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Chair

Mr. Paul Szabo

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• (1535)

[English]

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

This is the 18th meeting of the Standing Committee on Access to Information, Privacy, and Ethics. Our orders of the day are with regard to Access to Information Act reform.

This afternoon we have appearing with us the Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada. He will be with us for the first hour. He has with him some departmental officials, whom he will introduce, and they will be staying with us for the balance of our meeting, until 5:30 p.m., at which time we also have one other minor item to deal with, if we can, before we adjourn for the day.

Without further ado, I would like to welcome the minister and thank him for coming before the committee to assist us in our review of the Access to Information Act and possible reforms. I understand, Minister, that you have some brief opening remarks, and then we'll get right on to the questions from the members.

Please proceed, Minister.

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

I'm pleased to be with you for a little while this afternoon.

[Translation]

I am delighted to have this opportunity to appear before you in order to discuss the 12 recommendations from the Information Commissioner and a reform of the Access to Information Act.

[English]

What I propose to do in the next few minutes is to give this committee some background information on access reform and then to make some comments on certain of the commissioner's recommendations. I think these comments will give you food for further reflection and analysis. Finally, I'd be pleased to take any questions you may have.

As the members of this committee will remember, the government's first major piece of legislation was the Federal Accountability Act. This was tabled in the spring of 2006 and received royal assent on December 12, 2006. With the Federal Accountability Act, the government brought forward significant reforms to the Access to Information Act. This act had not been comprehensively amended since coming into force on July 1, 1983.

One of the reforms in the Federal Accountability Act extended the Access to Information Act to a number of officers and agents of Parliament, several foundations, and the Canadian Wheat Board. Mr. Chairman, I would like to take a moment to describe a couple of the other important reforms that were introduced in the Access to Information Act by the Federal Accountability Act.

For quite a number of years there had been an ongoing debate as to whether or not crown corporations should be covered by the Access to Information Act. On one side there was the argument that the crown corporations operate essentially in the private sector and therefore should not be burdened by the Access to Information Act. On the other side, the argument was that the crown corporations are connected to the government and therefore people should be able to submit access to information requests to them.

The government saw this as an issue of transparency and accountability and therefore came down on the side of extending the coverage of the Access to Information Act to crown corporations. But the reform didn't stop there. By this I mean that the government could have listed a number of crown corporations that would be covered by the act; instead, what we did was amend the act to state that it covers all parent crown corporations and their wholly owned subsidiaries. For now and for the future, the matter is simple: all crown corporations or wholly owned subsidiaries of a parent crown corporation are covered by the Access to Information Act.

I want to mention one other specific improvement to the Access to Information Act that was accomplished by the Federal Accountability Act, and that's the duty to assist. This provision states that the head of a government institution shall make every reasonable effort to assist a requester in connection with an access to information request, respond to the request accurately and completely, and provide timely access to the record in the format requested. This duty applies regardless of the identity of the person making the access request. The Federal Accountability Act has also brought forward a number of administrative reforms that I will not get into here.

As you may recall, in April 2006, when the bill containing the Federal Accountability Act was introduced, the government announced a two-pronged approach to access reform. The first step consisted of the amendments included in the Federal Accountability Act, which reflected a number of the reform proposals put forward by the previous Information Commissioner. The second step was a discussion paper that raised a number of areas of concern on the part of Mr. Reid, who was then commissioner. These areas required further analysis and stakeholder consultation before reforms could be introduced. That's why my colleague, the then Minister of Justice, Vic Toews, in the spring of 2006 tabled with this committee a discussion paper entitled, "Strengthening the Access to Information Act: A Discussion of Ideas Intrinsic to the Reform of the Access to Information Act".

This paper stated in its introduction that:

The government is committed to consulting with citizens on ongoing policy development processes and to ensuring that members of Parliament have the benefit of input from all Canadians.

This commitment still stands.

The paper also stated that the Access to Information Act had a broad constituency across many sectors of society with widely divergent views on its administration. For this reason, it's appropriate to hear a wide range of views on reform proposals and to develop approaches for reform in a public forum before the government introduces or prepares or considers a bill.

This is also still true today.

Mr. Toews appeared before this committee on June 19, 2006, to highlight certain concerns and issues explained in the discussion paper and to invite members of this committee to consider these issues further.

