've seen. I can explain to you what we understand of the severity of the problem, the character of the problem. It's not my place as an official to give an opinion about whether government should take action or not.

Hon. Jim Peterson: Great.

She said that Canada is the only G-8 country without anti-spam legislation. Have you looked at the spam issue?

Mr. Michael Jenkin: No, CMC has not, as an organization, looked at the spam issue.

Hon. Jim Peterson: So you have no opinion on that.

She has called for the creation of a federal-provincial task force to look into identity theft on an urgent basis. Would that conflict with any of the work you're doing, or would you have input into that? Would that federal-provincial task force be encroaching on work you're doing, Mr. Jenkin or Mr. Clarke?

Mr. Michael Jenkin: I think we've certainly done some good preliminary work in this area. I'm not entirely certain what the Privacy Commissioner was referring to in terms of the federal-provincial group, what area of activity it would cover. As a collective group, we don't generally deal with justice and criminal matters. Although several of our members come from attorney general departments, as a group we don't deal exclusively and generally with Criminal Code questions. So if she's talking about dealing with legal matters in that sense—

Hon. Jim Peterson: She says:

Government has an important leadership role to play by developing a strategy to fight identity theft, by co-coordinating the efforts of different stakeholders and by creating a legal framework that gives law enforcement agencies the tools they need to fight identity theft and gives individuals the ability to seek redress when they are harmed. One way that government can show leadership is by creating a federal-provincial task force.

Mr. Michael Jenkin: If governments decided to do that, we could certainly collaborate with them and provide them with the benefit of the work we've done, and I'm sure we could be of some considerable help to such a group.

Hon. Jim Peterson: Have you any comments on the fact that the United States created such a task force a couple of years ago and has put a great deal of emphasis on it, whereas repeated calls for creating this task force in Canada have come to naught?

Mr. Michael Jenkin: We've certainly looked at some of the work the Americans have done.

David?

Mr. David Clarke: All I can say, really, is that, yes, we have looked at what the U.S. has done, but within CMC and within my identity theft working group, we're working within the powers of the individual jurisdictions, which are limited. They extend to consumer protection laws, mainly at the provincial level—for instance, credit reporting laws. These are the kinds of issues we've been looking at. They don't extend as widely as perhaps that U.S. group does.

• (0920)

Mr. Michael Jenkin: I would just add, perhaps, that one of the issues you deal with when you're dealing with federal-provincial collaboration in this area is that not all of the consumer protection

agencies across the country necessarily share the same legislative base, nor are they in the same departments and organizations. Some, for example, are in government services departments. Some of them are in departments of the attorney general. One of them is in the ministry of finance of the provincial government.

So when you're talking about doing collective action, you have to face the reality that you have members who are ministers when they meet, working together, who come from different organizational structures. They don't necessarily all have the same legislative base. While they certainly have all the same constitutional jurisdictions—provinces certainly have the same constitutional powers—the ministers that may be responsible for consumer affairs don't necessarily all have the same legislative mandates to deal with all of the same issues in the same way.

Hon. Jim Peterson: Surely different governments can bring a whole-of-government approach to this thing, rather than operating in little silos.

Mr. Michael Jenkin: They can, but it often requires bringing more than one minister from a jurisdiction to a table when you're dealing with an issue as complex as identity theft. You're covering civil law and criminal law. You're dealing with issues involving the coordination of police forces and law enforcement agencies. There are also public education issues, and so forth. So quite a wide spectrum of issues has to be dealt with here and brought together to create a comprehensive strategy.

Hon. Jim Peterson: It seems to me you're saying that we had better get our act together, and maybe a task force is needed on an urgent basis to bring all these threads into one strand.

Mr. Michael Jenkin: I've outlined for you some of the challenges we face as officials dealing with this issue.

Hon. Jim Peterson: I don't see those as monstrous challenges. I think you can bring to the table your provincial consumer people, the Attorney General, and the finance department, or whoever looks after ID in a province. You can mandate one person to do that. I'm sure Mr. Clarke knows all the issues that different departments in the province look at.

The Chair: Thank you, Mr. Peterson.

Mr. Clarke.

Mr. David Clarke: We work closely with officials in the provinces, and we certainly welcome your views.

The Chair: Thank you.

Madame Lavallée.

Mr. David Tilson (Dufferin—Caledon, CPC): Mr. Chair, I have a point of order.

The Chair: Mr. Tilson.

Mr. David Tilson: The questions Mr. Peterson asked are good ones. But to be fair, these two gentlemen are officials with Industry Canada, and I think committee members should be cautious about asking political questions.

The Chair: That's not a point of order, but thanks for your guidance.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, Mr. Chairman. You were not here Tuesday, and you missed a good meeting.

To begin with, I would like to convey my greetings to our witnesses, Mr. Jenkin and Mr. Clarke, and welcome them to the Committee.

However, with all due respect for our witnesses, I am going to have to raise an issue relating to logistics. According to Committee procedure, I absolutely must do that right now. Please accept my apologies. I do have questions, but I have to raise an issue with the Chairman first.

Mr. Chairman, the Clerk explained to me last week that I could only discuss the agenda at this moment, now that I have the floor. He explained that I could not do that at the beginning of the meeting. Given that the Clerk clearly explained things to me and that I am a good learner, if you don't mind, I'd like to raise an issue with respect to the agenda.

First of all, I note that the second half of our meeting is devoted to Committee business. There is a notice of motion from Mr. Wallace, and one in my own name. I would like time to be set aside right now for us to deal with those two motions. The last time that you chaired a meeting of the Committee, although I'm not sure why, we didn't have enough time to deal with that item on the agenda. So, I would like some time to be set aside now to address Mr. Wallace's and my own motion, and that the two of them be put to a vote. Can I make that request of you now, Mr. Chairman?

[*English*]

The Chair: I'm not quite sure what you're asking. Are you asking the committee for unanimous consent to deal with the timing of this meeting?

• (0925)

[*Translation*]

Mrs. Carole Lavallée: Yes, I'm asking for unanimous consent. I am no expert on procedure, but I know that you have an excellent advisor at your side.

Essentially what I am asking is that, in your capacity as Chairman, with responsibility for the proper disposition of Committee business, you ensure that we have enough time to deal with the two motions before the end of the meeting. We have to adjourn at 11 a.m. Therefore, we could conclude our discussions with the witnesses at 10:30 a.m., spend 15 minutes on Mr. Wallace's motion and 15 minutes on mine. That is my request, Mr. Chairman.

[*English*]

The Chair: This sounds like déjà vu from Tuesday, even though I wasn't here.

Do we have unanimous consent to discuss Ms. Lavallée's suggestion?

Mr. David Tilson: No.

The Chair: Do you have any questions of the witnesses?

[*Translation*]

Mrs. Carole Lavallée: I want to be given assurances that we will deal with Mr. Wallace's motion at 10:30 a.m., and with mine at 10:45 a.m.

[*English*]

The Chair: That's not it at all. We'll deal with the witnesses until the committee has concluded its business with the witnesses. Then if there's time we'll proceed to other business.

[*Translation*]

Mrs. Carole Lavallée: That is not the way it works, Mr. Chairman. Do you want me to take out the little rules book? Normally, all items on the agenda should be dealt with. I have not found the exact citation, but the Clerk will tell you that the Chair's role is to ensure that the agenda is followed. There are two items on the agenda we have in front of us. The second item has two parts to it, and I am asking that the agenda be followed, as laid out, Mr. Chairman, in the time available to us between now and 11 a.m.

[*English*]

The Chair: I don't agree that we have to get through all of our business. We have an item on the agenda as item one. If we get through that, we go to item two. If we don't get through item one, then we don't get to item two.

There are other ways of getting to item two, but it's not for the chair to educate the members on how to do that. I invite you to look at your rule book at your leisure. We have lots of time. There will be other questions of the witnesses.

If you have a particular section you can refer me to, I would be only too pleased to read it carefully and make the appropriate ruling. At the present time, given the question you asked and the fact that there is not unanimous consent, we are in the process of questioning the witnesses.

I'm asking you, in the absence of being able to quote me a specific rule, if you have any questions of the witnesses.

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, listen to your Clerk. He is a good advisor.

The Chair: Ms. Lavallée.

Mrs. Carole Lavallée: Mr. Chairman, if you refer to the Standing Orders, you will see that your primary role is to ensure that all the items on the agenda are dealt with. I'm very surprised by your comments. We have always done that. If you have no intention of dealing with all the items on the agenda, why bother having one at all?

There is an agenda, however, and I believe that we should deal with all items. It's just common sense. I don't see why unanimous consent is needed to address two notices of motion that were properly provided. You received them in time. To me, it just makes sense to discuss the two motions listed on our agenda.

If I understood you correctly earlier, you said there are other ways of ensuring that all items on the agenda are dealt with. You said that you wouldn't say what they were, but if I ask you directly, will you answer me?

[English]

The Chair: Yes.

[Translation]

Mrs. Carole Lavallée: Well then, I am asking you now.

[English]

The Chair: If you move a motion to proceed to other business immediately, it's a receivable motion. It is not debatable. We will vote on it.

If the committee decides to move to other business, other business is item two. If the committee chooses not to support that motion, then we carry on with item one.

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Does it not have to be unanimous?

The Chair: No.

Just on the point of common sense, although I suppose common sense is debatable, suppose each member of this committee submitted a motion and there were eleven motions as item two, and we had item one. It can't be common sense that we have to deal with all of those items in a two-hour period.

Anyway, if you'd like to make that motion, go ahead.

• (0930)

[Translation]

Mrs. Carole Lavallée: Mr. Chairman, with all due respect for our guests, I would like to move a motion. I move that we change the agenda and deal with the motions immediately. Once again, I apologize to our guests but, since I don't have a choice, I am going to do this now.

That is my motion, Mr. Chairman.

[English]

The Chair: The motion is that the committee move to other business.

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): On a point of order, Mr. Chair—

[Translation]

Mrs. Carole Lavallée: We can debate it.

[English]

Mr. Mike Wallace: —I just want to know what happens to the witnesses.

The Chair: If what?

Mr. Mike Wallace: If her motion passes. Are they done for the day?

The Chair: We thank them very much and we excuse them—or we ask them to wait just in case it doesn't take us particularly long to deal with item two. That's also a possible option. I hate to bring witnesses here, have them prepped and ready to go, and then not make use of their expertise.

However, there's no discussion; I've answered the question. This is a motion and I'm going to call the vote.

I want a roll call vote.

(Motion agreed to: yeas 6; nays 5)

The Chair: The motion passes. We move to other business.

I'm going to ask the witnesses just to wait for a few minutes. We'll see how things go. We may be able to get through this. If it appears to me that it's going to drag on, then I'll excuse you.

I do apologize. These things happen. They're no reflection on you or your evidence, of course. So just grab a coffee, relax, whatever the case may be.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): On a point of order, Mr. Chairman, I have a question about the order of the next item of business. I understand—at least from my experience in previous committees—that notices of motion are dealt with in the order in which they are received.

The Chair: I believe that's true.

Mr. Pat Martin: I understood that Ms. Lavallée's motion was in first and that Mr. Wallace's was only submitted on May 8, I believe.

The Chair: My understanding is that Madame Lavallée withdrew her first motion. Mr. Wallace submitted a motion subsequent to that, and Madame Lavallée submitted a redrafted version of her motion. That's how I understand it.

Mr. Pat Martin: I see. Thank you.

That was my only point.

The Chair: I think your statement, however, is correct. We deal with them in the order they're received, assuming the movers want to move them.

Madame Lavallée, you have a point of order.

[Translation]

Mrs. Carole Lavallée: Mr. Chairman, you are absolutely right. I changed my motion because the members opposite believed—incorrectly, of course—that it was not in order because it presented the rationale. So, I changed it to be certain that no one would think that.

That said, I would like to move that the order for dealing with the motions be reversed. That would mean we would vote on my motion before Mr. Wallace's.

[English]

Mr. Mike Wallace: No. How can that be? Is that legal?

The Chair: So you're proposing that we deal with your motion before we deal with Mr. Wallace's motion?

[Translation]

Mrs. Carole Lavallée: Exactly. I want to change the agenda. In order to do that, we will have to put this to a vote, as we just did.

[English]

The Chair: That motion has been moved. It's in order, I presume. So we'll have the same vote, I guess. Call it out.

Mr. Mike Wallace: Is that debatable at all?

The Chair: It's debatable, if you wish to—

Mr. Mike Wallace: Yes, I'd like to debate that.

The Chair: Mr. Wallace.

Mr. Mike Wallace: Thank you.

[Translation]

Mrs. Carole Lavallée: Is this motion debatable? Can the Clerk confirm that?

[English]

The Chair: He gives me advice, I make the rulings: it's debatable.

[Translation]

Mrs. Carole Lavallée: Fine.

[English]

The Chair: Mr. Wallace.

Mrs. Carole Lavallée: I now know the rulings.

Mr. Mike Wallace: Oh, oh!

And you were mad at me for getting it translated! I can't believe that.

The Chair: We're debating whether or not to move the—

Mr. Mike Wallace: I think the committee should look at what was put in front of it, in the regular way, with the rules of order that we have in terms of who submits their motion first.

Let's put it right on the table. I have spoken to Madame Lavallée about her previous motion at the previous committee. We discussed it being withdrawn and that I would put one forward. The wording I have put in front of you is exactly what she read when she made that decision.

Let's be frank. People wanted to vote on it the other day. I could have said yes and we would have done it. But to be fair—because that's how I like to be treated at committees—I said no, let's have it printed so everybody can see it and let's have it translated so everybody can read it. I did everything by the rules to make sure everybody would understand it.

So I would like to deal with mine first. I do not support moving hers forward. And I think mine is very clear. I followed the rules. I had agreement for it. I don't think I should be penalized for being fair with the other committee members by following the rules. So I'm voting against moving the change, and I'm willing to move my motion first.

We can have a debate on what the wording is and what the wording means and what it means for timing. If mine fails, we can move to the next one, or if it passes, there'll be another discussion.

So I'm in favour of what has been presented and what everybody had a chance to read in advance, as properly translated.

Thank you, Mr. Chair.

● (0935)

The Chair: Thank you, Mr. Wallace.

Is there any other discussion on—

Mr. David Tilson: I have a point of order, Mr. Chairman. It's really a question of procedure, to you, sir.

It's rather irregular and unusual for this to happen. When this type of motion is made, does it have to be by majority or does it have to be unanimous?

The Chair: It's a majority vote, because it's a properly moved motion and it's properly debatable. And then it's decided by the majority, when the vote comes.

Mr. David Tilson: Okay.

The Chair: And, yes, it is rather unusual. There are a number of things that have occurred in this committee over the months that are rather unusual, but that doesn't make them wrong; it makes the committee more interesting.

Mr. David Tilson: Sir, I'm not debating, but just asking a question, and you've answered it.

Thank you.

The Chair: Thank you.

Do you have a point of order, Mr. Reid?

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): I just want to make sure we're discussing the same thing. The process of voting on switching the order of one motion versus another, is that what is decided by a majority vote under our Standing Orders?

The Chair: That is correct.

Mr. Scott Reid: Okay, thank you.

The Chair: Is there any other discussion on the motion to switch?

Hon. Jim Peterson: Let's vote.

The Chair: I see no other discussion on the motion to switch. Let's vote.

(Motion negated [See *Minutes of Proceedings*])

Mr. Glen Pearson (London North Centre, Lib.): Excuse me. Mr. Peterson answered for me, I think.

Hon. Jim Peterson: I'm sorry.

Mr. Glen Pearson: I think he misheard. It must be the age.

I am opposed.

The Clerk of the Committee (Mr. Richard Rumas): I recorded it that way.

The Chair: The motion is defeated.

We are now at committee business.

The Clerk: No, the motion carried.

The Chair: The motion was defeated. I thought I heard more “noes”.

The Clerk: That was Madame Lavallée's motion.

The Chair: That's correct. The motion to switch the order was defeated, as I understand it.

The Clerk: There were five against it.

The Chair: Mr. Peterson said “no”.

The Clerk: Oh, then it's defeated. Excuse me. I heard a “yes”.

The Chair: There were two “noes” there. The motion is defeated.

Mr. Wallace, are you prepared to move your motion?

Mr. Mike Wallace: Mr. Chair, I am prepared to move my motion.

My motion has the same wording I presented at committee, and it is very close to what Madame Lavallée had, with some editing:

That the Standing Committee on Access to Information, Privacy and Ethics address the internal report by the Department of Foreign Affairs entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*. This review is to occur after the Information Commissioner completes his ruling(s) on any and all ATI requests his office has received regarding this document.

The Chair: First of all, let me just say that you're moving the motion. I find the motion is order. You may discuss it.

Mr. Mike Wallace: That's a good point. Monsieur Vincent asked that question to me the other day.

I understand Madame Lavallée's interest in this item in terms of seeing whether the document in question was properly handled by the administrative staff of the foreign affairs department, which I believe is where it comes from, but the fact of the matter is that we have a system in place, and I think this committee, of all committees, should be respecting the Information Commissioner's role. They have had official requests for a review of whether that was an accurate blacking out of that document or not.

I think it would be very much premature of us to call witnesses in the middle of that review going on. I believe there's a number of ATI requests that have come in, as they weren't happy with the document they received. They are appealing to the Information Commissioner to rule on those issues, whether there needs to be change.

As we know, the Information Commissioner, who was here a few weeks ago, indicated to us that through their investigation they have the right to look at the document. They look at all 13 sections of the law that allows for the blacking out of certain areas, and they make a determination of whether that was the right thing to do or not. Then they make a ruling on whether that should be released or if there should be changes.

For us to get involved as a committee in the middle of that process... I've talked to Mr. Martin about this before. I'm not one opposed to looking at access to information legislation, when it could be from a broader piece, but I don't think we should be getting

involved in the middle of an investigation that's done by the commission that reports to this committee.

My guess would be that you could call them in as witnesses and they'd tell you that they're in the middle of an investigation, a quasi-legal procedure, and that they can't answer that question for us, or can't give us a determination, because that would prejudice the work that their investigators are doing. I think there are some issues on timing here, but I think this will be done fairly quickly because of the newsworthiness of the requests, and the commission will work on that fairly quickly.

I think it's appropriate for this committee. If we're interested in seeing what the answers are from a procedural point of view, I think that's great. But I think we need to get the ruling first, before we start calling witnesses who are in the middle of an investigation, who won't be able to answer any questions on this particular item because they have a legal obligation to do otherwise.

I don't mind doing a study on it. On this piece here...I only indicate the one because that's what my friend from the opposition wanted to look at. We got a report and an update from the commissioner saying he misled us a little bit, that he thought there were 66 but there are only 55 or 51—I can't remember the number—pieces of legislation that had requests. The department had refused to listen to the advice of the commissioner and they had to go to court on it.

The commissioner won on a number of those areas.

● (0940)

The Chair: He won on all but three.

Mr. Mike Wallace: All but three.

I don't mind looking at that as a big picture item, call witnesses, people who were involved in those court cases—those court cases are now public—but to get involved in the middle of an investigation... If there had been no ATI requests, I'd have a different story. But they are in the middle of looking at it. He told us about at least one. I think Mr. Peterson mentioned that the Liberal Party was going to bring one. So I don't think we will get any good answers. I think we're better off waiting until the rulings, and then the committee can look at the rulings to determine whether it is the right thing to be doing. If we're not happy with the interpretation of the 13 sections, that's where we can make recommendations to the government of the day that these are the kinds of changes we need to have made to the legislation so that this type of activity, if we find it inappropriate, can't occur.

I'm prepared to debate the 13 sections and all that stuff, but I think my motion basically says that as a committee we'll agree to look at it, but we'll agree to look at it after the Information Commissioner rules on whether it was appropriate or not, and then we'll look at the policy issues surrounding that document.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Wallace.

I have Mr. Stanton, Mr. Peterson, and Mr. Martin at the present time.

We'll go to Mr. Stanton.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Mr. Chairman.

I know we are debating Mr. Wallace's motion, but the background, or context, we're dealing with is really the difference between Madame Lavallée's motion, which is presumably the next piece of business after this one, and Mr. Wallace's I think more thoughtful approach to this issue, which has been raised in the House of Commons. We know it's been a point of debate over the last two weeks.

Mr. Wallace, I think, has made the point quite clearly that there is an access to information process. A review and investigation of this issue is before the Information Commissioner. We heard that loud and clear when the commissioner was here two weeks ago.

By point of background, the question is really whether we should be jumping into this now. Or should we wait for the proper time if, in the course of our mandate as a committee, we still consider it worthy to even open up this topic once the Information Commissioner's office has completed its review? So is it now, or is it at a proper time later?

To that point, I would say that there are at least two other committees that have this in front of them. As far as I understand, this has been brought forward. Our mandate, our purview, is to consider aspects of the protection of privacy, the release of information, and access to information. That's our purview. There are other components to this *Afghanistan 2006* report that may concern other committees. It's certainly well within their realm to look at those issues.

The point is that we have a busy agenda in front of us. Now here we are interrupting our important work today on an important matter concerning privacy. It's an issue that was debated at some length and brought forward to us by numerous witnesses in the course of our PIPEDA review. We're continuing on the identity theft topic. It's a topic we all agreed to. We also have, if we look ahead, a possible review of the Privacy Act in front of us.

It makes no sense at this stage, because of what appears to be political expediency on the part of some opposition members, to try take that proper course of study off track to get into something that already is in front of two other committees. And it's already in front of the Information Commissioner, who, I might add, is the key person, the impartial office, that is the right office to look at these matters.

Mr. Wallace's approach is good. It recognizes these facts. It puts the potential study of this issue after such time as the Information Commissioner has had a look at this. Then when and if the results of that particular investigation are made public, they might become a helpful piece of study for this committee if at that time it chooses to proceed.