More specifically, my colleague said in part:

As the Minister of Justice, I have confidence that the government would benefit from the committee's views on access reform. It is your work as parliamentarians that will be important in shaping this reform. Therefore, it is my hope that your committee will [discuss and] study the discussion paper....

Clearly, the paper was presented to this committee with the intent of involving parliamentarians in this highly important process. At this time, it is my understanding that you are not consulting with a wide range of stakeholders whose views could be of critical importance in this area, so I'm going to take the opportunity again to remind this committee that as the minister responsible for this, we would like to have any input that you would like to make with respect to it.

I'm going to therefore add my voice to my predecessor's and encourage the committee to perform the very valuable work that it is best positioned to carry out, which is to study the challenging issues raised by the discussion paper.

Turning to the commission's recommendations, I should note that some of the commissioner's 12 proposals are dealt with in the discussion paper. I'm not going to go over those in detail unless they're raised in the subsequent question period; I'll just mention them briefly. Those items are cabinet confidences, universal access, coverage of Parliament, allowing time extensions when responding to multiple and simultaneous requests from the same requester, and

imposing a deadline on the commissioner for the completion of administrative investigations.

Let's start with Mr. Marleau's fourth proposal. The Information Commissioner recommends that the act be amended to allow the commissioner discretion on whether to investigate complaints or not. In my mind, this proposal is intricately connected with his recommendation 11, which proposes that complainants have the option of going directly to the Federal Court if they have a complaint about a refusal of access. Interestingly, these two recommendations closely resemble two of the Privacy Commissioner's recommendations. When I appeared before you last year to discuss those ten "quick fixes", I expressed a concern that I'm going to repeat today.

My concern about the Information Commissioner's recommendations 4 and 11 can be boiled down to one of ease of access to justice. Under the current ombudsman model, an access requester can complain to the commissioner about a refusal of access. The commissioner is obliged to investigate, and upon the completion of the investigation, the commissioner will make a finding and a non-binding recommendation. If the requester is unhappy with the result, he or she can then go to the Federal Court.

I believe the crucial point is this. Under the current act, if the requester decides to go to Federal Court, he will then have the benefit of all the work that went into the commissioner's investigation and its results.

Under the commissioner's proposed reform, if the commissioner exercises his discretion and declines to investigate a requester's complaint, then the requester would be obligated to go directly to the Federal Court to complain. In this case, the requester then would not have the benefit of the commissioner's investigation; that is, the requester will have to start from scratch, attempting to investigate the refusal of access without any of the significant investigative powers the commissioner possesses. In short, I encourage you to consider these access to justice issues when you examine these two recommendations.

Recommendation 3 is that the commissioner be provided with order-making power for administrative matters. The commissioner describes this as a third model, a hybrid of the ombudsman model and the tribunal model. As this recommendation stands, a government institution could decide to appeal the commissioner's orders regarding, for example, extensions of time. As a result, the resources of the Federal Court could be increasingly occupied with disputes about the Access to Information Act's administrative or procedural matters.

In addition, the committee should be aware of the possible increased need for resources that may be necessary in order for government institutions to comply with the commissioner's orders.

Finally, recommendation 7 is in part that the Access to Information Act be extended to cover records related to the general administration of the courts.

● (1540)

I strongly encourage you to have thorough consultations with the courts on this issue, given the critical importance of judicial independence.

In closing, I would like to remind the committee that the Access to Information Act is an important statute of crucial importance to government accountability. It's a fundamental part of our democracy, and we're fortunate to have a statutory right to check up on the government. We must not allow this democratic right to be altered in any way that is not entirely thoughtful and cognizant of all the interests at stake.

Accordingly, I urge your committee to call on stakeholders to discuss the potential areas for reform in order to arrive at a balanced approach that reflects the needs and concerns of all affected parties.

Thank you, Mr. Chair, and I look forward to any questions you may have.

The Chair: Thank you kindly, Minister.

I want to move directly to the questions of members in the seven-minute round.

We'll start with Mr. Wrzesnewskyj, and then Mr. Nadeau, Mr. Siksay, and Madam Block.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): Thank you, Chair.

Minister, among the 53 Commonwealth countries, cabinet discussions are excluded from access to information requests in only two, South Africa and Canada.

It's an issue that the Conservative Party had raised, in fact, during the 2006 election. In your platform, "Stand up for Canada", you pledged that so-called cabinet confidences would not be excluded from the commissioner's review. It's been three years, and this promise has not been lived up to.