So I think this is a sensible approach. I certainly argue in favour of waiting for that time and certainly for keeping this as a potential item for study by this committee. But it shouldn't be now. It makes no sense to do it right now.

•(0945)

The Chair: Thank you, Mr. Stanton.

We'll have Mr. Peterson.

Hon. Jim Peterson: Can I ask the staff how long it takes the Information Commissioner to respond to a request? Is it 30 days?

Ms. Nancy Holmes (Committee Researcher): That's to respond to an access request. If you're asking for information, it's not the Information Commissioner; it's the ATIP coordinator in the department who has 30 days to respond. There's no time limit on the complaint process for the Information Commissioner, if that's what you're asking about.

Hon. Jim Peterson: So there would be no time limit on this, for this motion.

Ms. Nancy Holmes: No, not in the law.

Hon. Jim Peterson: It says "any and all ATI requests". That would mean that future requests could put off our study of this issue. I think it's far too open-ended. I don't see any problem in going with Madame Lavallée's approach. If there are things that prevent us from looking fully at this when it comes up, we'll be made aware of them at the time. But I would not support a motion that could indefinitely sideline us from dealing with this issue.

The Chair: Thank you.

We'll have Mr. Martin, followed by Mr. Van Kesteren and Mr. Dhaliwal.

Mr. Pat Martin: I can be quite brief, Mr. Chairman.

Mr. Peterson summed it up quite well. I am also concerned that the language Mr. Wallace has chosen leaves open an opportunity to postpone and delay.

I asked the Information Commissioner very specifically, when he was here, given the urgency or the way we view this matter as being very urgent, is it possible to bump it up on the waiting list at your office?

Quite rightly, he answered no; they are very consciously and deliberately blind as to the intake of cases. This the way it should be, now that I've thought it through. But this means that for all we know, this could be number 50, 60, or 70 on his list of investigations to get around to. I'm just pulling figures out of the air; I have no way of knowing.

Given how serious this matter is, the Information Commissioner's investigation will take a great deal of time.

It's a rare and unique situation. It's probably an unprecedented situation where the government blacks out a bunch of a document. First, that the government denies the existence of the document is a very serious offence. It's rare that the government would get tripped up on having denied its existence and then be forced to reveal it.

Second, it's very rare to have huge sections blacked out and then to get to see the original document and see what they've blacked out. That doesn't happen very often. I don't know of any case where that's happened. It gives great cause for concern. I think that's why the public is so seized with the issue, and we should be.

Regarding Mr. Wallace's argument that we have lots of other important business—or maybe it was Mr. Stanton's—I don't think we have anything as pressing, given that the title and mandate of this committee involves being the guarantors of freedom of information in this country. Overseeing the fair administration of the freedom of information is the responsibility that we've been charged with. I don't see any other issue that's as pressing or as poignant. So I think this issue should have primacy over less timely or time-sensitive issues.

The other reason—and I won't drag this on—is that our committee has unique investigative powers, which the Information Commissioner doesn't have, to compel witnesses and the production of papers. The magic of the Information Commissioner's package of powers is that he has more of an ombudsman-style office. He gets good cooperation from the departments, but the flip side or downside is that he doesn't quite have the clout to produce the information we may want.

I don't see any contradiction to having our investigation going on parallel to the Information Commissioner's.

I will stop there and simply say that I will be voting against Mr. Wallace's motion and in favour of Ms. Lavallée's motion.

• (0950)

The Chair: Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

First, I'm going to address something that Mr. Martin brought up. He says that it's unprecedented to have documents with large areas blacked out. We had testimony that this is just not true.

Mr. Pat Martin: No, but then to reveal the original....

The Chair: Mr. Van Kesteren has the floor.

Mr. Dave Van Kesteren: Often when documents are released, especially from foreign governments and agencies that deal with them, there are areas that are deemed by bureaucrats to be blacked out. They have to use their discretion—we distinctly heard that testimony. So this is nothing new.

Furthermore, much of what we're talking about is purely speculation. We haven't had an opportunity to look at these things. I think all we're doing, quite frankly, is going on a fishing expedition to embarrass the government.

When I think about the last meeting we had here with the Privacy Commissioner and what was laid out before us on this important study, it was a colossal waste of time. We have too many other things

to do that are of such importance to the people of Canada to just move off in another direction.

I read in our witnesses' brief about the percentage of Canadians who are affected by identity theft, and it's staggering. It's 11%. I know we don't have our witnesses in front of us right now. But there are three standing committees already investigating this very thing, if these allegations are true.

I believe that Mr. Wallace has brought forth a very sensible proposal. If you remember, at the last meeting he very graciously moved it forward to the next meeting for us to look over and study. So to come back and saddle this committee once more with something that is just going to waste our time is an absolute shame.

I know I will be voting for Mr. Wallace's motion. I want to remind everyone that this type of investigation will also prejudice the ongoing investigation. As I said, it's muddling. It's not a matter of getting answers for Canadians; it's trying to embarrass a government at the expense of Canadians, and at the expense of Canadians having their identities stolen.

Mr. Martin said this is an important task for our committee. We have an important task and the opportunity to present some options and solutions to these problems. We've only scratched the surface. How much time do we have left?

I urge all committee members to think about those things. Let's move in the direction we decided on a number of weeks ago. Let's do what we should be doing for our constituents and not go off chasing rabbits.

• (0955)

The Chair: Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair.

I would like to congratulate my good friend Mr. Van Kesteren for bringing this identity theft issue to the committee. I'm sure he's well aware that we almost unanimously voted to work on this issue. I don't think there's any member on this committee who feels this is not an important issue to Canadians. That's why I and all other members voted for it.

On the issue that Madame Lavallée brought in, when I look at elected representatives bringing an issue to the committee, for the last four weeks she has been trying to put this on the agenda and this has been filibustered every time.

Mr. Stanton said we have a busy agenda ahead of us. Then why don't we just take a vote on this? We all know that the *Globe and Mail* has access to this report without the whitewash. Mr. Martin has said that the government keeps changing its story every day. It is all about accountability and transparency; it is not about embarrassing the government. I personally feel that we should vote on this and let it go. This has been lingering for the last four weeks.

I remember when I was in private business, if I had a motion like this lingering for four weeks it would affect my company. I think Canadians want to see the truth come out. Let's vote on the motions by Madame Lavallée and Mr. Wallace, have a discussion here, and get back to the identity theft issue.

The Chair: I have two people. I have Mr. Wallace and Madame Lavallée.

I'd like to take Madame Lavallée first, Mr. Wallace, if you don't mind, and give you the opportunity to rebut at the end.

Mrs. Carole Lavallée: You're the first one, so go ahead.

Mr. Mike Wallace: No, no. I'd like Madame Lavallée to go ahead of me. She's a friend of mine, so I want her to go first.

[Translation]

Mrs. Carole Lavallée: We are *faux amis*.

M. Mike Wallace: Yes, *faux amis*.

The Chair: Please proceed.

Mrs. Carole Lavallée: First of all, Mr. Chairman, I want to say that the Conservative government does not really seem to know what the word "transparency" actually means. We are still waiting for the Minister to come forward with the new Access to Information Act. You let it slip, at previous meetings, that the Minister of Justice has indefinitely postponed his meeting with the Committee and that he may come and see us in September, at a date that is yet to be determined. That is another demonstration of the fact that this Conservative government—which is starting to be old, as a matter of fact—has no desire to be transparent and is not transparent. One has only to read the internal report from the Department of Foreign Affairs, entitled *Good Governance, Democratic Development and Human Rights*, to see that this government is not transparent. This is a report that the government has denied ever existed. It has done everything possible to prevent its release. However, it was subsequently forced to make it public by the Information Commissioner. So, it had to go back and do its homework all over again, and ended up blacking out just about everything there was to be blacked out.

As regards the two motions in front of us, I would like to take you back to September 27, 2006, when Jason Kenney tabled a motion almost identical to these ones. It read as follows:

That the Committee investigate and report on issues related to the alleged disclosure of the names of Access to Information applicants to political staff of the current and previously governments.

The Prime Minister's parliamentary secretary came here to ask us to analyze, study and investigate a special case involving privacy. That is exactly what we did. We had at least seven meetings, in addition to the one where we voted on the notice of motion, and an additional meeting, held in camera, to prepare a report. We had

approximately ten hours of meetings with witnesses. In other words, we worked very hard, and our legitimacy is an established fact.

Indeed, it's worth looking at the arguments made by Mr. Kenney to sell us on his idea of an investigation. He began by saying that this was: "[...] a general motion without limiting the Committee." Have a look at the blues yourself; that is exactly how it is written. He said, and I quote: "This is the appropriate Committee to examine the question [...]" and that the Commissioner had told us she had received a complaint. This is exactly the same situation. He added that it was important that we look at the practices of the Conservative government in this Committee. I am still quoting Jason Kenney's exact words on September 27, 2006. Go and have a look at the blues. He also said this: "[...] because we can be less partisan here than in the House, obviously." Finally, he said—and we can all agree with this: "[...] we all agree that it's inappropriate."

Mr. Chairman, I'm sure you can understand that I will not be supporting Mr. Wallace's motion and, if he agrees, I would like to ask that we put this to a vote immediately so that, out of respect for our guests, we can quickly dispose of these two motions and move on to discuss identity theft, as Mr. Van Kesteren is asking, in order that at the next meeting, or at a subsequent meeting, we are able to look more closely at government practices with respect to access to information.

Thank you.

• (1000)

The Chair: Thank you, Ms. Lavallée.

[English]

Mr. Stanton, you've spoken before. Is it a new point?

Mr. Bruce Stanton: No, go ahead. I'd like to come back at another time, though.

The Chair: Anyone else?

Mr. Wallace, to wrap up.

Mr. Mike Wallace: Thank you, Mr. Chair.

I appreciate my *faux ami* across the way pointing out some things from the transcript, because I would also like to point out some things from the transcript with the commissioner, things we dealt with, just to be frank.

If you let me start, I will do one thing to see if I can get some more support from the other side, and it goes to Mr. Peterson. I'll make a friendly amendment to my own motion.

Are you guys listening? You're not going to listen? Okay, good.

After the word "ruling(s) on", I have "any and all". I'll change that to "current ATI complaints his office has received". So if in two years, a year, or six months from now somebody else complains about it, fine, but our understanding is that there are current issues in front of him.

If I can have some time, Mr. Chair, I want to look at what was said in our committee. Mr. Peterson had asked if there were any specific complaints to Mr. Marleau about this piece of paper being blacked out or questions as to why Canadians were denied access to the proper information. Mr. Marleau said, "I'm informed that we have a specific complaint at this time. I'll ask the deputy commissioner to comment."

Here's what his comment was. Mr. Leadbeater said:

Mr. Peterson, as you know, we have a statutory obligation placed on us by Parliament not to disclose the details of what is ongoing. I certainly would be prepared to talk to you, or any other member, who wants to raise an issue about this.

—because you had raised the question of putting them on notice that the Liberal Party may bring in an ATI complaint—

However, if someone is going to complain about the answer to an access request, it needs to be the person who made the request. Anybody has the right to make an access request. The scope of our jurisdiction is set out in section 30 of the statute. We certainly will take your representation and ask our legal services—

—and so on and so forth.

Then Mr. Peterson asked "Is it legal for government officials to black out a report to the extent that has been reported?"

Mr. Leadbeater said:

There are a number—13, actually—of reasons in the statute that justify secrecy. We have seen cases where one of those reasons will justify the withholding of an entire record, and we have seen cases where the withholding has been overzealous. It would require us to examine the specific case to determine whether it was improper.

That is a quote from the deputy commissioner of the Office of the Information Commissioner of Canada.

Now, my reason for quoting that back to you, so it's a fresh reminder, is that what my motion does is ask that once they've done their work—

An hon. member: Let them do their job.

Mr. Mike Wallace: —then you can call them and then they can comment on it. You do not let them do the work. They will come here, and I can guarantee you they will say it's an issue that's before them and they cannot comment on it. That's even if you call the Information Commissioner or the ATI staff member in Foreign Affairs; they will not be able to give you any answers to any of your questions.

Now, if you want to talk about ATI requests that have been appealed to the commissioner, where the commissioner has ruled, then where the department has taken the commissioner to court—there are 48 of them or whatever—and where the commissioner has won every time, maybe you want to bring all those people back. I think there's even...it's the Government of Canada or the Attorney General...and the minister at the time mentioned a number of them. I think the Liberal minister actually still sits in the House, though not as a minister. We could call them to find out what went wrong in the process, with them blacking something out, people appealing it, and losing in court against the Information Commissioner.

I'll be happy to have a long discussion on where those issues went under the Liberal government, if that's of interest to the committee, but on this particular case that is in front of us, it has been indicated

by the Information Commissioner that they will not be giving.... They would not answer even Mr. Peterson's questions when he was asking them. They will not do any reporting on it until they're finished with the investigations they're working on, on these particular ATI complaints.

● (1005)

I'm very sad for the witnesses we had here today. I think we could have dealt with this at the end of the meeting. But I think it has been clear to us that they've already told us that they won't be coming here to deal with it, that it's in the system and they can't comment on anything that's in the system. I made a friendly change to call it "current ATI complaints", to resolve the issue that the Honourable Mr. Peterson brought up, that it could go on forever.

I think my motion is ruled in order. I think it's the appropriate thing to do. Other members have mentioned that other committees are trying to do things with it. I don't think Madame Lavallée's request is inappropriate, being that this is the access to information committee, but we're here to give advice on the policy pieces on different items.

I could probably talk for another 50 minutes, but I don't think that's fair. I know many people want to hear me for 50 minutes. But we've been told we could try to call witnesses. I would be very, very surprised, based on the information I have, if they would be able to appear with that in front of us, and then we will end up with no motion, because we won't be able to do anything on it, and then where are we? What have we gained?

That's why my motion I think is appropriate and it does what this committee has set out to do. That's my final word on my motion, Mr. Chair, and I appreciate that.

● (1010)

The Chair: The committee has spent at least 50 minutes on this item. First of all, Mr. Wallace has suggested that he would like to amend his motion by removing the words "any and all", and adding the word "current", which I would interpret as today, May 10.

Mr. Mike Wallace: Yes.

The Chair: Does Mr. Wallace have the unanimous consent of the committee to amend his motion?

Some hon. members: Agreed.

The Chair: Okay. The motion is amended.

Madame Lavallée, did you want to say something before we call the vote?

Could you please call the vote, Mr. Clerk?

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, interpretation is not instantaneous. I had not understood your question. If you're asking whether there is unanimous consent to accept the amendment, my answer is no. Please call the question on his motion.

[*English*]

The Chair: All right. There is no unanimous consent to amend the motion, so the motion stands as currently worded.

Mr. David Tilson: On a point of order, Mr. Chairman, are you telling me that Mr. Wallace can't make an amendment to his motion?

The Chair: Without unanimous consent.

Mr. David Tilson: No, quite the contrary. I believe there can be an amendment made to any motion by any member of this committee and that amendment would be voted on. If it fails, it fails. If it's carried, then there would be a vote on the motion as amended.

I've never heard of such a thing, that you get unanimous consent to approve an amendment. He's moving an amendment to his own motion. There's nothing wrong with that.

The Chair: My information is that if you're moving an amendment to your motion at the committee without previous notice, you have to have unanimous consent. That's my ruling.

Mr. David Tilson: I challenge the chair.

The Chair: Okay, there's a vote to challenge the chair. There's no debate. My ruling is that you need unanimous consent to amend the motion.

Is the chair sustained? "Yes" means the chair is sustained; "no" means the chair is not sustained. Call the vote.

Mr. Scott Reid: Is it "yes" to sustain the chair?

The Chair: "Yes" is to sustain the chair. "Sustain" means to support the chair.

(Ruling of the chair sustained)

The Chair: The chair is sustained.

The vote is on the motion as currently before the committee.

Mr. Reid.

Mr. Scott Reid: On a point of order, there was no debate, so I had to kind of make my own judgment on what I thought the rules might be without having them in front of me. I therefore voted to sustain your ruling because I suspect you're probably right. Mr. Wallace was trying to amend his own motion.

If the rules permit—I won't pursue this if they don't—I now would like to propose the same amendment that he was proposing. I stand to be corrected, but I think I could, as another member of the committee, propose an amendment to his motion, and we could debate it in a normal fashion.

So if that is the case, then I am indeed proposing the amendment that Mr. Wallace had made to his own motion. I'm proposing, as another member, that amendment to his motion.

The Chair: That's an interesting point. And that is in order.

Hon. Jim Peterson: I'll second that.

The Chair: Mr. Reid has moved that the words "any and all" be substituted with the word "current", which, as I said, I'm interpreting as today.

Is there any discussion on that motion, which is debatable? Hopefully not....

Mr. Scott Reid: I'll just say briefly, Mr. Chair, that essentially I did agree with the substance of what Mr. Wallace and the other

speakers in favour of that motion had said. I'd not spoken at the time, but I want it to be clear that I am moving it with that line of thought.

The Chair: Thank you, Mr. Reid. We understand that. All the points that have been made apply to the case.

We're now voting on the motion to amend Mr. Wallace's motion by changing "any and all" to "current", as moved by Mr. Reid.

(Amendment agreed to: yeas 9; nays 2)

(Motion as amended negatived: nays 6; yeas 5)

● (1015)

The Chair: We now move to committee business, item two.

To the witnesses, it's now 10:16, so if I see anybody request debate on the next motion—assuming it's moved—I'll let you guys go. Otherwise, what's the point? But if we proceed relatively quickly, we still have perhaps 40 minutes that we could ask some questions of you.

Madame Lavallée, are you prepared to move your motion?

[*Translation*]

Mrs. Carole Lavallée: Yes.

You have all received a copy of the motion. It reads as follows: "It has been stated in the House of Commons and in the media [...]"

Hon. Jim Peterson: You can dispense with reading the motion.

Mrs. Carole Lavallée: Fine. Thank you. There is no need to read the motion.

[*English*]

The Chair: Madame Lavallée has moved the motion that is currently before us. There's no need to read it into the record, since it's in front of us in both official languages.

Is there any debate?

Mr. Tilson.

Mr. David Tilson: I have a point of order, Mr. Chairman.

I'm going to submit the point that the motion is out of order, and for a number of reasons.

I am going to read at least the preamble to the notice of motion that is before us:

It has been stated in the House of Commons and in the media that the Conservative government has denied the existence of the internal report by the Department of Foreign Affairs entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*, and that the government then took every step to prevent its release but was finally forced by the Information Commissioner to reconsider and then published the report, but in a highly censored form.

Carole Lavallée therefore moves:

And then there's the motion.

Mr. Chair, I'm now going to refer to Beauchesne's, page 174, paragraph 565, the first paragraph under motions:

A motion should be neither argumentative, nor in the style of a speech, nor contain unnecessary provisions or objectionable words. It is usually expressed in the affirmative, even when its purpose and effect are negative.

Now, reading this motion, I would submit to you that it is argumentative. And it certainly uses objectionable words—i.e., “the government then took every step to prevent its release”. That's pretty objectionable.

The Chair: Let me just interrupt you. That is not part of the motion.

The motion before the committee is:

That the Standing Committee on Access to Information, Privacy and Ethics urgently address.....

—etc.

The preamble is not part of the motion.

Mr. David Tilson: Mr. Chairman, you can say that, but you acknowledge that the piece of paper that was put in front of us was the motion, and that's the motion.

The Chair: No, it's not.

Mr. David Tilson: Said by your own words, it's the motion.

A voice: Read what the motion is then.

The Chair: The motion is, clearly, that Carole Lavallée therefore moves:

That the Standing Committee on Access to Information, Privacy and Ethics urgently address the internal report by the Department of Foreign Affairs entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*, consider the matter, gather evidence and report on the apparent violation of the Access to Information Act.

That is the motion that we are debating at the present time.

Mr. David Tilson: So what is this preamble? What is that?

The Chair: I presume it's Madame Lavallée's attempt to convince people to support her motion when she distributed it.

Mr. David Tilson: It's a rant. It's a rant in the motion.

The Chair: It's not part of the motion. I have so ruled. I don't want to hear any more about it.

Mr. David Tilson: Is it part of the record?

The Chair: It isn't part of the record, because we've read what the motion is.

• (1020)

Mr. David Tilson: Well, I find it most offensive and objectionable.

The Chair: That may be. Do you have any other point of order on it?

Mr. David Tilson: I do, sir.

The Chair: Yes, sir.

Mr. David Tilson: I'm going to repeat a little bit of what Mr. Wallace said in asking for support of his motion, but it is part of a point of order, and that is the following. We have a commission. We have an Information Commissioner. They have a budget of millions

of dollars, and they're asked to do a number of things. One of them is to investigate whether certain information should be released.

I find it really unusual that this committee would decide to take over the work of the Information Commissioner and the Information Commission. Why have an Information Commission? This has been dealt with.

The Chair: Mr. Tilson, what is the point? You're not on debate, which is fair. You can debate it all you want. What is your point of order?

Mr. David Tilson: Mr. Chairman, I'm entitled to say that I think it's out of order, because this committee is trying to do the work of the Information Commissioner. That's not in order.

The Chair: Is your point that, in your view, the committee does not have the jurisdiction to deal with this matter because it is the Information Commissioner who has the jurisdiction? Is that your point?

Mr. David Tilson: Absolutely.

The Chair: I'll rule the point not well taken. Do you have any other points?

Mr. David Tilson: The point is, Mr. Chairman, that by the committee taking over the jurisdiction, which is your ruling—

The Chair: On the contrary. That's not my ruling.

Mr. David Tilson: Well, sir, that's the way I interpret it. You're saying—

The Chair: My ruling is that the committee has the authority to investigate any subject matter it wishes to investigate pursuant to rule 108, and it can do so. That does not usurp the jurisdiction of the Information Commission.

Mr. David Tilson: Well, I would submit it's certainly going to prejudice the investigation.