I'd like to know when you intend to live up to that promise to Canadians.

•(1545)

Hon. Rob Nicholson: Again, Mr. Chair, I'm pleased to hear any recommendations or any analysis that is made. This matter has been raised. You have the discussion paper before you. The whole question of cabinet confidentiality, quite frankly, is a long-standing cornerstone of the Westminster system of government, so if this committee would like to examine that issue—and I think they should—I would be pleased to have a look at this issue.

Now, my understanding is that the certification process that goes on between the Clerk of the Privy Council and any requests from the commissioner works well, but nonetheless, I'm here to tell you that if you would again take up the challenge that was issued by my predecessor, the former Minister of Justice, I would be pleased to see whatever you have to say.

Mr. Borys Wrzesnewskyj: This was a clear commitment that the Conservative Party made in 2006. At that time they didn't say things like "The current system works well"; it was a clear commitment.

Let's move on. Under your Conservative government the average processing times have gone from 30- to 60-day periods to 150- to 250-day periods. When departments are asked to respond as to why things are taking so long, they often respond that it's in "PCO consultations". Why is the PCO delaying requests from months to years?

In fact, there is a new twist to what they're doing. It's almost become Orwellian. They are now sending out memos, saying the following:

We are aware that a certain time has passed since your request was originally received and we sincerely apologize for the delay. In an attempt to clear out our heavy backlog situation, please complete the following: Do you still require that information—yes or no?

They're trying to compel people.... They're delaying—delaying to the point where perhaps it's no longer relevant—and then trying to get off the hook for having delayed by getting the people to actually say it's too late now, and they're saying that the original requester has asked that the access to information request be dropped.

Hon. Rob Nicholson: Well, I think improvements have been made, quite frankly, and while there may be a considerable number of—

Mr. Borys Wrzesnewskyj: We're up to 250 days for most—

Hon. Rob Nicholson: There may be many requests before the Information Commissioner. The government has been quite proactive in encouraging a cultural change, quite frankly, from the previous administration to make sure we get this information out.

I hesitate to brag, but my own department, as you will know, has gone from an F to an A rating. Any time you get an A on a report card, it's a pretty good sign. We all understand that. I'm pleased the Department of Justice is responding, and of course we're one of the key components of this government. The commissioner is quite happy with the way we are responding.

Mr. Borys Wrzesnewskyj: As the minister responsible, have you turned to the PCO and said, "This is not acceptable. My own department has an A rating; you guys have the worst rating around. I'm the minister responsible. Get things rolling."

In fact, in February of this year the commissioner, Mr. Marleau, stated publicly, "My understanding is there is a stranglehold in the centre...."

Why is there a stranglehold in the PCO on access to information requests?

Hon. Rob Nicholson: I can't agree with you whatsoever on that. I think everybody is committed to the piece of legislation, to getting information out. Some of the requests are very extensive; some of them are very complicated. I'm delighted to see that there is progress.

The President of the Treasury Board actually has dual responsibility with this. So that there's no misunderstanding between him and me, my department drafts any changes to the legislation. That being said, I think there has been considerable progress. Certainly the Department of Justice is an excellent example of it.

Mr. Borys Wrzesnewskyj: In 1999, legislation was passed making it an offence to destroy or attempt to destroy, mutilate, alter, falsify, or conceal a record with intent to deny a right of access.

You were sworn in on January 4, 2007. During public accounts committee hearings on June 11, 2007, there were very serious allegations made by two RCMP officers, Officer Michel Joyal and Superintendent Christian Picard. Your Conservative colleagues were at that meeting. I understand there may have been a staffer from the PMO there. So everyone was aware of these serious allegations that on an access to information request about Mr. Zaccardelli's expenses there was an attempt to block.

In fact, the officer in charge, Michel Joyal, was called into the commissioner's boardroom, and the deputy commissioner, Mr. Gauvin, provided alternate documents to do a switcheroo—documents that they had prepared, cooked up, to do a switch with the documents that were to be sent out. This was confirmed by Superintendent Christian Picard.

Why have you not acted on this? This is clearly a criminal situation.

• (1550)

Hon. Rob Nicholson: You have made about 15 different allegations and accusations.

Mr. Borys Wrzesnewskyj: No, there's strictly one.

Hon. Rob Nicholson: The committee can pursue anything it wants. We're acting in a responsible manner. We have done it, and the results are here. What I'm saying to you while I am before this committee today is that this discussion paper was tabled before the... We want your input on these things. If you're here just to make allegations or accusations about something that happened in early 2007, be my guest. But I'm hoping you'll have a look at this discussion paper and come forward with thoughtful recommendations, because it was tabled in the best of interests by my predecessor.

Again, you should have a look at these things. I think they should be studied by this committee.

The Chair: Thank you.

We're going to move to Mr. Nadeau, *s'il vous plaît*.

[Translation]

Mr. Richard Nadeau (Gatineau, BQ): Thank you, Mr. Chairman.

Good afternoon, Mr. Nicholson. You are asking us to do another study of something that was looked at quite a long time ago. Back in 1987, we had begun consideration of the bill, then we had another look at it in 2000, 2001 and 2005.

Like your Liberal predecessor, Irwin Cotler, you are asking us to consider the bill yet again, even though you know full well that the Information Commissioner of the day, Mr. Reid, had suggested a complete bill to the government in October 2005 in order to bring the government in step with the realities that he had brought forward as Information Commissioner.

Mr. Nicholson, within the next few months, will you implement the recommendation that was made during a meeting that this committee held in September 2006, namely, that the government table new legislation regulating access to information?

[English]

Hon. Rob Nicholson: Thank you very much, Monsieur Nadeau.

The government, of course, had a look at what the former commissioner's recommendations were. As you heard in my opening remarks, I was very pleased that under the Federal Accountability Act we made changes. We made government institutions more accountable, including crown corporations, as you know. That's a huge step forward, in my opinion.

I think I stated sometime the different considerations that went into it and the obligations put on people to move forward on these requests. These are huge, and I think they're very good reforms. In fact, I believe they're the most significant reforms to this legislation since it came into effect on Canada Day in 1983.

That being said, you have the recommendations of Mr. Marleau, the present commissioner. I would be very pleased to hear your comments and those of your fellow committee members. I would be pleased to hear what you have to say. Again, any time you're prepared to come forward with a report addressing the different recommendations he has made, I would certainly be pleased to hear from you.

But we have taken action, and again, I certainly don't close the door.

[Translation]

Mr. Richard Nadeau: Mr. Nicholson, we are playing games here. One thing is for sure, and that's with Commissioner Reid's past proposals, we could have gone ahead with this bill, even though it was imperfect. This would have allowed us to bring forward the new proposal to make changes to the bill so it would be more in keeping with today's realities. We could have studied it in committee. Unless I'm mistaken, you are not very keen on the idea of using the bill that Commissioner Reid wrote as a starting point to update the Access to Information Act. Am I right?

• (1555)

[English]

Hon. Rob Nicholson: Well, I can tell you, Monsieur Nadeau, I'm very open to hear what you have to say on this. As you know from the discussion paper you have before you, it's not just Mr. Marleau's but a number of Mr. Reid's proposals. Again, we addressed a number of the issues raised by Mr. Reid in the Federal Accountability Act. That was a huge step forward. I think most people look at it and say it is a pivotal piece of legislation in terms of protecting people's rights and ensuring accountability and transparency.

So I just want you to know that I'm very open to listen to any remarks, any comments, any recommendations that are coming from this committee. I welcome them and hope you will take the opportunity to have witnesses before you, and again, your comments

[*Translation*]

Mr. Richard Nadeau: With all due respect, Mr. Nicholson, table the bill drafted by Mr. Reid in the House of Commons, which is exactly the remark you need to hear from this committee, because that's what the committee had asked for. I am asking you to show some pride and keep the promise that your party made in 2006 to prepare a new Access to Information Act that would take into account the recommendations that Commissioner Reid made for us at the time. You know our point of view on this issue. I hope you will be a gentlemen and keep your word as a politician.

[*English*]

Hon. Rob Nicholson: Again, I would like to have your comments on the recommendations of Monsieur Marleau. You have them before you, and I would be very pleased to have this committee.... With respect to Mr. Reid's comments, you've seen that the government has already tabled legislation under the Federal Accountability Act. You know how difficult that was to get through the previous minority Parliament. I tell you, I was very proud the day we got that through, because it was a huge step forward for transparency and accountability.