The Chair: That may be.

Mr. David Tilson: It's going to prejudice the investigation—

The Chair: That could be, but that does not prevent the committee from doing it.

Mr. David Tilson: Mr. Chairman, I'm in the middle of a point of order here, and you're challenging me on every sentence I make.

The Chair: I asked you to make your point. You've made your point—

Mr. David Tilson: I'm trying to do that, sir. I'm on to my second point, which—

The Chair: Which is?

Mr. David Tilson: Well, if you give me a minute.... Mr. Chairman, just give me a minute. I know you're excited to get on to this and challenge me and debate me, but I'm saying you don't have the right to debate me.

The Chair: Mr. Tilson, you have one minute.

Mr. David Tilson: You're going to give me a minute to make a point of order?

The Chair: Didn't you just ask me for a minute?

Mr. David Tilson: Oh, well—

Some hon. members: Oh! Oh!

Mr. David Tilson: It's nice to bring humour to this, but I think it's very serious, because this motion, if it's carried, will prejudice the work of the commission.

We will probably get into the issue of... We will ask the *Globe and Mail* people to come and give evidence as to where they got their information. We will have an extensive investigation of the former government, the Liberal government's work in this area. We will have an extensive investigation of the work that the current Conservative government is doing, and by making that evidence public, which isn't done in the work of the Information Commissioner, we will be prejudicing the work of the Information Commissioner.

It does go beyond that. After the Information Commission has made its ruling, one way or the other, as I understand the process, it's conceivable that this matter could end up before the Federal Court. We will then be prejudicing the work of the Federal Court.

I don't think the role of this committee is to investigate applications or investigate situations that are already under the investigation of the Information Commissioner. The sections dealing with these exempting provisions to deal with the Afghanistan human rights reports are listed.

Section 13 of the Access to Information Act protects against disclosure of information obtained in confidence from a foreign government that is consistently treated as such. We'll have to look at that section. We'll probably have to have some legal people come and talk to us about that. That's very—

Mr. Pat Martin: On a point of order, Mr. Chair.

Mr. David Tilson: I'm in the middle of a point of order.

• (1025)

Mr. Pat Martin: This is a point of clarification then perhaps. Is this a point of order that you're recognizing here, or is he in debate?

The Chair: I'm giving Mr. Tilson the opportunity, since he asked for it, to make his point. I'm waiting for him to get to his point of order because at this point it sounds like debate to me. I don't want to be accused of cutting him off and debating him at every turn, so I've given him some latitude.

[*Translation*]

Mr. Robert Vincent (Shefford, BQ): On a point of order, Mr. Chairman.

[*English*]

The Chair: I would ask you, Mr. Tilson, to bring your remarks to a close, focusing specifically on what you consider to be the point of order. I will then rule on that point of order.

At this point I'm going to ask that the witnesses go home. Thank you very much for staying. I hope you found some of this of some interest from a procedural point of view. We may ask you to come back, because obviously the committee did not have an opportunity to ask you questions. Thank you for your patience, and we look forward to seeing you again.

Mr. Tilson, could you bring your remarks to a close and focus for me your precise point of order?

Mr. David Tilson: Mr. Wallace did refer to the transcripts when Mr. Leadbeater was asked questions, and he commented on the exemptions for blacking out certain provisions of this. This work is dealt with by the Information Commissioner. I'll read part of the transcript: "Mr. Peterson"—

The Chair: I'm sorry, are you reading the same transcript that's already been read?

Mr. David Tilson: I'm going to read more of it.

The Chair: I want to know, what is your point of order? I have no problem recognizing you in debate, but what is your point of order?

Mr. David Tilson: You've got to let me finish.

The Chair: I'm asking you to draw your remarks to a conclusion now.

Mr. David Tilson: You can ask me, but I'd like to make a point of order.

The Chair: If you're not going to tell me what your point of order is, I'm going to have the mike turned off.

Mr. David Tilson: You're going to turn my mike off?

The Chair: I'm sorry. I will rule that you have no point of order if you don't tell me—

Mr. David Tilson: You're going to turn my mike off.

The Chair: I'm going to turn your mike off if you do not tell me what your point of order is.

Mr. David Tilson: I'm in the process of telling you what my point of order is.

The Chair: You must tell me now.

Mr. David Tilson: I am, if you'll let me do that. I will tell you now.

The Chair: Right now.

Mr. David Tilson: Okay.

Mr.—

The Chair: Right now, Mr. Tilson.

Mr. David Tilson: I am going to do that.

The Chair: Go ahead.

Mr. David Tilson: You know, you've got to let me make my point of order.

The Chair: Go ahead.

Mr. David Tilson: Okay.

Mr. Peterson—

[*Translation*]

Mr. Robert Vincent: I have a point of order, Mr. Chairman. Earlier, I asked to be given a few seconds to raise a point of order.

[*English*]

The Chair: Mr. Vincent, you're interrupting a point of order, but what is it?

[Translation]

Mr. Robert Vincent: Mr. Tilson's point of order dealt with whether the motion is in order. He said that Ms. Lavallée's motion is not proper or in order. His point of order addressed that, but now he is discussing the substance of the motion. So, his point of order no longer relates to whether the motion is in order. His speaking time on the point of order is now up. You gave him one minute, but that minute is now up. So, you should call him to order, move on to something else and put it to a vote.

[English]

The Chair: In fact, in his opening remarks, he said he had several points of order. One point of order was that the committee did not have jurisdiction to deal with this. I ruled that out of order. Then he had another point of order, which I ruled out of order. Now he's going to the third one, and I'm asking him to come to a conclusion and tell me what the point of order is so that I can rule on it.

[Translation]

Mrs. Carole Lavallée: Mr. Chairman—

[English]

The Chair: Madame Lavallée.

[Translation]

Mrs. Carole Lavallée: —this is not a point of order; it's a filibuster. Last week, I told him that this is what he always does, and he got on his high horses.

[English]

The Chair: Madame Lavallée, it is for the chair to determine what is or is not a point of order. I'm trying to do that, but every time I'm interrupted by another member, I'm delayed in making a ruling. So I'd appreciate it if we could get Mr. Tilson to make his point and I'll rule on it.

Mr. David Tilson: Now you've made me lose my place, Mr. Chairman. I've got to look for my place.

Some hon. members: Oh, oh!

The Chair: You were looking at Mr. Leadbeater's remarks.

Mr. David Tilson: Mr. Chairman, Mr. Peterson made some comments in the transcript with respect to—

The Chair: Yes, but what is your point?

Mr. David Tilson: My point is that the investigation that will be undertaken by this committee will prejudice the investigation by the.... We're going to essentially have two investigations going on, one of which could end up before the courts, and this investigation will prejudice not only the investigation that is under way now—according to the Information Commissioner, it's prejudicing that investigation—but could prejudice any application before the Federal Court.

• (1030)

The Chair: Okay, so that's your point, and I rule your point—

Mr. David Tilson: I'm entitled to explain to—

The Chair: No, you're not. I've ruled your point not well taken. That's it.

Are there any other—

Mr. David Tilson: No, I'm in the middle—

The Chair: I'm sorry, you are not. I'm calling now for debate.

Mr. David Tilson: I have some other points of order.

The Chair: No. I'm calling now—

Mr. David Tilson: You're not going to allow me to make points of order?

The Chair: If you have another point of order, I want you to state what it is before you try to justify it.

What is your point?

Mr. David Tilson: Well, Mr. Chairman....

The Chair: What is the point?

Hon. Jim Peterson: It's my fault.

Mr. David Tilson: Yes, it is your fault.

Mr. Chairman, Amnesty International and the B.C. Civil Liberties Association—

The Chair: Mr. Tilson, I want you to state your point of order now.

Mr. David Tilson: Amnesty International and the B.C. Civil Liberties Association have commenced litigation seeking an interim injunction prohibiting the transfer of detainees by the Canadian Forces in Afghanistan.

So I'm saying, Mr. Chairman, that because there are court proceedings going on now, aside from the Information Commissioner, the evidence this committee is going to call could prejudice the deliberations of that litigation.

The Chair: That may be. That's not a point of order.

Mr. David Tilson: Okay.

Mr. Chairman, my final point is that the committee has already decided.... I find it absolutely amazing that we'd agreed to proceed with this issue of identity theft, and now we're going to shuttle it aside and not deal with it. We made a decision unanimously to deal with this. Out of the blue, Madame Lavallée comes to this committee and decides to make a motion to put aside that issue and deal with this issue.

The Chair: What is your point of order?

Mr. David Tilson: That's it.

The Chair: That's not a point of order.

Is there any debate on the motion?

Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chair.

First of all, I'm very disappointed that my motion did not pass. I think if I had not been so gracious at the last meeting, it would have passed and we wouldn't be dealing with it today, or there would have been a reconsideration; I don't even know if you can do that, but I got a lot of heat from other members for being fair. In retrospect, I don't think I will be fair in the future.

I have some amendments to the motion before me, which I'd like to move. But have you and the clerk determined whether the actual motion is in order—not the preamble, which you've indicated is not part of the motion—based on page 449 of the rules of order?

The Chair: Yes, it is.

Mr. Mike Wallace: It is in order. Okay, thank you.

The first amendment I'd like to make is to take out the word “urgently” from the second sentence—I'm sorry this is only in English, as I don't know what the French is—so that it would state, “That the Standing Committee on Access to Information, Privacy and Ethics address....” So the word “urgently” would come out.

The reason I'm moving this amendment—which is debatable—is that we, as a committee, put together an agenda. We had a meeting just on the agenda, if I recall, and talked about what we wanted to do. The word “urgently” tells me that we maybe would want to preempt, as we have today, other speakers on identity theft, which I'm not sure is actually Madame Lavallée's approach. The word “urgently” means that we will suspend other work.

I'm going back to my other motion—not moving it, but just talking about the principles in it. In principle, I believe you're not going to get any good answers from anybody while we have this in front of the Information Commissioner. He can come and say whatever he wants, that he's sorry, he can't answer this; that he's sorry, he can't answer that. It's not that he wouldn't want to answer or the staffers wouldn't want to answer; it's just that they can't.

So “urgently” means a suspension of the work. I think we've done a decent job as a committee, working together over this past year, on PIPEDA and a number of other issues. And Madame Lavallée indicated there was a government motion to look at another item, which she read from the blues, dealing with something that had a specific need, on which I think we all worked together and got an answer and moved on.

I'm not afraid of any answer in this case, but I think the word “urgently” sends the wrong message. And we will not, as a committee, attain anything usable other than having a few witnesses and holding a meeting or two, and nothing else will happen.

So my motion, which is debatable, is that the word “urgency” be removed. I apologize for not knowing what it is in French.

That's my motion, Mr. Chair, at this point. I have others after that.

•(1035)

The Chair: The amendment is receivable. An amendment has been moved to amend the main motion by removing the word “urgently”.

Is there any debate on the amendment?

I see no debate on the amendment. Can we call the question on the amendment, please?

Mr. Mike Wallace: Are we having a recorded vote?

The Chair: It's up to you guys. Let's see hands. All those in favour to remove the word “urgently”?

(Amendment negated [See Minutes of Proceedings])

The Chair: Mr. Reid.

Mr. Scott Reid: Mr. Chairman, I actually have a proposed amendment to Madame Lavallée's motion.

The Chair: You may do so, but you have to get on the list. It's not a point of order.

Mr. Scott Reid: Oh, I'm sorry. I didn't realize these were points of order. My apologies.

The Chair: No, these are not points of order. We'll put you on the list, by all means.

Mr. Scott Reid: Oh, okay. I'm sorry.

The Chair: Monsieur Vincent was next, but he said no.

We now go to Mr. Stanton.

We're now back to debate on the main motion.

Mr. Bruce Stanton: I'll say at the outset that I'm against the motion, of course, and here's why.

The motion is far too broad in its scope. The motion is asking that our committee, the Standing Committee on Access to Information, Privacy and Ethics, urgently address an internal report entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*.

Mr. Chair, it occurs to me that addressing this report falls outside the purview of this committee. It would likely be better addressed or dealt with perhaps in the scope of international development, defence, foreign affairs, or call it what you will.

The motion before this committee, which in fact guides the scope of this proposed study, is not on point with the mandate of this committee. Why doesn't the motion get to the point?

I get the fact that the real question here is that concern has been expressed that the redacted sections of this report have fallen into question. Members have expressed some concern that perhaps too much was redacted.

Then there's this article in the *Globe and Mail* that made some wild speculation. There are allegations in Ms. Lavallée's highly hearsay preamble about the government doing this and that. It's highly accusatory and very inflammatory.

To be honest, I agree with Mr. Wallace. This preamble shouldn't even be on this piece of paper. We have a motion by Carol Lavallée, we have all this bunk at the front end of this motion, and then we have a motion. The preamble shouldn't be there. It's editorializing, and that's all it is.

But to get back to the point, the only concern that may be in front of this committee is the question on whether or not the redaction the department provided on this report, when it was provided to an access requester, is too extensive. That's it. It's the only question. It's the only thing that could possibly come under the scope of this committee. As has already been suggested, it's a question that's in front of the Information Commissioner.

When all is said and done, I don't know who it is, but we've heard that the requester of this particular report may have filed a complaint to say that he or she believes the redacted sections were too extensive. If the requester has filed a complaint, the complaint will be investigated.

What is there for us to do? There is nothing for us to do here. We've left it in the hands of the impartial and objective office of Parliament. It's what they do. They deal with that question, and they then have all kinds of recourse to conduct an investigation and take whatever recourse they want.

I'll again say this is an attempt to politically become inflammatory about some kind of obscure, completely based on hearsay, newspaper article, Mr. Chair. It's a newspaper article. What possible interest would a newspaper reporter have in inflaming an argument about that? Come on.

• (1040)

Hon. Jim Peterson: I have a point of order.

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

Mr. Bruce Stanton: That's my point, Mr. Chairman. I'm finished. I've made my point, and I speak against it.

The Chair: Thank you.

Mr. Peterson, on a point of order.

Hon. Jim Peterson: I would suggest, Mr. Chair, that you could see the time as being 11 o'clock and we could save another 20 minutes of this.

The Chair: I don't think that's a point of order and I don't think I'd do that, because then I would deny members who wish to make a point the opportunity to do so.

Hon. Jim Peterson: I'm going to suggest to all members that we could get out of here 20 minutes earlier by recognizing that.

Mr. Mike Wallace: Make a motion to adjourn while you have the floor.

The Chair: I'm going to call on Mr. Martin, and then we'll have Mr. Reid.

Mr. Pat Martin: I'm reluctant to wade in at any depth, but I will take the opportunity to say I think it's regrettable that the Conservatives appear to be trying to run down the clock in this.

For a matter of record—I have the floor and I have an opinion—it does seem to me that the Conservatives are trying to run down the clock to avoid bringing this matter up for a study.

On Mr. Stanton's idea that nobody will give you any information anyway, we can't predict whether a witness will be productive or not until we get the witness here. That, in and of itself, is not a good reason to not undertake a study of this kind.

The one amendment that I would have looked at as being productive, possibly, and even more useful is that Madame Lavallée's motion calls on us to consider the matter, gather evidence and report on the apparent violation of the Access to Information Act.

We could have put a date, that perhaps we should call on the committee to undertake this analysis and submit a report to the House of Commons before June 8, 2007, for instance, to serve notice to the government-side members that we don't intend to drag this out forever. I don't think it's our wish or our interest to humiliate the government by exposing all kinds of wrongdoing.

We want to get to the bottom of this one issue, that somebody denied this report ever existed. That's a criminal offence, and it undermines and devalues the whole freedom of information regime if that's taking place in one government department.

I don't think the government-side member should be so self-conscious about this. This isn't a condemnation of the whole new Conservative government. We've stumbled across the bad administration of the access to information regime in this one instance.

It's a unique instance, I pointed out, and I don't think Mr. Van Kesteren understood my point. It isn't unique that big chunks of this were blocked out. That's quite common in documents, for any number of legitimate reasons. But this same access to information coordinator gave the entire document to a university professor a couple of weeks earlier. So we have the unique situation of being able to examine what the whole document said and what sections were blocked out and then use our judgment as to whether this was in fact within the 13 legitimate reasons.

So the two questions that need to be addressed, that are crying out to be addressed by this committee, are: did they deny knowledge or did they deny that this document existed at all, in which case it's a very serious offence; and secondly, are they using good judgment or are they working within the parameters of what's allowed in what paragraphs they choose to black out?

That's entirely within the mandate. I think we have an obligation as the access to information committee to ensure the proper administration of our access to information laws or freedom of information laws. It would be irresponsible of this committee not to undertake this study, because it's a rare thing, as I say, that we get such an egregious example with all the evidence clearly accessible and available.

I move that we put the question.

• (1045)

The Chair: I'm consulting with my advisers.

Order.

Mr. Martin, did you move that the committee put the question? That motion is not receivable in a committee.

Mr. Pat Martin: I know.

Some hon. members: Oh! Oh!

Mr. Pat Martin: I wasn't born yesterday.

The Chair: Did you want to make a motion along the lines of what you were talking about in terms of a date?

Mr. Pat Martin: No.

The Chair: No? Fine.

Mr. Reid.

Mr. Scott Reid: Thank you. Mr. Chair, I was preparing in my head the things I was going to say. I was going to start off by praising my colleague, Mr. Martin, for his respectful and thoughtful presentation. With the exception of the very last little fast one he tried to pull there, I still think that he was, as usual, very thoughtful, and I appreciated what he had to say. I find in these discussions often it's best to listen to the people who are speaking in the lowest tone of voice. You often get something that's worthwhile.

I've been reading the motion that Madame Lavallée proposed, both in the French and in the English. I'm not sure that the English is identical to the French, but that's not the point I'm working on. I'm going to propose an amendment, and I'm going to propose the amendment to the English, but I think if I read the French as well, you'll see where I'm coming from in the amendment that I'm going to propose to the motion.

Let me read the French first.

[Translation]

That the Standing Committee on Access to Information, Privacy and Ethics, urgently address the internal report by the Department of Foreign Affairs entitled *Afghanistan-2006: Good Governance, Democratic Development and Human Rights*, consider the matter, gather evidence and report on the apparent violation of the Access to Information Act.

[English]

Okay, now I'll read it in English. The important part is towards the end, but I'll read the whole thing:

That the Standing Committee on Access to Information, Privacy and Ethics urgently address the internal report by the Department of Foreign Affairs entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*, consider the matter...

It's fine so far.

...gather evidence and report on the apparent violation of the Access to Information Act.

Now the problem I see with this.... It is somewhat different in French. It talks about shining the light on the fact that the Access to Information Act.... I think it would be "might have been violated", but in English it's "report on the apparent violation" and it presupposes the outcome. So what I am suggesting is that in the English version it be changed to "report on any violations that may have occurred to the Access to Information Act".

I'm not sure if that requires an adjustment to the French to make them parallel, but I think you can see what I am trying to do. It's to have us not presuppose our outcome, which I think in a roundabout way was what my colleague Mr. Tilson was trying to get at. Anyway, that's the motion, and I'll stop there. Once we've decided if it's receivable and how to deal with it, I would then like to comment briefly on it, Mr. Chairman.

The Chair: The motion is receivable. Could you just state what the wording is that you would like?

Mr. Scott Reid: Yes. It would be "...to report on any violations that may have occurred of the Access to Information Act".

Mr. Sukh Dhaliwal: Instead of "the apparent"?

The Chair: I'll state the motion when I figure it out here. It's "...any violations that may have occurred of the Access to Information Act"?

Mr. Scott Reid: Yes, Mr. Chairman.

The Chair: So the motion is—and I'll just read the last line of the English version because we're dealing with the English version. I stated the motion in the English language: "...gather evidence and report on any violations that may have occurred of the Access to Information Act". Is that correct?

● (1050)

Mr. Scott Reid: That is correct.

The Chair: That is the motion that has been moved by Mr. Reid. It is receivable. Is there any discussion?

Mr. Reid.

Mr. Scott Reid: Mr. Chairman, I think you can see....

I'll just explain it, Madame Lavallée. I just overheard you ask what the difference is.

The way it's worded right now, it's almost as if we've made the decision that having found that there were violations of the act, we are now working to determine what the nature of these violations had been. The point I'm making is that—I could be wrong, and maybe that was their intention to say that—we should not presuppose that violations have occurred. We are making assumptions that they could have occurred, and we're now investigating that and bringing witnesses forward in order to see whether or not these violations occurred and what their nature would have been. As a matter of fact, I think the way the chair wrote it down, it's violations in the plural. We're leaving the potential for more than one if they occurred. So essentially that's the goal here.

Yes, you can see how it's a little bit different from the English.

[Translation]

Mrs. Carole Lavallée: As long as it doesn't change the meaning, I have no objection.

[English]

The Chair: Is there any further discussion on Mr. Reid's amendment?

Do you have discussion on Mr. Reid's amendment, Mr. Dhaliwal?

Mr. Sukh Dhaliwal: Sure, Mr. Chair.

The Chair: Bear in mind the time.

Mr. Sukh Dhaliwal: I personally support this amendment. I think we should all put it to a vote so we can be out of here by 11.

The Chair: Thank you.

Is there any further discussion on Mr. Reid's amendment?

(Amendment agreed to)

The Chair: We are now debating Madame Lavallée's motion as amended. I want to be clear so we understand what it is we're debating.

I'll read it in English: "That the Standing Committee on Access to Information, Privacy and Ethics urgently address the internal report by the Department of Foreign Affairs entitled", and we have the title there, "consider the matter, gather evidence and report on any violations that may have occurred of the Access to Information Act".

That is the motion as amended. Is there any discussion?

Go ahead, Mr. Wallace.

Mr. Mike Wallace: Yes, I'd like to move an additional amendment—and it's not even mine; it's what Mr. Martin brought forward.