Again, I put it to you, Monsieur Nadeau. Let's have a look at these recommendations. I'd like to have all the comments on their—

[*Translation*]

Mr. Richard Nadeau: Mr. Nicholson, you're doing a good job of camouflaging the issues. Congratulations, but I'm really not impressed by your answer. You have heard what we are asking for. I hope that you will have the courage of your convictions and table this bill in the House of Commons so that the committee can then discuss it. Thank you.

Thank you, Mr. Chairman.

[*English*]

Hon. Rob Nicholson: I hope you know what I'm looking for from you, Monsieur Nadeau. Please, let's move forward on this. Again, I welcome your input.

I feel terrible, Mr. Chair. We went ahead and we didn't listen to what the committee might have to say on these things. I feel terrible about that. I think you should have any recommendations—or maybe your recommendations are against these things; I'm not even presupposing that. You may say, we've gone through these things; this is not doable, and that's our recommendation to the government. Either way, I would be very pleased to have your input on this.

The Chair: Thank you.

Mr. Siksay, please.

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

Thank you for being here today, Minister.

I want to start with a couple of specific questions. You talked about how the Federal Accountability Act extended the coverage of the Access to Information Act. But one of the compromises in that discussion was around the Canada Pension Plan Investment Board. The compromise was that it wouldn't become subject to ATI until there had been discussions with the provinces and two-thirds of the provinces had agreed to its inclusion. Can you update us as to

whether these have taken place or whether the government is pursuing those conversations with the provinces?

Hon. Rob Nicholson: That might more properly be directed to the President of the Treasury Board, Mr. Siksay, inasmuch as the Federal Accountability Act is under his administration. But I will certainly pass this on to him and will get back to you with whatever information you may require.

Mr. Bill Siksay: That would be great, if you could get back to us on it.

One other specific question is that a lot of the act deals with paper release of information, but technology has rather passed us by. Are there plans to change the regulations associated with the act to include such things as CD-ROMS or e-mail?

Hon. Rob Nicholson: Again, I think that would be a question for the President of the Treasury Board. On the whole question.... To go back to the justice area, for which I have certain responsibilities, one of the challenges we always have is making sure our legislation is up to date. You get Criminal Code provisions talking about telegraphs and telegrams. We know we have to constantly be looking at that to mirror the changes of technology, but certainly I will pass that on to the President of the Treasury Board.

● (1600)

Mr. Bill Siksay: Thank you.

Minister, I understand that one of the changes in the Anti-terrorism Act was to give the Attorney General power to issue a certificate to halt investigations under the ATIA. I'm just wondering if you have ever used that power or issued that kind of certificate to prevent the release of apparently sensitive information.

Hon. Rob Nicholson: Not as far as I'm aware, Mr. Siksay.

Mr. Bill Siksay: I want to come back to some of the other issues. A number of my colleagues have already pointed out that the Conservative Party did pledge to implement former Information Commissioner Reid's recommendation for reform of the Access to Information Act. There were other commitments made at that time. I'm just wondering if you, as Minister of Justice and a representative of the Conservative Party as well, still stand by the commitment that was made in the platform in 2006 to give the Information Commissioner the power to order the release of information.

Hon. Rob Nicholson: The whole matter, as you know, is under review in the sense that we have this discussion paper before you, and we really do want to get your input. We've actually moved forward with a number of reforms in the Federal Accountability Act. In fact, I remember standing in this room with the then leader of the opposition, and he made it very clear that having more accountability and more transparency in government would be a hallmark of his administration.

The Federal Accountability Act has been a huge step forward in that regard. Of course, I supported that when it was introduced, but, again, I'd like to have your input with respect to all the issues. Monsieur Marleau has raised a number of issues, a number of recommendations; I'd like to get it all at once.

Mr. Bill Siksay: The other commitments that were made in 2006 by the Conservative Party, Minister, included such things as subjecting the exclusion of cabinet confidences to review by the Information Commissioner; obliging public officials to create the records necessary to document their actions and decisions; providing a general public interest override for all exemptions, so that the public interest is put before the secrecy of the government; ensuring that all exemptions from the disclosure of government information are justified only on the basis of the harm or injury that would result from the disclosure, not a blanket exemption rule; and ensuring that the disclosure requirements of the Access to Information Act cannot be circumvented by secrecy provisions in other federal acts, while respecting the confidentiality of national security and the privacy of personal information.