The Chair: You have the floor, Mr. Wallace.

Mr. Mike Wallace: Thank you.

The amendment we would add is that this would be done by June 8, I believe you said. So I'm moving that the addition of a timeframe of June 8 be added to the motion.

[Translation]

Mrs. Carole Lavallée: That's fine; I agree.

[English]

Mr. Mike Wallace: Is that in order?

The Chair: Well, yes, it's in order. I just want to get the precise wording. Are you suggesting that the committee report to the House by June 8, or are you suggesting that the committee—

Mr. Mike Wallace: No, the committee will gather evidence by June 8.

The Chair: We would gather evidence by June 8. That doesn't mean we would be finished with the matter.

Mr. Mike Wallace: That's right. It could go to a report after that.

Mr. Sukh Dhaliwal: Okay, let's call a vote.

Mr. Mike Wallace: It's your own suggestion, Mr. Martin.

The Chair: A motion has been made to amend the motion by adding the words "and gather evidence by June 8, 2007".

Am I correctly stating the motion?

Mr. Mike Wallace: That would be correct, sir.

The Chair: The motion is receivable. Is there any debate on the motion?

We'll go to Mr. Tilson.

Mr. David Tilson: Mr. Chairman, with due respect to my colleague, I think I'm going to oppose that, and the reason is that we're now discussing—

Mrs. Carole Lavallée: Ah, filibustering again.

The Chair: Go ahead, Mr. Tilson.

Mr. David Tilson:—more than the one violation, the apparent violation that was suggested initially, which has now been amended, because there may be other violations.

There may be violations by the Conservative government. There may or may not be, you know. There may or may not be violations by the former Liberal government. There may or may not be violations by the *Globe and Mail* reporter. How did this reporter all of a sudden get a report, take the blacked-out items, and put it on the front page of the *Globe and Mail*? How did that happen? Does that violate the act? If you look at section 15 of the act, it may well have violated the Access to Information Act.

I mean, you read some of these sections, and I don't know whether they've violated the act. We'd have to get legal people in here to give us advice. All of that has to be done.... I gather we're saying that the report has to be made by June 8. The committee's work would end on June 8. Is that the proposal?

• (1055)

The Chair: The evidence would be gathered by June 8.

Mr. David Tilson: Okay, but look at some of these sections, just at the opening subsection of section 15(1):

The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information

Then I'll just read the first one:

(a) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;

I mean, we now, conceivably, could be on to something else, because we're looking at all potential violations. Quite frankly, it may be that the *Globe and Mail* has violated the provisions of the Access to Information Act. I don't know if they did. They may not have, but we sure as heck have to look at it, and we have to do it by June 8.

So I don't know, Mr. Chair. I think this could be a very extensive investigation if this motion carries. We could spend a lot of time on this thing. It's a very serious allegation. We have to look at, now, all potential violations involving this topic. I would submit, with due respect to my colleague, that it may be impossible to do that by June 8.

The Chair: Thank you, sir.

Is there any further debate on the motion by Mr. Wallace to add the phrase, "and gather evidence by June 8, 2007"?

Mr. Mike Wallace: Based on the arguments I've heard, Mr. Chair, I'm going to withdraw the amendment.

The Chair: Does the committee give unanimous consent to withdraw the amendment?

Hon. Jim Peterson: No.

The Chair: There is no unanimous consent.

Is there any further debate?

Mr. Scott Reid: I don't know how to do this. Can I hear what Mr. Peterson's reason was for that?

The Chair: He doesn't have to give a reason.

I will call the question.

(Amendment negatived)

The Chair: We are now back to debate on the motion as amended.

Is there any debate on the motion as amended?

Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chair.

I have a question for you, first of all, just so I understand, because I want to be very clear. You have ruled what the actual motion that we are...and we've done some amendments to it, and I appreciate that. I think the motion is a little more usable now that it has been amended. But what actually shows up when we report back to the House? Does the preamble, which I believe, based on my reading, would likely have been ruled out of order, show up in the report, or how is it handled? I'd like to know how that's handled.

The Chair: As far as I know, it does not show up in the report, because I didn't read it into the record and neither did Madame Lavallée, although she did offer some commentary in support of her motion. I read the motion specifically in the English language. That is the motion that was put to the committee. That's what is going to show in the record.

Mr. Mike Wallace: Okay, I appreciate that.

Based on all the amendments and that the preamble is not part of the actual record, I still am not comfortable supporting the motion. Granted, it is better than it was, and I think it was better....

An hon. member: [*Inaudible—Editor*]

Mr. Mike Wallace: I think you mentioned a few minutes ago that when it's your turn to speak, you get a chance—right? *Merci*.

The issue—

•(1100)

Mr. Pat Martin: You should be conscious of the time.

Mr. Mike Wallace: Oh, I didn't know there was a time limit.

The issue is, in the previous meeting, when Madame Lavallée brought a motion, it was very inflammatory, and I didn't get to the point....

I thought I had made an amendment to it, a new motion that would solve those issues, and I thought I had agreement from other people in the room who thought it was a good way to go, because there are other broader issues, and that is not going to stop me from bringing those broader issues back in terms of how ATI requests were blacked out by previous governments and then went to the commissioner and then went to court. I think maybe that's something we should be looking at in terms of where this is going. But I want to be clear—

The Chair: Mr. Wallace, I'm sorry, it is 11 o'clock. There is another committee. I'm going to adjourn the meeting.

[*Translation*]

Mrs. Carole Lavallée: On a point of order, Mr. Chairman.

[*English*]

The Chair: Just a minute.

Before I do, we're in the middle of a discussion on a motion as amended. I'm going to bring this on as the first item of business on Tuesday.

The meeting is adjourned.

[*Translation*]

Mrs. Carole Lavallée: No, I have a point of order. I said that before.

[*English*]

The Chair: Okay, fair enough, a point of order.

[*Translation*]

Mrs. Carole Lavallée: No, I have a point of order. Put your gavel away. Good! Things are improving.

[*English*]

The Chair: Okay.

[*Translation*]

Mrs. Carole Lavallée: You do not have the right to end the meeting as you have just done. At a meeting of the Committee on Procedure and House Affairs held on April 19, 2005, which was chaired by Don Boudrias, and attended by Mr. Jay Hill and the Clerk, Mr. Pierre Rodrigue, it was agreed that the Chair could not unilaterally end a meeting and that an adjournment motion had to be passed by a majority vote.

[*English*]

The Chair: No, I don't find that a point of order. The meeting was called from nine until eleven.

[*Translation*]

Mrs. Carole Lavallée: Ask the Clerk.

[*English*]

The Chair: No, I have ruled. That's the end of it. If you wish to challenge the ruling of the chair, you may do so.

[*Translation*]

Mr. Robert Vincent: On a point of order. I challenge the Chair's decision and I would ask that this be put to a vote.

[*English*]

The Chair: The ruling of the chair has been appealed.

[*Translation*]

Mr. Robert Vincent: No.

[*English*]

The Chair: Is it the will of the committee—

[*Translation*]

Mr. Robert Vincent: I challenge the Chair's ruling and I request that it be put to a vote. Ask the Clerk to respond.

[*English*]

The Chair: Understand, the ruling of the chair has been contested.

[*Translation*]

Mrs. Carole Lavallée: Yes.

[English]

The Chair: Is it the will of the committee to support the ruling of the chair?

Mr. Mike Wallace: Yes.

The Chair: Would you please call the vote, a recorded vote? Quickly. We're running out of time.

(Ruling of the chair overturned [See *Minutes of Proceedings*])

The Chair: The chair is not sustained. What does that mean? That means we have to have a motion to adjourn. Is this what you're suggesting?

Mr. Mike Wallace: I still have the floor, then, I believe.

An hon. member: No.

Mr. Mike Wallace: He stopped me in the middle of my conversation to adjourn the meeting.

The Chair: I stopped him in the middle of his sentence because we had reached 11 o'clock.

Mr. Mike Wallace: I still have the floor.

[Translation]

Mrs. Carole Lavallée: This is a point of order, now.

[English]

The Chair: I ruled the point not well taken. You appealed. The point was taken as well taken. So you have stated that a motion is necessary in order to adjourn the meeting. That's the ruling that the committee apparently seems to think is in order.

But I interrupted Mr. Wallace. Mr. Wallace had the floor.

[Translation]

Mrs. Carole Lavallée: Fine.

[English]

Mr. Mike Wallace: Thank you, Mr. Chair.

[Translation]

Mrs. Carole Lavallée: Go ahead. We are in debate.

[English]

Mr. Mike Wallace: Can I ask a procedural question? Maybe you'll have the answer—whether the committee agrees with you or not.

Since I have the floor, I can move an adjournment. Is that correct?

The Chair: Apparently so.

Mr. Mike Wallace: If it fails, do I still continue to have the floor?

The Chair: As long as there's quorum.

Mr. Mike Wallace: Okay.

I move an adjournment of today's meeting, with the motion that's been presented to us to be the first item on the agenda the next time.

The Chair: There are no conditions. You move the adjournment and—

Mr. Mike Wallace: I move the adjournment. That's my expectation.

The Chair: Is there any debate on the motion?

Mr. Pat Martin: It's non-debatable.

The Chair: Non-debatable? Fine.

All in favour?

Mr. Mike Wallace: Of adjournment?

The Chair: Of adjournment.

Mr. Mike Wallace: Are you...?

You wanted to adjourn twenty minutes ago, for crying out loud.

Some hon. members: Oh, oh!

(Motion negated)

The Chair: We're still debating.

Mr. Mike Wallace: So I still have the floor, Mr. Chairman.

The Chair: Yes, sir.

Mr. Mike Wallace: Welcome to ethics, for four hours.

I want to comment on the ATIP process, as this motion relates to it. The federal Access to Information Act and the Privacy Act were passed back in April of 1993. In this department, the access to information and privacy protection division has full delegated responsibilities for the administration of both acts. The division receives and processes requests for information by gathering relevant records from the program areas in accessing—I have a point when I get to it—where portions should be protected from disclosure, which is part of the rules.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Mr. Chair, a point of order.

Mr. Mike Wallace: You're not on the committee.

Mr. Colin Mayes: We have a meeting scheduled here for 11 o'clock. I would ask that this committee reconvene in another room. We have privilege over this room at 11 o'clock.

Mr. Mike Wallace: You guys voted against adjournment.

The Chair: Mr. Wallace, you have the floor.

Mr. Mike Wallace: Thank you.

Specifically what happens—because this is what the motion talks about—is that there are justifications and there are experts who do this. Records that contain information obtained in confidence from another country must be safeguarded as well as information whose release could be injurious to international relations.

Specifically, the following exempting provisions could be invoked to withhold information, including on any reports that we get on Afghanistan. I want to tell you what sections they are.

Section 13 of the Access to Information Act protects against disclosure of information obtained in confidence from a foreign government and is consequently treated as such. That could be one of the reasons why we had that blacked out.

Section 15 of the act protects against disclosure of information that is likely to be injurious to international affairs and defence, including military and defence affairs as well as hostile activities. This includes positions adopted by the Government of Canada, any foreign government, and any international organization.

Section 17 of the act protects against the disclosure of information that could be reasonably expected to threaten the safety of individuals. That includes the Canadians who are on the ground in Afghanistan.

Section 21 of the act protects against disclosure of information that constitutes advice, including, but not limited to, advice or recommendations provided to a minister, as well as an account of consultations and deliberations between public servants.

I asked the Office of the Information Commissioner—and you can get this off the website—what this means....

● (1105)

The Chair: Mr. Martin.

Mr. Pat Martin: On a point of order, Mr. Chairman, the bells are ringing in the House.

The Chair: And what point is that?

Mr. Pat Martin: That we should be—

The Chair: What is the point of order, Mr. Martin? We know that the bells are ringing.

Mr. Stanton.

Mr. Bruce Stanton: Mr. Chair, in light of the fact that there's another committee coming here, I believe it's not proper to occupy the space. If we're still in debate, it's only proper that we find another room to continue this debate, if that be the case, otherwise we adjourn.

Mr. Sukh Dhaliwal: Let's vote. We're going to vote one day anyway. Why don't we just vote and get this over with?

Mr. Bruce Stanton: We declare a recess until we can find another space.

The Chair: I'm not going to rule on that point at this point, Mr. Stanton, because it's something the clerk has to discuss with other clerks.

However, I will point out to the committee that the 48th report of the Standing Committee on Procedure and House Affairs was presented yesterday, and I am told that it has been concurred in, so that Standing Order 115(5) has been amended.

It now reads:

Notwithstanding Standing Orders 108(1)(a) and 113(5), the Chair of a standing, special, legislative or joint committee shall suspend the meeting when the bells are sounded to call in the Members to a recorded division, unless there is unanimous consent of the members of the committee to continue to sit.

Therefore, it is my duty to ask if there is unanimous consent to continue to sit.

It's not a vote because this motion specifically calls members for a recorded division.

Let's be aware that this is for a recorded division, so if bells ring for a recorded division, I'm required to suspend the meeting unless there is unanimous consent.

I'm now told that it's not for the purpose of a recorded vote, so we're back to Mr. Stanton's point of order.

Mr. Stanton, I cannot rule your point—

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, wait a minute.

[*English*]

The Chair: Excuse me, Madame Lavallée. Mr. Stanton has a point of order. I'm about to rule on it. We'll get to you.

Mr. Stanton's point of order is not well taken. There is nothing that I'm aware of contrary to my ruling, in the event that the committee decides to proceed, that forces us to leave this premise at this time. That's the information that I've received from my clerk.

Madame Lavallée, do you have a point of order?

● (1110)

[*Translation*]

Mrs. Carole Lavallée: No, that's fine, Mr. Chairman.

[*English*]

The Chair: Thank you.

Some hon. members: Oh, oh!

The Chair: Where were we?

Mr. Wallace, you were still speaking.

Mr. Mike Wallace: Yes. I'll try one more time because it's still my turn.

I'll move to adjourn.

The Chair: Mr. Wallace moves to adjourn the meeting. There is no debate.

(Motion negated)

Mr. Colin Mayes: Mr. Chair, I have another point of privilege. If you look at Standing Order 115(2), under "Meetings", it says:

During periods coinciding with the hours of sittings of the House, priority shall be given to the meetings of committees considering legislation or Estimates over meetings of committees considering other matters.

The Chair: The committee that is waiting for the use of this room is the committee on aboriginal affairs. It is considering legislation, Bill C-44.

Consequently, it seems to me that I have to give priority to that committee. So what we will do is suspend this meeting and look for another room in which to consider carrying on our debate.

I ask all members to hang around until such time as we see whether the clerk can find us another committee room.

I apologize to the members of the other committee that we interrupted their meeting.

Thank you for bringing that to my attention.

•(1110) _____ (Pause) _____

•(1130)

The Chair: I am reconvening the meeting.

To remind members, we are currently considering a motion by Madame Lavallée that was amended by Mr. Reid. We're currently in debate on the motion as amended.

Mr. Wallace had the floor.

Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chairman.

I'm glad we're all reconvened here to deal with the motion that's in front of the Standing Committee on Access to Information, Privacy and Ethics about urgently addressing the internal report that was issued by Foreign Affairs and to consider evidence if there was any violation....

I want to make sure that members of the committee understand what the act has in it, so that if and when this passes, the questions we ask the individuals who may or may not appear, based on whether they are able to, with an ATI piece in front of them...that we ask them questions that deal with the act that the Office of the Information Commissioner deals with, in terms of access to information.

I'm not sure that we're all absolutely aware of all the parts, but there are exemptions, which I think the deputy commissioner indicated before at committee, and I read out that there were at least 13. There were a few, and this is a Foreign Affairs document that had been requested. I read out sort of a briefing of what kinds of areas. Sections 13, 15, 17, and 21 quite often apply to Foreign Affairs.

It is important for us, because we're all busy and may not have all the information that the Information Commissioner deals with and what those sections actually mean.

I happen to have a couple of them here that I might talk about. There are exemptions to getting that.

Again I want to remind the committee that this legislation is not brand new; it started in 1983. We can show where the Information Commissioner made a ruling that was appealed by the government of the day, which I believe was Liberal, and it went to court based on these exemptions and on these things.

If this motion does pass, I am looking forward to...that we will get all the court cases that have happened and what the circumstances were. They are all concluded and they are public knowledge. We have free access to call on that documentation and the witnesses who were involved in those cases—whether they are from the ministries, maybe even the person who did the ATI request—and the commissioner and his staff, who might be able to come and tell us about why they thought it should be appealed, what the results were, and how they came to their conclusions.

Based on their testimony on those issues that happened before the Conservative government took office on January 23, 2006, they will be able to enlighten us as a committee on a number of areas where the government of the day, which was Liberal, decided that it met the

exemptions. Then the commissioner had to take them to court over that.

This should make a very interesting discussion about what policy changes might need to be made to the act to reduce that. It's very costly to the taxpayer. Not only is staff involved and tied up in meetings and doing reports and background studies....

I think most of this was resolved by 2004, long before we were in office. But it happened over a number of years, and there would probably be a fair amount of research. So that would tie up the staff in terms of doing what they were doing. It would be fairly costly to the taxpayer, but I think it's important, if that's the kind of road we have.

Those are legitimate issues that are dealt with once a decision has been made by the Information Commissioner, and not in the middle of a process, which we are doing here.

One of the exceptions is actually entitled "Responsibilities of Government". I don't know the details of the specific piece we're talking about, but I think "Responsibilities of Government" makes it clear to whoever is the government that these are the rules that are set out in particular cases.

In section 15, it's "International affairs and defence".

•(1135)

The motion talks about a Foreign Affairs report entitled, *Afghanistan 2006; Good Governance, Democratic Development and Human Rights*. Obviously section 15 applies directly to that.

I don't have the details of what happened there. I know for a fact that they have at least one person in the department, in the ministry, who has been doing similar work. My understanding is that since about 1978.... Obviously the act didn't exist then, but there have been ATI people around since the inception of the act.

I don't know for sure, but we will see if this motion passes. At this point, I'd be happy to call any individuals who are involved in this. My previous motion would have dealt with it after the Information Commissioner ruled.

We are dealing with people who have experience protecting the information that is important to Canada and other countries for security reasons...and to help build on the confidence that other countries have in providing us with important intelligence that we would need to make good policy decisions in dealing with situations around the world.

In the "International affairs and defence" portion, subsection 15 (1), it says:

The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information.

The report that was brought forward obviously relates to the international affairs piece exemption that is in the act in subsection 15(1). It is an international affair. It's from Foreign Affairs. It talks about what we're doing in Afghanistan in terms of good governance, democratic development, and human rights. Information provided in that report could have been...and I don't know because that ATI request hasn't been looked at. The ATI request was done, and the ATI individual provided the information from Foreign Affairs.

In my understanding, there has been some appeal of that decision, and it has gone to the commissioner. Of course, they have not ruled on that, so it may be accurate that the reason the areas were not made public was because it has to do with our international affairs with Afghanistan.

It states clearly in the legislation in subsection 15(1) that matters having to do with international affairs that could be hurtful to Canada or to our partners... I believe in this environment that Afghanistan is certainly a partner of Canada. We have a very close and important relationship with them at this time, particularly with our men and women doing very brave work in their country, trying to bring democracy, and rights for men and women and children that haven't existed there for many decades.

We are doing more than our share. We have about 36 partners there, but I believe, and I think everyone around this table believes, that Canada is doing its share in Afghanistan and making a difference.

So the report could have had an effect, and based on the law, which was set out by politicians before I got here, there is an exemption for that particular reason.

Paragraph 15(1)(a) says:

relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities

In this case, again I don't know what's in the report, but the ATI person, once the commissioner rules on it, will be able to decide whether it meets the criteria of paragraph 15(1)(a), which, as you know and as I've just read, could deal with military tactics, strategy, or exercises. I don't know what the report said. We know what was released to the public, but the report is about good governance and democratic development. We have people on the ground, both militarily and non-militarily, in Afghanistan doing good work in terms of humanitarian work.

• (1140)

Paragraph 15(1)(a) could have an effect and put them at risk. We have the report and it may—I'm not saying it does or doesn't—have had an effect on our relationship with our Afghan partners. It may have provided information to those who are not in favour of our being there, meaning those whom we consider the enemy in Afghanistan. It could have put at risk the potential good work of our humanitarian efforts there, whether through CIDA or other non-governmental organizations who are providing water, helping to provide school systems, and doing all kinds of development work there. I think it's appropriate, as the act says, for the government to be responsible to ensure that any information provided would not affect the work being done there.

Paragraph 15(1)(b) says:

relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being designed, developed, produced or considered for use as weapons or other defence equipment;

Again, we don't know what was in the piece that was requested, and the ATI officer at Foreign Affairs may have used this. I'm not sure if this is one of the clauses that affected the blacking out of the report, but it may have been. There may have been information that the Afghan government provided in the report that would have affected the safety and security, or the tactics or thinking, of our military personnel on the ground, who are doing very good work for us in Afghanistan, risking their lives. I would say there's a possibility that the ATI officer felt they might be at risk if information in this report were released. I don't know where this information was generated from; it could also have been from the Afghan government.

Paragraph 15(1)(c) says:

relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or personnel or of any organization or person responsible for the detection, prevention or suppression of subversive or hostile activities;

Again, this is clearly our responsibility, and I really don't think I can get arguments from the other side that Canada does not have a responsibility to make sure that information provided to the public does not injure our role, our performance, our capabilities on the ground in Afghanistan when we are doing the work we're doing there, in providing a military presence that allows for the development and the growth of the humanitarian side of our mission. The other piece of this one is that we've done a very good job in helping to provide Afghanistan a democratic elected government for the first time in many, many decades. We want to make sure, and I think it's the responsibility of government under the "International affairs and defence" piece, that this exemption is applied in this report. So I think this is a legitimate piece of legislation passed by this Parliament and enforced and upheld by the members of this Parliament. The individual doing the work on this may have used this clause to black out some of the areas.

Paragraph 15(1)(c) says:

obtained or prepared for the purpose of intelligence relating to

(i) the defence of Canada or any state allied or associated with Canada, or

(ii) the detection, prevention or suppression of subversive or hostile activities.

●(1145)

Of course, this report is up for debate in terms of bringing it back to see whether there were any violations of the Access to Information Act. This is another area where clearly we have Afghanistan as an allied state. That information in there could have been provided by Afghanistan. It could have been detrimental to the work Afghanistan is trying to do on the humanitarian side and on the democratic development and good governance. My guess is that the person may have used this section of the act to provide the safeguard to that country and may use that part of the act to look at the wording in the report that wouldn't meet the criteria set out in this exemption.

Then we have paragraph 15(1)(e), Mr. Chairman. It says:

(e) obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of Canada in the process of deliberation and consultation or in the conduct of international affairs;

Now, clearly you'd have to say that this may be an area where the blacked-out area may apply, but we don't really know that for sure because we're guessing. There had been a request for information obviously asking for documentation. This is the document that was sent to them and it was blacked out in certain areas. That has been appealed—that is my understanding—so we really should be waiting to hear from the Information Commissioner on whether that area does apply or not.

And just a reminder that the Information Commissioner has full access. Their staff has full access. We do not have full access to the report. The report that was sent out on the ATI request is not legal. It's not full access for us. We will have to rely on the word of the commissioner on this—the access to information commissioner—but of course this motion doesn't allow the access to information commissioner to do their work first before they report back to us on exactly what was right or wrong. It may all be right. We have no idea because we have no information on it. We have no report from a third party, an independent organization, which we have faith in.

In fact, I recall our voting for the new Information Commissioner in a unanimous vote, with lots of praise around the table. So I think in this particular case especially, because it's his first political issue, we should be looking at what they do with it and evaluating how that is handled. This motion that's in front of us today preempts the ability of the access to information commissioner to do their work, and I'm guessing it will not be very fruitful for this committee because they will not be able to comment until they have done their work, which is the appropriate—

●(1150)

Mr. David Tilson: A point of order, Mr. Chairman.

The Chair: Mr. Tilson.

Mr. David Tilson: Mr. Wallace has just raised an issue, and it makes me wonder whether you should reconsider your ruling as to whether or not this motion is in order.

For us to study this report we're going to have to make an application to get the report, because we don't have the right to get the report. In other words, it's going to have to go through the process of going through the Information Commissioner, just like any other application. Matters may be blacked out because of what's in section 15, so the very thing that Madame Lavallée, in her motion,

is trying to do, we can't do. We can't get the report to study it, so I therefore ask that you reconsider your ruling and submit that the motion, because of that process that would be required, is out of order. Otherwise we have to start on Tuesday, if this motion carries—and it may or may not happen, we may have more things to say today—but if it starts on Tuesday, we really can't proceed with the report until we get the report. You as chair, or the clerk perhaps, would have to get a copy of the report. I don't know how you're going to do that.

My only solution is that you have to make an application to the Information Commissioner or the ministry, and it has to go through that process, just like anybody else.

The Chair: I don't rule your point well taken. On the points you've made, I don't think that whether or not a committee finds difficulty in studying a question is a point of order. That may very well be. Mr. Martin already pointed out to us that he seems to know some professor who has the uncensored version of the report. I'm presuming we could call that professor, if that professor didn't voluntarily issue the report to us.

Mr. David Tilson: Well, on that point—

The Chair: Let me just finish on my ruling.

I was just speaking to the clerk that indeed it's crystal clear that if we're going to deal with this, and this motion passes as currently worded, it's going to result in all of the business of the committee already scheduled being.... The clerk will tell us at the right time what witnesses were scheduled and what witnesses we are now going to have to cancel.

But clearly, Mr. Tilson, I think you're right. The first order of business would be to obtain a copy of the report and to read it as a committee—whether or not we decide to do that in camera or not—so that having read it, we can then decide what witnesses we want to hear, etc.

All of this presupposes that the motion is going to pass, and I don't think I should do that until such time as the motion does pass. But I do not agree that it is a point of order that if the committee has difficulty obtaining information, I should rule an otherwise valid motion invalid.

Mr. David Tilson: Mr. Chairman, if I could—

The Chair: Mr. Tilson, I ruled your point as not well taken.

I'll go to Mr. Dhaliwal, and then I can come back to you.

Mr. David Tilson: But, Mr. Chairman, I have the right to respond to what you've just said.

The Chair: No, you don't. I've made the ruling.

Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Thank you, Mr. Chair. I was anxiously waiting for my colleagues on the other side to finish.

I'm a little bit—

The Chair: Is this a point of order?

Mr. Sukh Dhaliwal: Yes, it's a point of order. In fact, the point of order is that Mr. Wallace did not respect the civility of this place in calling...when I did not have any dealing....

In fact, if a member comes to me and says they're going to bring in a motion, they have every right to bring in a motion, and I have no problem with that, but there was no commitment, and Mr. Wallace did not approach me at all with his motion since that meeting. I only saw the motion that Mr. Wallace brought in when the clerk handed the motion to me.

I think Mr. Wallace should apologize for his act, to respect the civility of this place.

The Chair: Mr. Dhaliwal, you were speaking to me on a point of personal privilege, as opposed to a point of order, and you've made your point. I'm not quite clear on exactly what your point is. I could be wrong, but I don't recall Mr. Wallace saying anything on the record about you, though I may have to review the blues. He may have, but I just don't recall anything.

What is it that you think he said on the record? I can't do anything about things that may have been said in the hallway, or anything, but do you recall anything he said on the record that you feel he should apologize for?

Mr. Sukh Dhaliwal: Mr. Chair, I mean—

Mr. Mike Wallace: I'd like to respond.

The Chair: Mr. Wallace, did you want to respond?

Mr. Mike Wallace: Sure.

I appreciate his point of personal privilege. If he was offended by me when I talked to him in the hallway afterwards, I'll apologize if I offended him, but sometimes the truth hurts.

I just want to point out to the member opposite that I actually read the motion into the record at the last meeting. He may not have seen it in writing, but he heard it. I read it twice. It's in the record, in the blues, and they were calling for us to vote on it at the time, and I said, no, because I thought it needed to be in writing and to be translated.

So I am opposed a little bit to his comment that he didn't hear or know the motion. I, actually, as a member of the committee—which I think is appropriate—favour doing it in writing, instead of just reading it out and maybe having it misinterpreted. And that's what I did.

• (1155)

The Chair: Thank you for apologizing for any perceived slight in the hallway. You are correct that the motion was read into the record, because I was briefed on this and know that it occurred.

Now, Mr. Tilson, do you have another point of order?

Mr. David Tilson: I just want to be clear, Mr. Chairman, on what you said. If we can't get the report from the ministry, are you going to go to some professor and get the report from him?

The Chair: We'll discuss what we do and how we do it when the motion passes. The motion is currently—

Mr. David Tilson: If it passes, indeed.

The Chair: Yes, if it passes.

We have to discuss how to “urgently address”, and in what manner to “urgently address”, the matter and how to gather evidence. I'm not going to entertain discussion of that unless and until the motion passes.

We are on debate on the motion as amended. Is there any further debate on the motion?

Mr. Mike Wallace: I still have the floor, do I not?

The Chair: Yes. It was a point of order. You are right, sir.

Mr. Mike Wallace: Thank you, Mr. Chair.

Why I continue to read parts of section 15, related to the motion in front of us, is that I would like you to consider the point that as a member of Parliament I'm willing to look at documentation that is obtained legally, but I'm not sure how as committee members, with a sworn oath, we can look at illegally obtained information.

I'm not asking you to rule on that, but it's for your information for future discussions.

Paragraph 15(1)(f) reads:

on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (d) or (e) or on sources of such information

Let's be honest about this. Chances are that the methods or scientific equipment piece are probably not in the report on good governance and democratic development, but I don't know that because I didn't have it.

But I'll concede that this is likely not one of the areas that might have required the ATI staff member to remove that information. This is what that person does in every single department, not since we've come into government in 2006, but since the inception of the act. There have been ATI people in departments looking at the information that's being requested, and they decide whether those exemptions apply, based on the legislation that was duly passed by the House of Commons with all 13 exemptions.

Then there is an appeals process, if you didn't like the answers you received or how the document looked. That's why it goes to the Information Commissioner. They get to look at it in its complete form. They get to decide, and then if you don't like what the commissioner has to say about it, you can take it to Federal Court.

That's what the Liberal Party did with 51 cases, and they lost 49 of them. The commissioner won those 49, to the credit of the person doing the work. Let's be honest, if you look at those cases, they may be changing a sentence or a word. "May", or "not", or something was blacked out, but now that word is available. It's not like the whole document becomes completely accessible, but often parts become accessible. Often they work with those organizations that put in the request to make sure they get the information. But it does happen, and we should be waiting for the commissioner to rule on this particular case before going any further.

There is paragraph 15(1)(g):

on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations

The Chair: Mr. Vincent has a point of order.

Mr. Mike Wallace: Excellent.

• (1200)

[Translation]

Mr. Robert Vincent: I have a point of order, Mr. Chairman.

[English]

The Chair: Mr. Vincent.

[Translation]

Mr. Robert Vincent: Mr. Chairman, I am wondering whether we are really debating the substance here and if Mr. Wallace is not, in fact, trying to prepare future meetings by discussing who should appear and who should not appear before the Committee. I thought he was talking about an amendment to the motion earlier. I believe we need some clarification here. He is really just preparing subsequent meetings.

If he wants to do that, I have no objection. We have only to vote on the motion. We could discuss future meetings and who we will invite or not invite to appear. Today, we are not supposed to be planning our future meetings; we are supposed to be voting on the motion. If he wants to speak to the motion and debate it, I have no objection, but I think you should call him to order and ask him to make his comments more specific.

Thank you, Mr. Chairman.

[English]

The Chair: Thank you, Mr. Vincent.

I don't rule your point well taken.

Mr. Wallace is debating the motion and speaking against it, so he is pointing out the various reasons why he believes the committee should vote against the motion, including the points he's making with respect to the act, the difficulty of obtaining evidence, etc.

I rule that perfectly acceptable debate on the motion, and I rule your point not well taken.

Mr. Wallace, you have the floor.

Mr. Mike Wallace: Thank you.

This is to the point that Monsieur Vincent was making. I do not have an amendment on the floor, of course, but I may bring notice, as I think should be done, in both English and in French, on a motion

to deal with other items dealing with the list of crown cases initiated against the Information Commissioner. That may come, but maybe not today because I want to make sure.

I'm really focusing today, Mr. Chairman, on the motion that's been amended and that's in front of us that deals with the report.

I was on paragraph 15(1)(g), and the report clearly stated—*Afghanistan 2006*. I'm not sure if there's an *Afghanistan 2005, 2004, or 2003*, but the title is *Good Governance, Democratic Development and Human Rights*.

Look at paragraph 15(1)(g). It says:

on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations;

Clearly the individual in the department who has the sole responsibility to respond to ATI requests could have looked at that area and said: "Look, some of that information provided in that report deals with future negotiations that we may have with Afghanistan. It has a relevance that has a detrimental effect to either the Government of Canada's position or the position of Afghanistan." So they could have blacked that out for the purpose of making sure that those intentions stay intact and that no one is injured by that.

Of course, we don't know that, because we haven't heard from the appeals to the Information Commissioner, which in my motion, if it would have passed, would have been the appropriate time to deal with that. We would have then had full information and a full set of witnesses who would have been able to speak freely on the actual request, the actual appeal, and what the decisions were and why they weren't.... So paragraph 15(1)(g) could have been clearly one of the areas they could have worked on.

Paragraph 15(1)(h) reads:

that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad;

Let's be clear, there could have been information that would have been in that report, which I have not seen, that would have been blacked out. That official correspondence or information that would have had an effect on our diplomatic mission or our posting in Afghanistan could have been one clear reason why the ATI person in this department made the decision that it was in the best interest of Canada, which is clearly allowed in the act under "Exemptions" under "International affairs and defence". It is actually our responsibility to make sure this doesn't happen. It's not done carelessly, and we will work on the assumption that maybe that's why that person didn't do it.

I think this is important. I know you're thinking I'm taking up time here, but I want to make sure that everybody around this table has an understanding of some of the sections we're dealing with. I can guarantee you—

• (1205)

Hon. Carolyn Bennett (St. Paul's, Lib.): You could have had the study done by now.

Mr. Mike Wallace: Before the—

Mrs. Carole Lavallée: It's because you have nothing to say.

Mr. Mike Wallace: I like being interrupted. Sometimes it's difficult, but that's okay.

Before we're able to decide on these things, we're moving ahead because we haven't had it. So I think it's an important educational piece, to make sure that everybody understands the 13 exemptions that are allowed, the 13 clauses that are allowed in the process, and if and when witnesses are called, that we are well-educated and have a clear understanding of what the legislation has to say and the grounds on which the ATI officer and the Information Commissioner operate.

These are important issues they would be considering on a daily basis. Think about Foreign Affairs. This is not the only ATI request that Foreign Affairs gets in a year. It is likely—and I'm just making an educated guess—that Foreign Affairs gets one of the highest volumes of requests of any department on these issues. I'm guessing there are organizations, individuals, universities, professors, and non-governmental organizations asking for information from Foreign Affairs on a daily basis at a very high volume. Based on these first few things I've read, I'm guessing the ATI individual rules a number of areas are not able to be released to the public, and they get blacked out for good reason.

So let me continue, Mr. Chairman.

Paragraph 15(1)(h) of this act states:

that constitutes diplomatic correspondence exchanged with—

Hon. Carolyn Bennett: Is he asking permission of the chair? He said, "Let me". I think that was asking.

The Chair: Order, please.

Mr. David Tilson: He has my permission.

The Chair: We're going to try not to drag this on any longer than necessary.

Mr. Mike Wallace: Thank you, Mr. Chairman.

Paragraph 15(1)(h) of the act reads:

that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad;

I am guessing that the piece of information, or some of the information, in the report, *Good Governance, Democratic Development and Human Rights*, was likely done via correspondence. That correspondence was either provided by Government of Canada officials who are on the ground, or it could have been provided by Afghan officials to Canada, and it was built into this report.

So, clearly, if the communications come from diplomatic correspondence or from exchanges with foreign countries, such as

Afghanistan, and if these are believed to have a detrimental effect, based on what I have read, they have the right to black those out and to bring them back to the individual who made the ATI request.

Now, I don't know this for sure, because we haven't seen the report. As for anything reported in the *Globe and Mail*, I don't know if anybody knows how accurate that is, because the report hasn't been made public.

So we should be dealing with the real documents, not other stuff that people have put together. But we don't know what's in there, because we haven't had the right to see it. I have agreed with that position. Others haven't, and they have appealed that to the Information Commissioner, and he will make a decision. But we won't know that decision because we're moving ahead quickly before they have a chance to discuss the issue and do the proper investigation.

Paragraph 15(1)(i) reads:

relating to the communications or cryptographic systems of Canada or foreign states used

(i) for the conduct of international affairs,

(ii) for the defence of Canada or any state allied or associated with Canada, or

(iii) in relation to the detection, prevention or suppression of subversive or hostile activities.

Now, I'm not sure what's in there, but when we see it, it may have been in relation to the suppression of subversive activities. There could have been something in there about that. That is why the ATI person from this department who, in my uneducated understanding, has years and years and years of experience on this topic, and probably is very, very busy, because of all the work that's done—which doesn't mean you don't do good work.... My view, Mr. Chairman, is that busy people often do high-quality work, because they're used to the topic and become familiar with all of the issues surrounding it. I'm thinking that in this case, that is a clear possibility.

The act also...because it's not necessarily clear to everyone.... And I'm sorry that I'm only speaking English today, but that is my ability, and I am trying to learn French—and all I can say about it is that it is "going".

Anyway, there is a definition subsection, so that people understand the definitions. Subsection 15(2) reads:

"defence of Canada or any state allied or associated with Canada" includes the efforts of Canada and of foreign states toward the detection, prevention or suppression of activities of any foreign state directed toward actual or potential attack or other acts of aggression against Canada or any state allied or associated with Canada;

So we clearly identify what an allied state is, and obviously Afghanistan is an allied state of Canada.

There is no question of any person looking at the ATI request and saying Afghanistan is not an allied state and that the report should not be viewed in that manner. Obviously with the military and humanitarian support we'll provide until 2009, and which this parliament had agreed to under the Liberal government, I think it's clear that we have been there a while—about five or six years now—and that we're doing great work, both military and humanitarian, and that this is part of the defence of Canada. So it meets the definition set out in the act.

• (1210)

Now, “subversive or hostile activities”.... Some people's definition of that might be different, but it's clear in the act what the definition is. It reads:

espionage against Canada or any state allied or associated

So it doesn't even have to be a spy here in Canada, or a spy about Canada. If somebody is in Canada spying on a foreign country, say, Afghanistan, or the United States, or one of our other allies—Britain, Australia—we have the right, based on the act, with the access to information, with the exemption that's provided under “International affairs and defence” under the “Definitions” portion.... We can prevent others from getting that information, if it's been provided by other governments or by our government, that may affect the activities that may constitute espionage, that may affect not only Canada but also other countries. And that's clearly set out in the definitions.

That may have been a part of this person's thinking pattern and decision-making when it came to deciding which parts would be released under the ATI request or not.

The second part is “sabotage”. Now, in this case we're talking about a report entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*. I don't know what's in the report because of course I haven't seen it in its entirety, but sabotage, obviously, is an important issue that could have been part of the decision-making. Based on the information that's in this report, that it was designed for the government to review and to make policy decisions that help prevent sabotage, not only in Afghanistan but also here in Canada, it is inappropriate, and obviously set out in the legislation...that's a possibility for why the ATI individual in the Department of Foreign Affairs may have decided that some of that information, knowing how it was provided, was not publicly available at this particular time.

Paragraph 15(2)(c) says:

activities directed toward the commission of terrorist acts, including hijacking, in or against Canada or foreign states,

Obviously under the previous administration, under the Liberal government, we had the very tragic events of 9/11. Security, obviously, became an important issue of the day, and continues to be a very important issue for Canada and for other free nations around the world. Hijacking is actually mentioned. Terrorist acts are clearly indicated as a potential reason—a part of the definition of “subversive or hostile activities”—and these issues are clearly defined in the act, under the “Definitions” section. The information that was included in this report, that we're asking to have reviewed and seeing here before the Information Commissioner has a look at it...could easily have had information that would either have affected

or had information regarding terrorist acts or hijackings, or any other events, not just against Canada...but also the possibility of it happening in foreign states, and of course that could be Afghanistan.

Paragraph 15(2)(d) reads:

activities directed toward accomplishing government change within Canada or foreign states by the use of or the encouragement of the use of force, violence or any criminal means,

So obviously under the definition of “hostile activities”, there could have been issues to deal with criminal activity that had been taking place or may have been taking place, or with the prevention of criminal activity. But if, in the opinion of the person in the ATI office, the information, whatever the report says, actually made it to the public, made it to the newspapers, and maybe made it to those who were trying to overcome in Afghanistan, and they were able to use that information to promote criminal activity, to promote violence, to use force, that information would be inappropriate to be in the public domain.

• (1215)

That could be a reason why it's there. But we won't know, Mr. Chairman, because we have a motion in front of us to deal with this urgently, prior to the Information Commissioner and his staff doing the work, seeing the information that's there and applying the criteria.

I'm just on the “Definitions” part of section 15. There are a number of other acts, 13 in total, where this could have made a difference—

Mr. Pat Martin: What's paragraph 21(1)(b)?

Mr. Mike Wallace: I don't have that one in front of me right now.

Mr. Pat Martin: That's the only one I want to know about.

Mr. Mike Wallace: I don't have that one in front of me right now, but it might be in my pile. I'll certainly get there sometime today.

The next part of the “Definitions”, paragraph 15(2)(e), reads:

activities directed toward gathering information used for intelligence purposes that relates to Canada or any state allied or associated with Canada

So if you were confused about what is meant by the gathering of intelligence information, this definition clearly sets that out in the act, an act that has been around since 1983, I believe. But these exemptions clearly indicate to anybody who's in an ATI role in any department—and of course we're dealing with someone from Foreign Affairs. This act doesn't just apply to Foreign Affairs, but to every department across the government. And there are ATI individuals in every department who go through these requests for information and, for the most part, I think, provide the information on the most timely basis possible.

There are issues, which we have heard about, where it takes time, and more time than we would maybe like. I make no apologies that when it comes to the protection of Canada and our allies, they look at the exemption portion of the responsibilities of government and look at where these go.

So under “Definitions”, when it's about information used for intelligence, I'm not sure what information was in this report on good governance and democratic development and human rights, but it could be used against Canada or Afghanistan, because of the information in it. We won't know that, because we haven't seen the report. The report sent to the public was blacked out. Maybe it was blacked out for the right reasons, but, again, we don't know that, because the Information Commissioner has not ruled on it. And he hasn't ruled on that, even though my motion would have allowed him, or his office, to rule on that. My motion would have allowed us to call him and ask him what he was doing, what information was in there on this particular item that should or should not have been blacked out. Then we'd have something to work on.

Otherwise, I'm not sure where we're going with this motion, because the motion says we should deal with it urgently, and we may not have any information. If we deal with it next week, are we then done with it if they come and say to us, well, we're not available or not able to provide the information because it is under investigation? So our urgency may not be their urgency. But my guess is that they understand the political importance of this document and will be working on this to make sure it is done appropriately.

Paragraph 15(2)(f) reads:

activities directed toward threatening the safety of Canadians, employees of the Government of Canada or property of the Government of Canada outside Canada.