Granted, you did extend the coverage, and we're all pleased about that. I know the Conservatives are very pleased about that. Mrs. Block constantly reminds us of how pleased we are about that extension of coverage—

Hon. Rob Nicholson: She's a hard worker when it comes to fighting crime in this country too.

Mr. Bill Siksay: —but there's a long agenda of other issues, Minister, that were part of the commitment of your party at that time, and I think they were applauded by many folks who work in the area of access to information.

Minister, what happens between a well-thought-out opposition platform—and I'll give you credit for that in this particular area—and taking power? Why is it that governments seem to backtrack? Your government as well seems to want us to study and to focus on the limited work that has been done in this area, but not get on with a whole open government agenda, and not get on with making sure that Canadians have access to the information that their tax dollars provide.

Hon. Rob Nicholson: Well, I can tell you that it's a challenge in a minority Parliament. I didn't have carriage of the Federal Accountability Act because I was government House leader at the time, but to get that piece of legislation through was a huge step forward. Quite frankly, I would have liked to have seen the thing go through in a month, and you know it didn't take a month. We do have a challenge in a minority Parliament. You know how difficult it is for me to get justice legislation passed. You know how difficult that has been and how difficult it continues to be to try to move these things through.

You're quite right about one thing: we have a huge agenda for this country. It covers many different areas. We're trying to be comprehensive and careful on all of these issues. Again, with respect to the pieces of legislation that I've had tabled before Parliament, it hasn't been easy, but I want you to know that I still remain very determined that our justice legislation, our justice agenda, is going to move forward.

Again, I always look for input. As I was saying to Monsieur Nadeau and others, any input you want to give will certainly be welcomed by me.

•(1605)

The Chair: Excuse me, Minister, the member only has one minute left, so I want to let him get his last question in.

Mr. Bill Siksay: Well, Minister, I think you're probably aware that you have three opposition parties that are very keen to get on with dealing with a new piece of legislation on access to information. We've asked for it a number of times for the committee.

Given that, and given that former Information Commissioner Reid gave us a proposed bill, and given that the bill has been turned into a private member's bill in Parliament, so that some of the legislative drafting has already been done, what's the delay?

Hon. Rob Nicholson: Well, I value the input of people like you, Mr. Siksay. I know that you're a thoughtful, careful individual who takes these matters very seriously. Again, I would feel terrible. Let's just say I did bring forward a piece of legislation. I hope you wouldn't be one of the first ones to ask, why didn't you get our input? You put out a discussion paper; why didn't you get our input on some of these issues? This could have been a much better bill if you had heard what we had to say on these things.

I try to be very careful, as you know, on these things, I really do. I welcome any information, any study you can provide on this. Again, I'm very open to.... Every bit of discussion that you can have will take place, and I would like to have your recommendations.

The Chair: I think that's very clear already on the record.

Madam Block, please.

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

Welcome, Minister. Thank you for responding to our invitation.

I would like to say that I think the approach we are taking on ATIA is a solid one. As I understand it, the government has used the FAA to make important improvements to the ATIA. On the other hand, as the members of this committee are aware, there remain several key issues relating to the ATIA that were not included in the Federal Accountability Act. If my understanding is correct, this is because these issues are extremely complex and require further analysis and discussion with stakeholders before they will become ripe for implementation.

These issues have been laid out in the discussion paper that your predecessor tabled before the House in April 2006, and this honourable committee has been invited to delve into these issues and present its findings to the government. I for one entirely support this approach and am glad that this committee now has the opportunity to look at these issues in depth so that the government can legislate solutions to them that are well thought out and fair.

Having said this, Mr. Chair, I would like to ask the minister whether he feels that we are ready to move on any of the issues in the discussion paper.

Hon. Rob Nicholson: That's a very interesting question, and I thank you for the preamble to it.

I will say with respect to this piece of legislation that I've had people say to me, you have to change this. I believe this legislation was passed in 1982 and proclaimed into effect in July 1983. They say, it's been around since 1982; we have to update it, we have to change it. And I say, I guess I can appreciate some of those issues. I've gotten provisions into the Criminal Code that weren't even new in 1892, 90 years before that. Very often what you see coming from the government is trying to respond to the change of technologies and trying to move through a very heavy agenda. In our legislation on identity theft, for instance, or on auto theft, for that matter, we're just trying to catch up with the changes of technology.