This is a very important piece, in my mind. The paragraph talks about activities directed toward threatening the safety of Canadians, and we don't just mean Canadians here at home or the Canadians we have in the field in Afghanistan doing military work, who are actually Government of Canada employees. I would just remind members of committee that our fine men and women who are in our uniform representing our country and doing very dangerous, very tough, very important work for us in Afghanistan are Government of Canada employees. We have to do what we can to make sure their activities and safety are not threatened by any information that could be gleaned from a complete release of the report, *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*.

Now, it may or may not have that information in there. We don't know that; we will not know that. I heard earlier, as brought up by my colleague, that there might be an unblacked-out report that somebody thinks they have and that was provided in the ATI access piece. I'm not sure how legal it is to have that document. And I'm not a lawyer, so I'm not going to comment on that, because you wouldn't want me to comment on the legality of these pieces.

But my view is that, as a committee, we should be looking at what was legally obtained and not encouraging people to get illegal government documentation, or any type of documentation garnered illegally, and treating it as evidence. That's like saying that if somebody breaks into another company and they're here about theft of their information, about identity theft—which we were dealing with earlier today.... If they got the information, but they had to

break in to get it, and stole it, I think we should not be ruling that as something we would consider. I think that goes far beyond our obligations and our responsibilities to uphold the law. If somebody obtains something illegally, it should be deemed inadmissible here in this jurisdiction. I would caution anybody who brings anything forward that has an illegally obtained piece of information, that this may expose them to others getting involved—maybe those who uphold the law, from a criminal perspective, getting involved—and not us.

● (1220)

There are a number of reports, Mr. Chairman, that are referenced. So if you wanted to know where the government of the day, and then supported by the House of Commons, got that information, there were court decisions from 2002, decisions not involving the Information Commissioner.

In 2002 there was a report on section 15, on “International affairs and defence”. This report was done before we were in government and dealt with the exemption issues that are here in this piece, and we're supporting why those exemptions are in here.

There was another report about it, an index of case studies, case summaries, that had happened between 1994 and 2002, again, when the legislation was introduced and passed. Then the previous Liberal folks were in charge, I would say. They were the government.

Here's a number of case studies that they looked at, again, to help support these exemptions that are in this first piece, number 15.

That's available to the committee to help you make a decision on whether this blacking-out piece was done appropriately. I don't know if we're ever going to make that decision here. That's not really our role. I think that's the role of the Information Commissioner and the courts, if required.

In 2001-02 there was the Imperial Consultants of Canada Ltd. v. Canada case. This wasn't a Foreign Affairs issue. This was a Ministry of Citizenship and Immigration.... Foreign Affairs, of course, is usually involved in these topics, but this case specifically dealt with the exemption rulings in section 15 and basically supports what's in there.

In 2001-02, the Department of Foreign Affairs and International Trade did a report. Again, that was under the Liberal government. In 2001-02, the "Performance Negatives"... "Antiterrorism and Secrecy"... So there was a report done to show where we were going in terms of legislation and how the access to information legislation was working, particularly with the exemptions, and particularly on the "International affairs and defence" piece in section 15.

In 2000-01, there was a report done for disclosing e-mail addresses, which really may have had an influence on international affairs and defence because those e-mail addresses may be able to be used for other purposes.

In 2000-01, "Reform of Cabinet Confidences", they actually looked at what constitutes a cabinet confidence and how it relates to the information act, particularly with the exemptions to international affairs. Again, it supports what's in this section.

In 2000-01, section 15, "International affairs and national defence", another report. There have been two other court cases, not involving the actual commissioner, in 1999-2000 and in 1998-99.

So for this particular section, section 15, I've read you each paragraph, which I know you've taken in. I'm hoping this helps you understand at least that section on international affairs and defence, why it's important that we hear from the commissioner first, based on their review of what was available or not.

• (1225)

Of course, we did not and do not have any legally obtained report—the *Good Governance, Democratic Development and Human Rights*—and I haven't seen the blacked-out report piece, but we have some information here. The definitions are here...the backup reports of why this is important and why it's justified in the law. If this motion passes, we'll certainly call the Information Commissioner and see if he or the deputy commissioner will be able to shed any light on this. My guess is not, because it's in the process and we can't do anything about it.

There is another section about "Safety of individuals". It's also under the "Exemptions" international area; it's under the "Responsibilities of government" area, which we take very seriously on this side of the House. We do have a responsibility to the people of Canada, to our people in the field in Afghanistan.

We have another section that talks about the safety of those individuals. It says:

The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to threaten the safety of individuals.

I don't know how much clearer we can be than that. This document may, based on the view of the person responsible for this role in the department...whether they've made a decision that the safety of individuals will be an important piece in this act or in this documentation....

The issue is about *Good Governance, Democratic Development and Human Rights*. One section is about human rights, and we have to make sure that any information that is released doesn't affect

human rights or that any information that might be disclosed doesn't threaten the safety of the individuals.

So we have a tremendous number of Canadians on the ground in Afghanistan who are working there every day. Does this information that may be in this report provide a security risk to them? I don't know, and we won't know till the commissioner of information rules on it. But if this passes, we're not sure what would happen with it.

So I'm opposed to the motion as it's presented because I am not sure it goes to protect the safety of individuals. And that's said for our Canadian people.

Clearly in the definitions of this act we also have an obligation and a responsibility to the people of Afghanistan, that they are also protected, based on the information we may have that may have been provided by their government and that may have formed part or all of this report. I don't know what part it forms; it may form no part of this report. But I'm guessing that we have had some consultation with them, since we're doing a review of what's going on in Afghanistan in 2006, and that they have provided us with information about the progress they're making from either a democratic point of view...how their government is operating, the social net they are starting to develop, the military aspects, the policing aspects of what they are doing.

So they have issues that they may have presented to us about the issue of policing, for example, which directly goes to the safety of individuals, not only of individuals who are on the ground, who are Canadian, but also of the individuals who are Afghan civilians. In particular, maybe there are some issues in there about the Afghan police and their development, and that could be a threat to the work they're doing and to their own personal safety if this information had been released.

Now, I don't know if it should have been released or not. We haven't seen the report. It's blacked out. Of course, the Information Commissioner has received a number of complaint applications on this, and he will rule on that. He and his office and his investigators will get to see the report, in whole, which we don't, or we shouldn't, and he will make a determination and get back to us. His responsibility is to the House of Commons, not to this committee, to get back to the House on whether more information could have been released. That could be a few sentences, it could be the whole thing, or it could be nothing, based on what I've been reading about our exemptions that have been put in the act, which the ATI person could have been using to make their decision.

•(1230)

At the end of the day this isn't done with a machine; this is done by individuals who have been involved in the organization and the act and the issues dealing with access to information for many, many years. My understanding is that it was not a new person who made these decisions but somebody who has been involved in this and has a clear understanding of what the responsibilities are.

The individual person makes the decision. Could they have been wrong? Absolutely, because I have been wrong once or twice before

A voice: No!

Mr. Mike Wallace: It's true, and I normally deal with any item relating to me, and if corrective action needs to be taken, that's great. But it's not for us to do that. We can talk about the policy aspects of the exemptions. Do these need to apply? Do they need to be changed? Do the definitions need to be improved, whether in sections 15 or 17? The fact is we have the law in front of us and we don't have the position or ability to make that decision.

We have professional people whom we have asked to do an independent review of this. We have asked them to do it. People have asked them to do it; I didn't ask them to do it, but the individual requester did. After that is dealt with and the commissioner rules on it—and I do use the word “rules”, because that's what it is, as the commissioner gives his opinion.... And the commissioner told us previously that they can't compel a department to do something, but they work on that, and in the vast majority of cases it works. But I do have a list of 50 some items where it didn't work. Maybe we should review what the differences were under the Liberal regime, where they refused to make the change the commissioner offered. Maybe they had good reasons, but they had to go to court over it, and they lost. So we should look at that in the future, I think. So I'll be thinking about that and pursuing that.

We don't have the answers that we have on this section. Now, this section hasn't gone by without its own review. And let me tell you about reports. They're all 2002 or older, so it's not as if the Conservative Government of Canada, the new government of Canada, has made some major change to this. We are doing what the law sets out, the law that we haven't changed, the law that we are working on with these issues. The exemptions I'm talking about have to do with the responsibility of government. I've talked about the importance of our relationships in Foreign Affairs and that the exemption applies to international affairs and defence.

The exemption I'm talking about now deals with the safety of individuals, and it makes sense that we have the ability to protect people, both our people and our allies, with the information they may have provided us in confidence. Could you imagine if Canada provided another country with information in confidence, so they could make a policy or a diplomatic decision to work with us—whether they wanted to come to Afghanistan and be part of that major effort we have, both from a humanitarian and military point of view—but that information was released in the country and put that government, which should have been making an informed decision, on the hot seat, because the local press in that country was making something of the information they had?

Decisions need to be made on information. We all make decisions on information. Some of that information is confidential, and this country provides confidential information to other countries about Canada, about their country, and other countries we may be dealing with, that will help protect the safety of individuals and international affairs and defence—and those are just two parts of the act.

But of the reports I want to reference, there is one from 2002 that includes a section...it's *Strong Medicine For Delays*. That report, I think, would tell you that the issue of protecting the safety of individuals is very, very important, and that any delay in that could be detrimental to those individuals. So I would recommend you read this report, and it supports the exemption in the act.

There was also a report in 2002 about the safety of individuals, or section 17 of the act, a specific report making sure the exemption we have put in the act does what it's intended to do in terms of protecting Canadians, not only at home but also abroad, and our allies around the world.

•(1235)

Again, this isn't done in isolation. There are a number of reports here, Mr. Chairman. A bunch of case studies have been done, and there are case summaries that can be...and these cases happened from 1994 to 2002.

The report I referenced earlier, the Imperial Consultants Canada Ltd. v. Canada (Minister of Citizenship and Immigration), dealt with the issue of the safety of individuals. It was supportive of the responsibilities of the government. It was supportive of this exemption that exists in this piece of legislation that has been developed and that has been supported by the vast majority of parliamentarians over the last couple of decades.

There is also the report, which I referred to before, that was done under the Liberal regime, in terms of reform of cabinet confidence. It upholds the exemption piece on the safety of individuals and that this is an appropriate exemption in the act for the responsibilities of government. There is a section there; it's listed in the act.

If you want some of this information, you can get it right off the Internet. It is available to everybody to read, not just to us, as parliamentarians, of course, but to all Canadians. In fact, with the use of the Internet now, basically the whole world can look at this.

In 2001 there was a report, *Strong Medicine for Delays*, which I mentioned, but there's another section in there that you should be looking at.

There's an important one in 1999-2000, *Fear of Retribution*, which is another very important piece to look at. It was reviewed with the concept that the safety of individuals should have an exemption in the Access to Information Act that would help protect individuals from the fear of retribution.

And who knows? I don't know. You don't know whether any of the information in the report that's entitled *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*, which is what we're debating here today, in terms of its release, in terms of its blacked-out form, would have been detrimental to somebody's safety, both Canadian or non-Canadian, in Afghanistan or at home here. Would there have been a fear of retribution if that information got out? I don't know what that form of retribution might be. It might have been a prison term. Hopefully, it would not be, but it could have been violence of some sort. It could have been loss of a job. I don't know what that retribution would entail.

Of course, we don't know that. We shouldn't know that, as the report has been sent to the Information Commissioner to rule on what other areas can be released. And we should be waiting for that decision to be made. I have full faith in the commissioner that this committee unanimously supported that they would make good decisions.

And we quoted...and Madame Lavallée was mad at me for quoting from it. He wrote a book on House procedure—he and his partner. We have a lot of faith in that book.

An hon. member: Marleau and Montpetit. It's right here. It's a great book.

Mr. Mike Wallace: And we should continue to have faith in this individual making an appropriate decision on that.

So those are two areas that I'd like to talk about.

I have one final spot, if I have time, Mr. Chair.

The Chair: You can have all the time you want.

Mr. Mike Wallace: *Merci beaucoup*.

The exemption is in section 21. Again, it's under "Operations of Government". It's not something the Conservatives brought in. It's a part of the act that all ATI employees of this government—and previous governments—use to decide whether the information should be released or whether it does really affect the operation of government.

That's a tough decision, because I believe we do need to look at the access to information piece—and I've spoken to my colleague from the New Democratic Party on this outside the committee room, and I was actually quoted in the press earlier on—to make sure that people get the information that they are rightly entitled to, and in a timely manner.

• (1240)

But "rightly entitled to" doesn't mean the government of the day should be required to provide information that was provided in confidence or that would be damaging to the operations of government. And operations of government doesn't mean buying pencils and booking rooms and going to meetings; operations of

government also has to do with our military and where we're going with our military.

Could you imagine if part of a report that was released gave our enemy in Afghanistan information on what our next move was going to be, in terms of where we were going to be on the road and which area we were going to go after next in terms of rooting out Taliban? Could you imagine what that information would do in terms of their ability to determine where to ambush our own men and women?

You can't just think in terms of the narrow definition of this, because "operations" sound as if they are the day-to-day workings of government in terms of its administrative operations. These go far, far beyond that, and you need to know when information should be released and when it should not.

Based on that, over the years—and rightfully so, I would say—budgets have been kept secret until they're announced, so that nobody in this country or other countries profits from decisions that may have been made and are going to be announced at a certain time on a certain date. That is the operation of government. Can you imagine what it would do to the markets if we didn't have that, and things like those could be released? People would get rich off them. It would be an unfair advantage to those who would get these things. That's why, when you think about the operations of government, you have to think of not just some of the minor things, the day-to-day business of operating this place, but also of the actual documentation or information that would be available if this exemption did not exist.

For example, under the heading "Advice, etc.", in subsection 21 (1), the act 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 a minister of the Crown.

I would be surprised if anybody could argue with that. First of all, they may think they're never going to form government; that's a possibility. But those of us who think that someday we will be a government, or are in government, believe there should be an opportunity for a minister of the Crown to be getting confidential advice on different topics, whether economic, environmental, or military—just to pick some big ones. So the advice they get from their staff, and from the individuals who have expertise in the area and who don't necessarily want to be identified with that advice, should be protected with the exemption rule under the heading of "Advice".

Now, there might have been advice in this document that went to the minister. I don't know that. It did go to the foreign affairs department. I don't know what advice was in there. It may not be a section that the ATI employee used, but it's a possibility. We won't know that, of course, because we won't get a chance. If we call these witnesses, my guess is that because this matter is before the Information Commissioner, they won't be able to comment on this to any extent that will make us any more knowledgeable about the issue than we are now.

But advice is important. Recommendations are important, and they are included in the exemption. Look, on our side and on your side, we give recommendations to ministers. I know I have; I've done it verbally and in writing. That might be public information, and it might not, if it deals with issues of national security or other issues. I haven't provided any of those types of information. In fact, if anybody asked me, I'd be happy to provide what recommendations I have made to ministers.

But there is a sense that a minister of the Crown or a government institution—including, to my understanding, other departments, not just ministries—may have crucial information they don't want to release.

• (1245)

I'll give you a wild example. What if, Mr. Chair, all information was available, if the timing of prison guard changes, how the place is laid out, and the security system that's provided at a prison was public information? That, I don't think, is a good operation of government. I don't think it's a good choice that we allow that to be out there, and that others may use it for the wrong reason, and not just empirical reasons or interest reasons.

In paragraph 21(1)(b) it reads:

an account of consultations or deliberations involving officers or employees of a government institution, a minister of the Crown or the staff of a minister of the Crown

So this exemption to the access to information if a deputy minister or a senior minister in an office or a senior officer of a crown corporation or other organizations provides information or advice, either in writing or verbally—but obviously we're talking in writing because I don't think you can do it verbally—on a particular public policy issue, something that needs to be done to help protect Canadians to do something positive for the environment, to do something that would affect the financial markets for the day, that you cannot in good conscience say that that needs to be public information...that ATI officer in that department has the ability and the right and the knowledge to be able to say this is included in the exemption and it should be exempted because it can injure not Canada, individuals....

I've been using a number of examples, but another great example is the department for public safety. There may be names, there may be all kinds of issues that the minister gets briefed on by his senior officials on security issues for this country. Could you imagine if we didn't have this exemption and those were all public documents?

• (1250)

Mr. David Tilson: I have a point of order, Mr. Chairman.

Mr. Chairman, Mr. Wallace has been raising some excellent points. Again, I'd ask that you reconsider your ruling that this motion is out of order.

I realize that we have to wait for witnesses to come before us, but Mr. Wallace is raising the issue that if witnesses come, this may contravene the provisions of the information legislation. So, inadvertently, by allowing that to happen, we do that. Because of that conceivable possibility—I know you could say the witnesses aren't here and it hasn't happened, but I think you would acknowledge that it conceivably could happen, that witnesses could reveal areas that certain ministries, the ministries that Mr. Wallace has been quite correctly referring to, would normally black out, but because they don't have an opportunity to black them out, we, this committee, would contravene the provisions of the information act.

I therefore ask that you reconsider your position and rule this motion out of order.

The Chair: Thank you for the succinct comments. I don't find your submission a point of order. And in any event, I will not reconsider my ruling.

Mr. Wallace, you have the floor.

Mr. Mike Wallace: Thank you, Mr. Chair.

Thank you for the breath of fresh air there on that one.

The—

The Chair: There are other speakers if you want to give up the floor.

Mr. Mike Wallace: I hope to hear them on Tuesday.

On paragraph (c), again, it's under the "Advice" section, I want to make sure this is clear because there may have—

The Chair: What section is this, Mr. Wallace?

Mr. Mike Wallace: It's paragraph (c) of subsection 21(1)—

The Chair: Section 21, okay. I just want to make sure you aren't back on 15.

Mr. Mike Wallace: No, I only move forward, sir.

I haven't dealt with paragraph 21(1)(c), which may have been part of the report on good governance, democratic development and human rights and is referred to in this motion by Madame Lavallée. I don't know if it's in there or not, but let's talk about this paragraph for a moment. It reads:

positions or plans developed for the purpose of negotiations carried on or to be carried on by or on behalf of the Government of Canada and considerations relating thereto

Now this clearly states that if there's any advice dealing with negotiations with the Government of Canada, the government has the right, under the section on advice and the exemptions for the operations of government, to black it out. We don't know if that's the case, because we haven't seen the report. But let's just look at the title of the report, *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*. I think it's possible that this report may include positions and plans that were developed to help us negotiate with the Afghan government. We don't know that, but clearly, the advice that was provided may have been in writing, both from the other departments.... It could have been from Foreign Affairs and it could have been from the Afghan government. And the advice was maybe then turned into part of the report.

What the act says is that the access to information officer who was assigned to this department has the right, and not just the right but the responsibility, to look at the advice that was given under the operations of government exemption and to black that out so that the public doesn't get it.

The downside, Mr. Chair, is that if this information is released—not just in this report but in any report—who then is going to provide advice to the minister? If you're at risk of saying some very strong things about another government, for example, or an individual department, or a policy or a program the government has, why would anybody want to give advice, particularly in writing, if there's a major risk of it being released to the public before anything is done with it?

What if we were negotiating with another country, or what if a government organization were negotiating with another government organization? Maybe we're negotiating for property. Maybe we're negotiating about getting our people out of a hot military situation. Maybe we're negotiating to go to Darfur with the UN. Maybe we're doing that—maybe—and the minister gets advice on that, but it's in writing and it's from the UN, Sudan, and our allies. But, no, it's not protected, because it's not under an exemption. But it is under an exemption. And this advice that could have come may have been in this report. That may be why the access to information officer blacked it out and made sure that the public and Canadians and our allies were protected from any breach of this.

In fact, if we didn't have this clause in here, for negotiations carried on by or on behalf of the Government of Canada, there'd be very little diplomatic discussion between our countries on moving some agendas forward. It would all be social. We'd have nice social relationships with everybody, which is a good thing—don't get me wrong, we need that part. We need to develop those relationships. But after those relationships are developed, even in our own business, in our own way of operating as members of Parliament, eventually you get down to brass tacks on whatever the issue is, and sometimes you agree and sometimes you don't agree. And if those things are in writing, sometimes they can be damaging not just to Canada but to the country that may have provided that information. And we need to protect that.

•(1255)

That's what this paragraph does. It protects ministries and other departments of the Government of Canada and advice that clearly

affects the operations of government and is clearly exempted and clearly could be part of that report that we're debating at present.

Paragraph (d) reads:

plans relating to the management of personnel or the administration of a government institution that have not yet been put into operation.

Clearly, this could be part of the advice that's in *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*. Mr. Chair, I haven't seen it, but if you put that title in front of me, my guess is that it probably has a lot to do with how things went in 2006. But my guess—and I haven't seen the report—is that it has the ability to say this is what happened in 2006, but this is what we should be doing in 2007, 2008, 2009. Here are the plans. Here's the framework for the plans to be developed, whether that is on humanitarian aid, what we're doing in terms of financial aid, personnel aid. Or it could deal with the military: plans on where we're going to be deployed, who our partners are going to be, who the partners should be, what we should negotiate on, where we should go with it.

So there are a number of issues in terms of plans that very clearly could have been a part of why this person blacked out that part of the report. I don't know if that part of the report is even in there, because I haven't seen that report. It's blacked out, and I think it would be illegal for me to have a copy of the non-blacked-out report because at present that is the position of the ATI committee.

The ATI officer in this case may have used this advice section and clearly believed that any plans or potential plans that could be derived from this shouldn't be released, but it would be released if this documentation wasn't blacked out.

I don't know about my colleagues, but I'm of the opinion that we continue to rely on the ATI experts who we have in these departments. This individual has been there for many years doing this same work, day in and day out.

And we're inspecting....

Can I have a little quiet?

•(1300)

The Vice-Chair (Mr. Pat Martin): Order. Mr. Wallace has the floor.

Mr. Mike Wallace: Thank you very much. I have the floor.