So, yes, it was a big step forward. I was part of a government in 1984, when this piece of legislation was just coming into effect and just getting going. I couldn't help thinking at the time how cutting-edge this particular piece of legislation was and how important it was for governments and how forward-thinking it is.

That being said, time marches on, there are changes, and quite frankly, I was pleased to see the changes, which I enumerated in part, under the Federal Accountability Act. This is why I was saying to a couple of your colleagues across the table that I'd be very pleased and I think it would be appropriate—and I think it's the right thing to do—to get your input on these.

Mrs. Kelly Block: Thank you.

I consider the work of this committee to be of utmost importance in reforming the Access to Information Act. Included in the work that this committee is going to undertake is a review of the reforms suggested by the Information Commissioner, the key ones of which are analyzed in the discussion paper.

I must admit, however, that I am surprised at the tone of the Information Commissioner's special report. I honestly didn't realize that the proposals in Bill C-2 relating to the ATIA, were “retrograde and dangerous”, to quote the commissioner. But I realize I should probably save these sorts of comments for our next witness, who will be the commissioner. Regardless of the tone of the report, this committee must carefully consider what it contains. I hope that doing so isn't also “dangerous”, Mr. Chair.

In his special report, the Information Commissioner states that “there has been full opportunity for debate, critique and persuasion” and that there are no knowledge gaps. But you are suggesting to us today to undertake more consultation. Could you please explain to us why you believe that more work needs to be done?

• (1610)

Hon. Rob Nicholson: I think some of the recommendations would have some very profound effects on the way business is done in this country, and it's not just with respect to cabinet ministers, but indeed to all members of Parliament. The proposals that you have seen from now two commissioners are very wide-ranging. This is why I would ask that you have some input on this. This can affect your offices and your role as a member of Parliament, quite apart

from cabinet responsibility. I've always believed this is a good way to go: let's have some input on it and get some stakeholders.

Indeed, have your own say as to how it might affect your role. You've been here now long enough, Ms. Block, as a member of Parliament. You're starting to get a feel for what works and what doesn't work and how you can be most effective in assisting your constituents. And I know you are very effective in assisting your constituents. I'd like to know from you how you think this might affect your role as a member of Parliament.

I think all those questions have to be answered.

Mrs. Kelly Block: I realize that one of the thorniest issues this committee is being asked to consider is that of possible reform of the regime for dealing with cabinet confidences under the ATIA. In passing, I realize that the Canada Evidence Act also plays an important role in this area.

Minister, I know that the discussion paper takes a neutral tone in general, but there is an approach to cabinet confidences described in the paper that appears to be favoured. Is the cabinet confidences proposal that you've put forward in the discussion paper the equivalent to the status quo?

Hon. Rob Nicholson: We're having a look at that. One of the issues that would be involved with the exact proposal put forward is that we might then find the whole matter being litigated on a regular basis, as to what is or is not a cabinet confidence. As it is now, there is a certification done by the Clerk of the Privy Council. It is given to the Information Commissioner. I think we should explore that possibility: do we want to start arguing in court as to what is or isn't a cabinet confidence? I indicated to one of your colleagues at the beginning of this that this is one of the cornerstones of the British parliamentary system. This is how our system works.

Again, we raise the issues, you have the discussion paper before you, and I would be glad to hear from you.

Mrs. Kelly Block: Do I still have time?

The Chair: You have a little bit of time, for one more.

Mrs. Kelly Block: Okay.

Along with cabinet confidences, another difficult issue in the Access to Information Act reform arena is whether or not the offices of ministers should be covered by the ATIA. So I was of course not surprised to see a section of the discussion paper dealing with that issue. However, Minister, I was somewhat surprised to see that the discussion paper raises the possibility of extending the right of access to all MPs' offices, when the Information Commissioner has never suggested it.

Mind you, I think I may be able to answer my own question. Would I be right in thinking that the issue of covering MPs' offices was included in the discussion paper because one cannot discuss covering ministers' offices without turning to look at whether the offices of members of Parliament should also be covered?

Hon. Rob Nicholson: I know there has been an interpretation that under the Access to Information Act ministers' offices would be treated separately and distinct from other government departments. But once you raise the issue, once you bring these things out, it seems to me you have to have a full discussion and a full consideration of these things, so that nobody is taken by surprise.

Again, you have those recommendations before you, and I think you should have a look at them and express your own opinion as to whether you think this should apply to your offices—whether it should, and what your view of that is.