This individual could have used that area, in terms of the advice section of the exemption, to make a determination, which this person likely makes, if not daily, then weekly, on the documentation this department gets.

I'm with you. We're going to need to make sure that this was the right decision to be made, but we're not the body to make that decision. You need to wait until the Information Commissioner decides whether the person made the right choices or not, but you're trying to pre-empt that with this motion. By pre-empting that with this motion, I don't think we'll get to the answers we're looking for on this particular item.

I think, based on the motion that was put on the floor first, that if we had waited for that individual...and I even amended it, or had somebody else amend it, to make it "current" issues. A colleague of mine from the other side mentioned that if this proceeds for years, then we don't get an answer; I said "current". It wasn't even a concession. It's what I actually meant: that the current ATI applications that were in would be reviewed and we would get an answer quickly.

I think the sitting chair now made a point that this could go on forever, and so on and so forth. He made a suggestion on a date. We put that forward. That didn't pass either, but I did appreciate his suggestion.

So I'm very, very concerned about the section of the act, in terms of exemptions and operations of government on the advice piece, that plans could clearly have been outlined in this regard. Now, even if the plans aren't word for word in the documentation, there still is a possibility that people could read the documentation and make their own plans against Canadians or against the Government of Afghanistan, based on the information they had.

Again, my guess is that there is probably a nucleus of what the next steps might be, because rarely do you get a report like this that wouldn't have some sense of where we go next. If it's just an analysis of how things are going, democracy, the number of seats they have, how many prisons they have, how many countries are there helping, how much new water has been developed, I can absolutely guarantee you that type of report would have no blacked-out sections, because there would be no exceptions that would have been applied. The operations of good governance would not have been applied. The responsibility we have for the safety of individuals would not have been applied. Clearly, our responsibility as a government on international defence in sections 15 and 17 would not have been applied.

So, obviously, this likely report, which I have never seen because it's blacked out, may have that kind of information in it, and that is clearly set out in the act.

In addition, under "Advice", if the record came into existence fewer than 20 years prior to the request—

Mr. Bruce Stanton: I have a point of order, Mr. Chair.

As my colleague has continued to make some, I think, very valid points on this, it occurs to me, Mr. Chairman, that the motion actually compels us as a committee to gather evidence. As we have increasingly heard here today, the potential evidence for this review is in fact the subject of an investigation by the Information Commissioner. We've also heard that it's the subject of an investigation by the court.

How is it possible that we can proceed with a motion that compels us to gather evidence we may not have access to? In fact, it appears

we do not have access to it because it's the product of another investigation. So it would appear that this motion is at odds with an existing protocol that we as a committee can't really contravene.

I'd ask you that again. I know you've ruled on this. I certainly beg your indulgence on this, but again, part of the essential tenets of this motion is the gathering of evidence, which I don't think we're at liberty to partake of.

● (1305)

The Chair: I'm going to rule the point not well taken.

Again, I want to point out that "gather evidence" is a very broad term. While we may or may not be able to get certain types of evidence, and we may or may not be able to get other types of evidence, we will not be able to determine that unless and until this motion passes and we attempt to obtain the evidence that we want to get.

Powers of committee are exceptionally broad in terms of calling for papers and documentation, but that would be an issue that we would deal with at another time on another day. It may very well be—and I'm not ruling one way or another—that we might be denied access to certain documentation on certain statutory bases. We'll have to deal with that as a committee if and when that arises, if and when this motion is passed.

But certainly, I can conceive of some kind of evidence that could be gathered that would not breach national security. So I have to rule your point not well taken.

You're back on the floor, Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chairman.

I was just providing information to the committee on subsection 21(1) on the advice part of operations of government. I just want to be clear, there are paragraphs (a), (b), (c), and (d), and at the end of that, if you take those out, it reads:

if the record came into existence less than twenty years prior to the request.

If you put that with the first part, they read:

The head of a government institution may refuse to disclose any record requested under this Act that contains

—and then it goes into what it may contain, then—

if the record came into existence less than 20 years prior

I know some academics and some individuals would say there's no way the government can always, forever, hold the information. Well, the act itself says that after 20 years that information, that advice, because this is in the advice section...they're likely not in government any more, they're a different body, different names of people, and this part may not apply to that. There may be other areas in terms of national security and so on that may apply.

In this section, in terms of advice, because that's what we're talking about, any advice in writing to a minister within 20 years that meets the criteria that was set out in paragraphs (a), (b), (c), and (d) is protected. The access to information officer who is in this department had the ability to make a determination based on seeing the report in its full context that it may be blacked out based on one of those criteria...“may be” because we haven't seen it, based on the advice, and that's completely legal.

In 20 years from now, if the report, *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*, is still of interest to people, to see that report and what advice may or may not have been in there, then after 20 years, likely they would, in this particular section, be allowed to see it. But at present, based on what's written in front of us and what the law is, the law that came in and was fully supported by the House and has done a pretty good job for Canada over the last couple of decades....

There is an exercise of discretionary power in this. Subsection (2) reads:

Subsection (1) does not apply in respect of a record that contains

(a) an account of, or a statement of reasons for, a decision that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of a person;

So this exercise of discretionary power obviously is not black and white, and there is a potential because you can't list absolutely everything in terms of what constitutes advice, what doesn't, how it affects other areas...you just cannot physically list it out. There is an opportunity, which I think is part of the exemption, to exercise a discretionary power function. Where the account or statement or reasons for a decision that is made in exercise of discretionary power affects the rights of a person, that part of the legislation may be able to be released.

That's a section that, again, the ATI person, particularly in this case, would be very familiar with, having been in the business focusing on this probably for a number of years, based on the fact that it's in Foreign Affairs and we would have people who would have been there.

• (1310)

My guess, Mr. Chairman, is that if you really look at it at that level, the chances of it being a change from one government to another is pretty slim.

We'll probably be looking for consistency in that function from the Office of the Information Commissioner and that department to make sure that the protections that have been provided in the past for our allies, for the advice to ministers, for our negotiations with foreign countries, for our international obligations, and for our safety and security....

My guess is it's pretty consistent that the person who may have made these decisions may have been in this department for many years. That person has been using the exact same criteria for many years to determine whether it fit into any of these exemptions pieces.

There's also an exercise of discretionary power:

a report prepared by a consultant or an adviser who was not, at the time the report was prepared, an officer or employee of a government institution or a member of the staff of a minister of the Crown.

So there are some exemptions here to allow for some discretion, based on what the report says or what the advice is, in terms of its detrimental effect to the operations of government. It provides some security for those who are on the outside as consultants or advisors, but not for an employee of government at the time, or for an employee of the minister when the report was prepared.

That also helps protect them in this section, and this wasn't done on its own. It's been tested numerous times, Mr. Chair.

There are references in this area of this report that you could look at. There are reports to refer to, and in 2002, again long before we were in government, there's item (i)(g) in that report—

A voice: Tell us about item (i)(g).

Mr. Mike Wallace: —that talks about splitting protection of cabinet confidences. My understanding is that this talks about the role of cabinet confidences, where you draw the line when somebody's giving you advice, and where it can and can't be released.

Basically, this report, under the Liberal administration, supports what's in front of us here, in terms of the operation of the government and advice to the minister—or it doesn't have to be to the minister. Again, I would let you know that it could be advice to other departments. I'm not sure if it covers crown corporations, so I'm not sure if it applies to advice to the Canada Post Corporation, for example, to Ms. Greene or someone such as her. They are separate from the operations of good government, but this would be something that as a committee, when we're looking at the access to information piece, we could explore.

There's another report, which I mentioned in another section, that also applies here, *Strong Medicine for Delays*. It's important in this case, and in all cases, that the advice ministers get is provided in a timely manner, because they're often making decisions that need to be made fairly quickly, and so on.

In the *Afghanistan 2006: Good Governance, Democratic Development and Human Rights* report, which is referenced in this motion, we're not sure what it would have done in terms of the delay on any decisions that had to be made, particularly based on the advice that was given. Again, the title indicates that it may have been a review of what happened in 2006, but I'm pretty sure it would also give advice on what should happen in 2007, and further on.

So any delay in that could have been very damaging to the country, to our military people, and to our humanitarian folks on the ground in Afghanistan, who are doing great work for us.

I would encourage members of the committee to look at that report to see why it's important to this section, and it's important that we wait until we hear from the commissioner on this particular item before we proceed.

These are the kinds of things....

Oh, Sukh, you're leaving us. I'm sorry.

An hon. member: How could you?

• (1315)

Mr. Sukh Dhaliwal: I am going to come back.

Mr. Mike Wallace: We'll see you next week.

The kinds of reports that we should be looking at support these pieces. When we get the Information Commissioner back here, we can talk about what—

Mr. Sukh Dhaliwal: I have to make a speech in the House, but I will come back.

Mr. Mike Wallace: Very good. We'll be watching on television.

Some hon. members: Oh, oh!

Mr. Mike Wallace: These are the kinds of reports, Mr. Chair, that support these exemptions in the law that has been set out, and we should be taking these reports, reviewing them, and seeing how they affect this piece. If this ends up passing, which is a possibility, I'm assuming we'll call the commissioner on this. I know I will be asking for the commissioner to appear. Either the commissioner will appear or he'll say he's sorry, that since they have an active file on this, they can't do anything—sorry, we can't come. But when the commissioner appears in front of us again, and if this is still an issue about the ability of this section of the Access to Information Act to allow governments to protect our international affairs, the security of individuals, and the operations of government, then these reports are the things we should be referencing and asking the new commissioner about—no, he's new, so let's give him a break. He may have to get back to us on these positions. Maybe we work on some advice to government to make changes; maybe we agree with what's in there. But there was a report in 2002, and it has a section 21 in the advice and recommendation section.

I've mentioned this 2002 report a few times. There were safety and security issues in this country. They were looking at the access to information report. There were reports done on these specific sections. This is 2007; that's five years ago. Maybe it's time to do another report for you. I know when this committee was first constituted, the actual Minister of Justice came. He's not the Minister of Justice now; he's head of the Treasury Board. We have a new Minister of Justice, but when we tabled the Federal Accountability Act, we also tabled the Open Government Act, which was provided by the previous Information Commissioner. He provided a response to our accountability act, and we actually have in writing a working document that gives the government's response to that document.

If we wanted to get started on that kind of discussion, I think we've got the privacy piece coming up first, which, it sounds from the privacy commissioner, is long overdue, but when we get to access to information, which I know we will study eventually, those are the kinds of things we will deal with. That section that applies in this report that we are dealing with today in terms of gathering evidence may have implications for what we might do.

From 2001 to 2002 there's this index of case summaries. It's the same index we had before, but I encourage people to look at it. They

happened from 1994 to 2002, so they're very relevant to what happened prior to that.

In 2001 and 2002 the Information Commissioner was representing Canada, representing himself, so it's Canada versus Canada, which is an interesting piece. In 2001-02 there is an actual case in which the Information Commissioner took the industry ministry to court. It supports the exemption that's available in this report on advice. It isn't new that this has happened. It didn't happen under our government, the new Government of Canada; it happened under the old Liberal government. I would recommend to my committee members that they have look at what the Information Commissioner at the time said and at the outcome of that case. It's appropriate to look at it after the decision has been made; I'm finding it very strange that this motion in front of us wants us to look at something before the Information Commissioner has ruled on it and made a decision. Then I think the debate and the discussion will be a lot more productive than it is today.

• (1320)

Mr. Rick Dykstra (St. Catharines, CPC): No, I wouldn't say that.

Mr. Mike Wallace: Well, it's true, and it would deal with the facts of the matter. Maybe after the commissioner is done with the piece, it might be released, and we could have a full discussion on it. There might be areas that are still blacked out, but we will have a decision from the Information Commissioner on what was appropriate, why it was appropriate, which part of the act he used, and if he used any exemptions. If you review the results of the court case between the commissioner and the minister for industry, that would be great. In fact, if I recall correctly—and I might be wrong—I think Mr. Eggleton is still part of the government. Is he in the Senate?

The Chair: No, he's not part of the government.

Mr. Mike Wallace: No, I meant Parliament; I apologize. Good point, Mr. Chair. Thank you for clarifying that.

Are we able to call a senator to come to a committee to discuss something that happened in the past?

The Chair: Absolutely.

Mr. Mike Wallace: He's here. There are a few other names here—

Mr. David Tilson: I have a point of order. Mr. Chairman, Mr. Wallace has raised yet another outstanding issue, the issue that arises if this committee makes a decision that is contrary to the decision of the Information Commissioner's report.

We all talk about the rules of natural justice; their report would unquestionably be more thorough than ours, as Mr. Wallace has pointed out, and that might cause serious problems with precedence. I'm wondering if you would again reconsider your ruling that this matter is out of order.

The Chair: Thank you, Mr. Tilson. That is highly speculative and hypothetical, and I'm not going to rule on a hypothetical matter. I rule your point not well taken.

Go ahead, Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chair.

That piece that happened is part of the reason the wording of the advice is important for us to look at, particularly if we're going to review this section in the future and also as it relates to the report that's in front of us and the advice that may or may not have been in that report, and that's why it was blacked out.

I think it's an important issue. I'm sure nobody around this table wants to injure Canada. I'm not talking about the Government of Canada, but Canada, and any information that's released inappropriately, particularly information that has to do with Afghanistan and the good people we have working on the ground, both the military and in humanitarian efforts over there....

The other case that was previously mentioned that also has an effect in the advice section is Imperial Consultants of Canada v. Canada (Minister of Citizenship and Immigration). It is an interesting one to look at in terms of how it affects this area of the legislation and whether it applies.

Another one that I think is particularly important to advice, the section that may have caused the ATI person to black that section out, is Merck Frosst Canada Inc. v. Canada (Minister of National Health). That must have been under the Liberals...it was; it was 2001-02, under the Liberal regime—

• (1325)

Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.): I have a point of order, Mr. Chairman.

Can the member get to the point of the motion?

Mr. Mike Wallace: No, you're just getting here at the beginning. I just started, Massimo.

The Chair: Thank you, Mr. Pacetti. Your point is not well taken.

Order.

Mr. Mike Wallace: Massimo missed the first sections. The honourable member missed other sections. I wonder if you want me to go back.

The Chair: Mr. Wallace, you are—

Mr. Mike Wallace: Okay, I'm sorry. It's just getting late.

The case is between the health department and what I believe is a pharmaceutical company. This is the kind of thing that could be in a report. A minister gets advice on some pharmaceutical issue and the pharmaceutical company wants a copy of it. It's an interesting case to look at.

This could be happening, and that's why we have to be very careful and get the Information Commissioner's report first. The

Afghanistan 2006: Good Governance, Democratic Development and Human Rights report may have very similar advice. It's obviously not the same advice, but the same type of advice—giving advice on what we should be doing next, what the issues are, what the policy decisions might be, and what our role as Canada should be. Now, if everybody has the right to see that, it puts the minister and the administration who have to implement this stuff in a very difficult position.

I'm telling you that if you look at the case that happened in 2001-02, which is public, it was the same sort of advice. Think about the advice that was given and what it could have done in that case. That is why, in the act, we have an advice section under the operations of—I keep saying “good government”, and I can say that now, but it's operations of government.

There are other cases and there are other things. We have the commissioner in the courts. There's an actual report of what the role is; my understanding of the report is that there is an actual report of what the role of the commissioner is in the court, and I think it's an important topic for today.

My motion—and I understand, and I respectfully saw it fail—talked about where we are. Maybe we should get all the decisions made, whether or not they were through the ATI requests in terms of a complaint, and then see the ability of them to go to Federal Court to see what the actual answer is going to be. We need the ability to get those answers.

This report tells you what the role of the Information Commissioner is. We need to be able to read that report and have a look at it before we move to addressing what was blacked out in this report, *Afghanistan 2006: Good Governance, Democratic Development and Human Rights*.

Here is another very interesting one. Of course, these are all public; I'm not making this up. It's all in the documentation that's on the website that supports this piece. There is a report called *Women's Role in the Navy*. Of course, that is a very important document. It was done in 2001-02 and talks about the role women have in the Canadian Navy, but it's in this section, not because of the role but because of the advice that was given to the minister at the time, and its importance in terms of its confidentiality.

I'm not going to comment on whether it was confidential or not confidential, withheld or upheld, but there was a discussion. When we are trying to introduce tough legislation or changes to policy or programs that are delicate—and I don't mean to use this word in this context, but delicate in the sense that it could be offensive to people—there could be arguments without hearing both sides of the issue. In this particular case, if the advice were not withheld in terms of its being in confidence because of this part of the act, this exemption to advice under operation, it could have affected the discussion that the senior naval folks had with the minister at the time on what we could do to make sure women play an important role in our navy and what that role will be, and based on what I understand, that role has been improved in the navy for women.

• (1330)

The Chair: Mr. Wallace, it's utterly irrelevant. What does the role of women in the navy have to do with this?

Mr. Mike Wallace: Okay. Thank you for that.

I'll move on to the next item: the 2000-01, "Reform of Cabinet Confidences". That's another report that was referenced. It's a report that I think everybody should review. It goes to the heart of the matter of why you even have ATI people in departments; it goes to the heart of that.

If every report, including this one, *Afghanistan 2006: Good Governance, Democratic Development and Human Rights* were public, you couldn't take it to cabinet. You could never take a document to cabinet. Based on the act right now, the advice you're giving to the cabinet minister, the Prime Minister...those documents would become public. Everything would be done verbally; there would be nothing in writing.

I could verbally say a motion, which I did last week—my colleague from the Liberal Party didn't think that I had said it, but I said it twice—but providing it in writing gave people an idea of what it actually means, to make changes, agree or disagree and make sure it was in order, which I did.

In this case I think the report on cabinet confidences is important. It's included in the act. This report, which I have not seen, which has parts blacked out...the ATI person could have used the theory that there was advice in here that was either provided by other governments or by senior people in the department from Foreign Affairs and that it should not have been released. We have a report that talks about those issues. I would recommend to my colleagues that they look at that before they vote on this motion. We'll see if they will do that.

A hon. member: I'm going to look at it.

Mr. Mike Wallace: There was another report in 2000 and 2001, again, long before we were in government. The case is in progress: the commissioner as an applicant. It's a very interesting piece. It has nothing to do with this particular item, I don't think, other than that it does deal with the advice that cabinet people get and the role of the commissioner when the commissioner applies for the information. As we know, the commissioner basically gets any document he wants. He can't make it public. That's not his role. But he can give advice to the minister and make it public.

After we hear from the commissioner after they hear the rulings, they could be—

The Chair: Excuse me. I wonder if we could keep the conversation to a minimum so that we can hear the speaker.

Mr. Mike Wallace: Thank you, Mr. Chairman.

Once we hear from the commissioner... Their office gets to see it, of course; we may or may not. We'll see what happens. But that report is important. Of course, we do have the report that was done in 2000-01 on advice and recommendations, which were encompassed in this exemption section of operations and good government.

There is a report on the cases that have been completed. That's where we should be at, Mr. Chair. We should be waiting until the case is completed on this. That was my assertion during the first motion on this item, and we will—

The Chair: Mr. Wallace, that is the third time you've made that argument. Could you come up with a fresh one, please?

Mr. Mike Wallace: Just to be fair, we have a couple of new people who will be voting, and it would be nice to hear—

• (1335)

The Chair: I'm not going to permit you to continually repeat yourself.

Mr. Mike Wallace: Thank you very much.

There's another report here that's new and wasn't listed elsewhere. In 1998-99, how was the choice made? My understanding of this report is that it talks about how the person was able to make the choice, based on advice provided. It talks about the importance and relevance of confidentiality to the minister on certain topics—of course not on everything—to help him or her make the right choice for Canada and present that.

The issue in this case is the Afghanistan report that is up for discussion and referenced in this motion. It may or may not have information or advice that would affect the choices of the Minister of Foreign Affairs. It's not just the minister; often deputy ministers and other senior people look at these reports, study them, understand what the issues are, and then make advice based on this report to the minister. I haven't been a minister, but that is my understanding of where things go.

Mr. Rick Dykstra: You should be.

Mr. Mike Wallace: The other issue is that a number of cases were completed—I'm not going to talk about them—back in 1998-99.

There's another report I referred to on the exercise of discretion, which I think is important in this area. Your definition of who gives the advice, when they give it, and whether it's protected or not is an important one. There is a report from 1998-99, *Outsiders vs. Insiders*. It really discusses the issue of whether a consultant provided the information or not.

I don't know where the information came from and who provided the information in the *Afghanistan 2006: Good Governance, Democratic Development and Human Rights* report, but it could have come from people who are not government officials. It could have come from NGOs or a number of areas. This is in Foreign Affairs and not National Defence or any other area, so we could have looked for the NGOs to provide us with their opinions. They're not really employees of the corporation, but their advice is very important to us.

We may have used the exercise of discretionary power to say, "You're right." The ATI officer could say, "You're right, this isn't from the government, but these people gave us information in confidence so we could do good public policy and assist them, and that's why we've blacked it out." We don't know that because we haven't seen the report, of course. I'm waiting patiently for the Information Commissioner to report on that—and I think we all should be.

Those are some of the reports that are in here. We've had some examples of the piece.

It has been mentioned that this report was made public or was available. I think a previous speaker said it was in the *Globe and Mail*. There's an assumption being made that the report in the public was the actual report that was blacked out, but we don't know that for sure. Another member has mentioned that the complete report was received by somebody in the academic world. We don't know for sure whether that was even the report that was requested.

As you know, only the requester of the information, the ATI report—and I think there have been a few—once they get a copy of what's been returned to them, can appeal that if they're not happy with it. In this case, for the report on Afghanistan, my understanding is that there have been appeals from people because they were not happy with what was provided to them.

● (1340)

But how are we going to be privy to the actual document? If we are not, as a committee, a requester, how can we have any authority to look at the unblacked-out area? So I have some concerns about where we're going with this motion. I don't think we actually have the right information in front of us. I think the act that we have in front of us clearly indicates to us that there are exemptions, clearly defined and stated in the act, and I only read three of them. There are more of them; there are 13 exemptions in the act.

An hon. member: Wow.

Mr. Mike Wallace: Would you like me to read them? I could.

I want to say that when we had the commissioner here, I think it was maybe Mr. Martin who was asking him questions about whether there was any need to black things out and what the purpose of that would be. The deputy commissioner who was here, with the

authority to answer the questions, because he has longer experience, said there were 13. And he listed some of the areas where you can legitimately and appropriately, I would say, tell the requester that that information is just not available. We don't have that information in front of us. We should be waiting until the commissioner does the work so we know what is available and what is not.

It was also indicated to me, as I've done some investigation of this, that things often get appealed and resolved—and it doesn't mean that the whole document gets revealed. It means there might be a sentence, or two or three, or a word in a sentence that gets revealed, or a couple of sentences, or a paragraph, and maybe, because the person is human, the ATI person in Foreign Affairs, in this case, may or may not have made any errors in what was put forward. But that is not this committee's determination. I think we should be waiting to deal with that.

One final thing, Mr. Chairman, and then I'll have to relieve the floor. I know everybody is upset. We got a letter—

An hon. member: Say it ain't so, Mike.

Mr. Mike Wallace: You got a letter, Mr. Chairman, as chair of the committee, from the Information Commissioner via legal services. We had been slightly misled—and I just want to make sure people have it.

A voice: Oh, oh!

Mr. Mike Wallace: No, no, it's fair. I really appreciate him bringing it forward. It was brought to my attention that the statistics with respect to the number of cases the Crown referred to the commission was inaccurate; the exact number of applications initiated by the Crown challenging jurisdictional issue against the Information Commissioner was 51. So there were three cases where the Attorney General of Canada was successful, and 94% of the cases were not. That means the Information Commissioner won.

I think we should be taking advantage of this. They mention here how they measure their success. They are taking an ombudsman role. They are specialized and have the knowledge and the expertise. This motion does not take advantage of that.

This motion tries to bring that forward, and I think we should only be looking at this after he's done a report. Then, in addition to that, we should be looking, in my view, at what went wrong with the other 48 cases brought forward and that the government of the day—a Liberal government—lost against the commissioner. Then if there are changes that need to be recommended, based on the culmination of that information, and if there's a theme that runs through it, let's do that.

But this motion in front of us, Mr. Chair, talks about urgency and about violations. I don't believe this is an urgent matter. I believe it implies there are violations. I think we should wait to hear the commissioner, and I would appreciate the mover of this motion deferring the motion until we hear from the Information Commissioner on this topic, on whether his office is even able to appear on this while they have an active file in front of them.

• (1345)

Thank you for your time.

Some hon. members: Hear, hear!

Mr. Mike Wallace: How long was I?

The Chair: Thank you, Mr. Wallace.

We have four people on the list so far who wish to address this motion as amended. We are going to start with Mr. Tilson, followed by Monsieur Vincent.

By the way, there's no point in looking at the clock. I'm not going to adjourn at 2 o'clock.

Mr. David Tilson: Mr. Chairman, I wouldn't expect that. We have a lot to say here.

The Chair: Carry on.

Mr. David Tilson: Mr. Chairman, I want to congratulate Mr. Wallace on giving an excellent summary of the issues that are before us. He's covered many of them.

I believe the committee should have some time to digest what he has to say, and I would therefore move an adjournment.

The Chair: It's been moved by Mr. Tilson that the committee do now adjourn. There is no debate.

(Motion negatived)

The Chair: We'll now go to Monsieur Vincent.

Mr. David Tilson: Sorry, but I still have the floor, Mr. Chairman.

The Chair: You made a motion. It was defeated.

Mr. David Tilson: No, I still have the floor.

The Chair: All right. Go ahead.

Mr. David Tilson: Yes.

[*Translation*]

Mrs. Carole Lavallée: No, no. Under what Standing Order are you giving him the floor? He moved a motion and it was defeated. That's it now.

Mr. Robert Vincent: He has had his speaking time.

Mrs. Carole Lavallée: Yes, he has had his speaking time. That's it now.

[*English*]

Mr. Pat Martin: That's right. He chose to make a motion rather than a speech. His turn is over.

[*Translation*]

Mrs. Carole Lavallée: Just a moment; the Clerk will—

[*English*]

Mr. Pat Martin: That's the end of what you get to say. You moved adjournment.

The Chair: Do you have any comments or advice for the committee, Mr. Clerk, on this issue?

The Clerk: You gave the floor to Mr. Tilson. He moved a motion, which was defeated. We're still now in debate.

Mr. Pat Martin: But he doesn't have the floor. That's the last thing you do when you move a motion. At the end of your remarks, you move something.

The Chair: Mr. Martin, we're not going to debate with the clerk. I've just asked the clerk to provide us with information.

It was my understanding that Mr. Tilson could continue with his remarks notwithstanding the motion. If that is incorrect—I stand to be corrected—I've got no problem with that. That's why I've gone to the clerk for his impartial advice as to whether or not I recognized Mr. Tilson correctly.

Mr. Massimo Pacetti: A point of order, Mr. Chairman. If we need to, we'll challenge the chair. I've never seen this before.

The Chair: Oh, then stick around here. It happens all the time.

Mr. Massimo Pacetti: In other committees, when the mover asks for closure on debate and he loses, it goes to the next person. That's parliamentary tradition.

The Chair: First of all, Mr. Pacetti, thank you.

Secondly, today I've been challenged, I believe, three times, sustained twice, and overruled once, which is why we're here. So it does happen in this committee.

I'm going to rule, based on the advice I have, that I can and should recognize Mr. Tilson and allow him to continue his remarks.

Mr. David Tilson: Thank you very much, Mr. Chairman.

[*Translation*]

Mrs. Carole Lavallée: Can we challenge your ruling?

[*English*]

The Chair: Of course. If someone is going to...

[*Translation*]

Mrs. Carole Lavallée: On a point of order, Mr. Chairman. I would like to challenge your ruling and I would like it to be put to a vote.

[*English*]

Mr. David Tilson: I thought I had the floor. People are babbling away here.

The Chair: My decision to recognize Mr. Tilson has been challenged. Is it the will of the committee to support the chair?

(Ruling of the chair sustained)

• (1350)

The Chair: We're calling on Mr. Tilson.

By the way, just for interest's sake, Marleau and Montpetit clearly indicates that overruling the chair does not necessarily mean lack of confidence in the chair. I don't take any of these rulings personally.

Mr. Rick Dykstra: You should not think that.

The Chair: Mr. Tilson, you have the floor.

Mr. David Tilson: I want to say, Mr. Chairman, that our side has complete confidence in the excellent work you're doing. This is a very difficult time in your chairmanship, and I congratulate you for it. You haven't made rulings that I agree with, but I respect you for it. You suggested, when I raised some points of order—

Mr. Sukh Dhaliwal: A point of order, Mr. Chair.

The Chair: Mr. Dhaliwal.

Mr. Sukh Dhaliwal: First of all, I would like to thank Mr. Wallace for filibustering this meeting.

The Chair: How is that a point of order?

Mr. Sukh Dhaliwal: I will tell you what the point of order is. I heard a lot mentioned about our men and women who are proudly serving Canadians, either here or abroad. There is no doubt in my mind that every member in this committee supports those men and women. I would like to bring a motion to take a vote on this: that every person who's present here supports those men and women in uniform.

The Chair: First of all, I don't rule that a point of order. It's an interesting thing. We're discussing a motion, and a motion on an entirely different topic requires the usual 48 hours' notice.

Mr. Tilson.

Mr. David Tilson: I can only say to Mr. Dhaliwal that our side supports both men and women.

Mr. Wallace has been very thorough in his presentation. I will try to not repeat too much of what he said.

The Chair: That would be graciously appreciated.

Mr. David Tilson: I will do my best.

I'd like to emphasize some of the points he touched on. I believe the Standing Committee on Foreign Affairs and the Standing Committee on Justice are reviewing this very report. When Foreign Affairs, Justice, the courts, and the Information Commissioner are all making reports—and there's a court out west making a ruling on an injunction—I worry whether the rules of natural justice are going to be followed.

Mr. Wallace has said he hasn't seen the report, and I haven't seen the report. The only thing I've seen was in one of the Toronto papers, where there was a blacked—

The Chair: A point of order, Mr. D'Amours.

[*Translation*]

Mr. Jean-Claude D'Amours (Madawaska—Restigouche, Lib.): On a point of order, Mr. Chairman.

I realize that Conservative members of the Committee get a kick out of hearing their own voice and talking about nothing. If that's what turns them on, so be it; that is their right. However, the rules governing committees have to be followed, and one of those rules is that speakers do not repeat the same facts or arguments over and

over again just because they feel like it. Mr. Tilson has again referred to the point raised by Mr. Wallace during his argument, if you can call it that, with respect to an article that appeared in the *National Post* or *The Globe and Mail*. I can't remember which of the two newspapers was involved. However, those arguments cannot be made twice. He will have to find new ideas if he wants to continue talking. Therefore, Mr. Chairman, I would request that you ask government members of this Committee to follow the rules. They will have to stop repeating what others or they themselves have already said.

[*English*]

The Chair: Thank you.

I rule your point not well taken. Each member is entitled to address the substance of the motion and make the points they wish to make. I'm following the debate very carefully. If the speaker becomes repetitious, I will interrupt him.

Mr. Tilson is entitled to put his own spin on whatever argument he wants to make, as is any member. I'm sure the members on the Conservative side have heard the admonition.

Mr. Tilson.

• (1355)

Mr. David Tilson: Thank you, Mr. Chairman.

I have not seen this report, and it is my understanding that Mr. Wallace has not seen the report. Maybe other members of this committee have seen the report. If they had, I'm sure that fact would have arisen. So the motion is talking about studying a report that no one has seen.

There has been reference to one of the local newspapers. There was an article, which we've all seen, on the front page, and there was a section that was blacked out and another section on another page that wasn't blacked out. I don't know whether that's the report. I don't know whether the blacked-out portion is this report. I don't know whether the portion that's not blacked out is this report. I don't even know whether that newspaper has the report. So that seems to be one of the things we're relying on.

Mr. Martin, I believe, referred to a report that some professor had. I don't know what that report is. I don't know whether that's the report in the motion.

So again, I submit an issue that I raised in a point of order, and which you ruled out of order. Again, I don't agree with you, but I respect what you've said. You encouraged me to talk about that if I wanted to in debate, which is what I'm doing now. That issue is which report the committee is going to study.

Presumably, the committee is going to have to go and ask the minister—a minister—for the very report that has been acknowledged by the Information Commissioner as being before the Information Commission in a study. I don't know the status of that report. None of us does. Nor do we know whether portions have been blacked out or whether the whole thing has been blacked out.

Mr. Wallace has spent a great deal of time going through, I think it was, section 15, indicating why you could conceivably black out certain areas. Presumably, the Information Commissioner is proceeding with that.

Mr. Chairman, the point I'm making with this discussion is that our study could conceivably be frustrated. We will not be doing the report that we set out to do, because it is being done in a more thorough fashion by the Information Commissioner.

Then, of course, you get to the issue of the Information Commissioner's making a decision that conceivably could be appealed to the court. If we make a decision that someone doesn't like—the Liberal Party, the Bloc Québécois, the NDP, the Conservative Party, an individual, the Minister of Foreign Affairs, someone over in Afghanistan—looking at the rules of national justice, they have no recourse. It could be anyone who doesn't agree with the report. Well, perhaps it wouldn't apply to the people of Afghanistan, but it would certainly apply to Canadian citizens.

They do have recourse—with respect to a decision that has been made by the Information Commissioner—to the Federal Court. That doesn't exist in this report. We're causing a bit of a problem.

We're going to look at all the issues. We're going to look at the issues that, it has been suggested, occurred in this government, the Conservative government. We're going to be looking at issues in the former Liberal government, which have been referred to. They may be relevant or they may not be relevant, but we're certainly going to look at them.

We're going to be looking at the issues with respect to the Toronto newspaper that made a report and whether that person or persons violated the provisions—because that's what the resolution says—of the Access to Information Act. Were they revealing secrets that, under the Access to Information Act, they shouldn't reveal?

All of these things make it very difficult, Mr. Chairman, to proceed with this motion, and that is one reason I don't believe we should proceed. When you look at the motion, I honestly believe it should be dealt with by another committee, with respect to matters that should go beyond the Access to Information Act. We are certainly going to go into it. We're going to go into matters of security. We're going to go into matters that have nothing to do with this committee.

I believe this whole motion is beyond the jurisdiction of this committee. I mentioned in my point of order that there are legal proceedings going on in British Columbia with respect to an interim injunction that would prohibit the transfer by Canadian Forces of detainees in Afghanistan. As I submitted in my point of order, I believe it would be inappropriate for the committee to proceed with this matter, because there's an ongoing legal matter that's before the court.

•(1400)

In our deliberations, our examining of witnesses, and our submissions, we could inadvertently prejudice those proceedings. I know they were introduced last week. I don't know whether they have been heard, but there certainly would be a timeframe for appeal one way or the other. It would be most irresponsible for this committee to prejudice matters that are before the court.

Finally, it's kind of ironic that we were dealing with the issue of identity until this big brouhaha occurred, because that's how all this happened. This happened because there was something in the Toronto newspapers that I don't think someone got legally. Maybe they did. They'll have to come to tell us whether they got it legally. They may have broken the law.

I'm not going to refer to the sections that Mr. Wallace referred to. I'm just going to refer to section 64 of the legislation, which says:

In carrying out an investigation under this Act and in any report made to Parliament under section 38 or 39, the Information Commissioner and any person acting on behalf or under the direction of the Information Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,

Here we are, going on our merry way. Is the Information Commissioner going to come to this committee under the provisions of the Access to Information Act, section 64, and say, "You guys are breaking the law, you're breaking the provisions of the Access to Information Act"?

There are a couple of exceptions to that. Paragraph 64(a) says:

any information or other material on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act;

In other words, the head of the government can say that all the various sections that Mr. Wallace mentioned—and I won't repeat them—in section 15 should be blacked out. That person has the right to do that.

Mr. Chairman, I believe we should vote on this matter.

Some hon. members: Oh, oh!

The Chair: Thank you.

Mr. Martin.

Mr. Sukh Dhaliwal: Excuse me. Is Mr. Tilson asking for the question on the original motion?

The Chair: At the present time I have people who wish to speak. If the list is exhausted, we can do it.

Mr. Martin, do you wish to address the motion?

Mr. Pat Martin: I'd like to take the floor to address a couple of issues, and then I will put the question.

Mr. David Tilson: That's what I just did. I put the question.

Mr. Pat Martin: I ask that the question now be put.

Mr. David Tilson: I want to vote on it.

The Chair: Please, go ahead.

Mr. Pat Martin: Mr. Chairman, I think it is important to try to leave the record a little more balanced than it was with some of the information put forward by Mr. Wallace and now Mr. Tilson.

It's clear to me that the government has been pulling out all the stops to try to avoid having this information come out, because they're embarrassed that they've been caught in a conspiracy to defraud the Canadian public about the existence of the human rights report on Afghanistan, and then about the contents of that report—in other words, why they blacked out sensitive information, which we now know was really not that sensitive. Much of what Mr. Wallace said was true, that there are justifiable reasons to black out a document, and they're listed very clearly. In fact, he was kind enough to read them all to us, point by point, or virtually all of them. But we now know they're using subsection 15(1) extensively in the blacked-out documents, but they're also using paragraphs 21(1)(a) and 21(1)(b), which deal, as Mr. Wallace pointed out, with cabinet confidences, ministerial briefing notes, etc. Much of what was blacked out did not need to be, because I have copies of that particular document for 2002, 2003, 2004, and 2005—just like the 2006 document exists—where the blacked-out sections have been taken out and we can read what's underneath them.

So the main thing that we have to answer today, or that we will engage in when we vote to undertake this study, is why did the ATIP coordinator, Jocelyne Sabourin, say no such documents existed, when they've existed from 2002 right through 2006 and been published annually? And then, when they changed their minds and did release the documents, why were sections blacked out that any objective outside or third party clearly would agree should not have been blacked out?

We have freedom of information laws in this country. The law itself might be called the Access to Information Act, but what this really is about is freedom of information, that the people of Canada have a right to know what their government is doing and why.

• (1405)

Mrs. Carole Lavallée: *[Inaudible—Editor]*

Mr. Pat Martin: I am aware of it, thank you.

The Chair: Go ahead, Mr. Martin.

Mr. Pat Martin: I do want to set the record straight, because we had a disproportionate amount of argument on the one side that this study wasn't necessary.

In actual fact, the government has taken extraordinary steps to deny, first of all, they had any knowledge of prisoners being tortured. Well, I have documents from 2002 stating clearly that there was a very great concern that torture was going on, and illegal arrests, etc. These are government documents under the same title, the good governance and human rights document, published annually—and every year the same allegation is repeated. So for any minister of the Crown, either in the Liberal government of 2002 to 2006 or the current government today, to stand up and say they had no knowledge of Afghan prisoners being mistreated, they're covering their ass by blocking it out, frankly, Mr. Chairman.

It's a rare opportunity for us to be able to see what's actually underneath that black felt pen. Well, now we know. Now we know

what they were blacking out year after year after year after year, and we know that the public had a right to know, and Canadian soldiers had a right to know they were putting lives at risk. Most Canadians would not support knowingly handing over prisoners when there was full knowledge they were about to be tortured.

So this is the most serious breach—

An hon. member: *[Inaudible—Editor]*

Mr. Pat Martin: Well, because we've read reports from 2002 and 2003. I have seen them.

An hon. member: You've read the reports?

Mr. Pat Martin: Yes, I have seen the reports. I have a copy with me, in fact. I'd be willing to show it to you, if you'd like.

So the question has been put on Ms. Lavallée's motion.

The Chair: Mr. Martin, the question has not been put. You have the floor on the motion.

Mr. Pat Martin: I have the floor on the motion. Then I would like to call the question on the motion, so that the question is put.

Mr. Mike Wallace: I have a point of order. I don't think you can do that once you start speaking. You have to do it right away. It's not debatable, I believe.

Mr. Pat Martin: No, I think.... We'll let the chair rule, but you're wrong.

The Chair: First of all, Mr. Martin, you were speaking to the motion. That's the first point.

Is that correct?

Mr. Pat Martin: Correct, yes.

The Chair: Okay. Now you've concluded that and you were going to do what? To move something?

Mr. Pat Martin: Yes, now I'd like to call the question so that we can vote on Ms. Lavallée's motion.

The Chair: I still have at least one speaker, who is Mr. Dhaliwal.

Mr. Sukh Dhaliwal: I don't have to talk.

The Chair: If we have no further speakers, then we'll call the question.

Mr. Wallace.

[Translation]

Mrs. Carole Lavallée: No, we are voting now.

[English]

Mr. Mike Wallace: Just a brief response to his....

The Chair: Go ahead.

Mr. Mike Wallace: I think Mr. Martin was making my point. Mr. Martin said any third party would agree it was obvious. I'm not supporting this motion, because in the first motion we were waiting for the independent Information Commissioner to provide his report on whether this is accurate or not.

He was making my point that it should be done by an independent third party, that this committee is not an independent third party, and that's why I'm not supporting this motion, because I think the first motion has more relevance.

The Chair: The question is on the motion as amended.

(Motion as amended agreed to)

• (1410)

The Chair: Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, I would like the steering committee to meet next Tuesday, so that we can begin our study of this issue.

[*English*]

The Chair: I'm sorry, I won't be available until Monday. We can do the best we can to set up a steering committee meeting for Monday. That will depend on the availability of the members. That's what we'll do.

There may not be a meeting on Tuesday, because we may not be ready to address the issue, depending on what we decide in terms of what we need. But we'll have a steering committee on Monday if we can arrange it.

Before the committee leaves, this motion says:

That the Standing Committee on Access to Information, Privacy and Ethics urgently address the internal report by the Department of Foreign Affairs....

As your chairman, I view that as a direction that this supersedes any other business we have agreed upon, which would require me to then cancel witnesses who have already been scheduled. Before I do that, I want the committee to know who these witnesses are who have agreed to come and the arrangements that have been made.

Mr. Clerk, would you advise us, please?

The Clerk: On May 15 we have CPIC coming and the Canadian Consumer Initiative; on May 17 the Canadian Bankers Association and ITAC, which is the Information Technology Association of Canada; May 29, Professor Geist, and the Credit Union of Canada, plus the Insurance Brokers of Canada; May 31, the RCMP, the Department of Public Safety, and the Department of Justice. Nothing has been scheduled for June 5. On June 7, we have the commissioners from British Columbia, Ontario, and Alberta.

The Chair: Unless I hear otherwise, I'm going to instruct the clerk to advise these people that they will now be on hold and we will advise them when we are ready to hear their evidence. We will deal with the subject matter of this motion to the extent we feel we can, beginning with a steering committee meeting on Monday.

It may very well be that as a result of that steering committee meeting we may not be ready for a meeting on Tuesday. So I'll have to adjourn this meeting to the call of the chair, and we will have a steering committee meeting on Monday.

Are there any points of order?

Mr. Van Kesteren.

Mr. Dave Van Kesteren: It's a question. What are we going to do with identity theft? Are we just pushing it forward until this is—

The Chair: At this point it will be on hold until the committee deals with this particular motion, however it may be that we deal with it.

Mr. Dave Van Kesteren: However, we are going to deal with it once this is done?

The Chair: Yes. It's not off the table; it's merely postponed until we deal with this motion.

Are there any other points of order?

Okay. I'm adjourning the meeting to the call of the chair, and we will have a steering committee meeting on Monday, provided we have a quorum for it.

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