Mrs. Kelly Block: Thank you.

The Chair: Mr. Minister, I understand that you have a firm commitment at 4:30. The committee members have had a little discussion. We're going to allow each of the parties to have one more question of you, and then we'll wrap up the session with you.

If that's acceptable, we'll have Madam Simson, then Mr. Nadeau, Mr. Siksay, and then Mr. Dreeshen to use up this last fifteen minutes. We'll split it up evenly.

• (1615)

Mrs. Michelle Simson (Scarborough Southwest, Lib.): Thank you, Chair, and thank you, Minister, for appearing before the committee.

We've heard testimony from you and several witnesses about the Federal Accountability Act that was introduced in 2006 and described in some quarters as significant.

On the other hand, this committee has heard testimony from several expert witnesses that would describe it as being akin to comparing the financial viability of General Motors with Chrysler's. In other words, it didn't go nearly far enough. It included 67 new crown corporations, but it also contained a number of new exemptions and exclusions. Could you give us the number of those exemptions and exclusions and outline a few of the actual bodies that have been exempted?

Hon. Rob Nicholson: I actually don't agree with you. You've said it's been described as significant in "some quarters"; I think most people who've had a look at it think it was a significant step forward.

You quite correctly point out that now this applies to 67 crown corporations. In fact, quite frankly, I like the way it is set out in the Federal Accountability Act; it applies to all crown corporations, so actually I can't agree that it's—

Mrs. Michelle Simson: No, Minister. The question asked how many new exemptions were included in that legislation.

Hon. Rob Nicholson: I can undertake to have a look at that. I'd be glad to do that for you.

Mrs. Michelle Simson: If you could do that, I'd really appreciate it.

Hon. Rob Nicholson: Yes.

Mrs. Michelle Simson: You've stated that this accountability act was a crucial statute of crucial importance. As late as this weekend, a national Canadian paper described Canada's transparency in government and our Access to Information Act as dismal on the world stage and said that our government is shrouded in secrecy, which is part and parcel of the whole issue of the culture.

How would you propose bringing about a cultural change when we've been described as dismal and shrouded in secrecy? Obviously the Federal Accountability Act hasn't been the tonic to fix our access to information.

Hon. Rob Nicholson: I want you to know that I completely disagree with anybody who would suggest this country has a dismal record on anything related to access to information. We blazed the trail in this world, going back to the early 1980s. I was there when this bill was being fully implemented, and when they say it is dismal on the world stage, I want to see who they're putting on that list. I'm going to tell you something: there are some countries that have pieces of legislation on there that don't work as well as ours. We have a close—

Mrs. Michelle Simson: Mr. Minister—

Hon. Rob Nicholson: Just a second.

When we bring forward any legislation, we do check with other like-minded countries, but I'm going to tell you something: this country has an outstanding record. If anybody has anything different to say to that, I say that they are completely wrong. This is an excellent piece of legislation. This is a huge step forward, and so was the Federal Accountability Act.

Mrs. Michelle Simson: Minister, all I'm—

The Chair: I apologize, Madam Simson. We'll have to move on to Monsieur Nadeau, *s'il vous plaît*.

[Translation]

Mr. Richard Nadeau: Thank you, Mr. Chairman.

Mr. Nicholson, we don't have much time left, and probably we will not see each other back at this committee anytime soon. As you know, this is 2009. I'm telling you this to situate you in time and space. I'm going to read you something that the Standing Committee on Access to Information, Privacy and Ethics, that is to say, this committee, passed quite recently, actually on February 11, 2009. This motion was tabled in the House of Commons the following day, on February 12, 2009. You can read the transcript, which will be made available. The motion reads as follows:

That the government introduce in the House, by May 31, 2009, a new, stronger and more modern Access to Information Act, drawing on the work of the Information Commissioner Mr. John Reid.

Mr. Nicholson, you haven't wasted your time here today. You know our position on the Access to Information Act. So you know exactly what you have to do. This motion was passed by this committee, with all parties present. There are four parties at the table, and there are 12 parliamentarians here today. The work that we are currently doing has been around for more than 20 years. Mr. Reid has done the work for the Liberal government, the Conservative government, the entire House of Commons and the Canadian Parliament.

The recommendation has been written down black on white, and it was tabled in the House of Commons. So you can't ignore it, Mr. Nicholson. So don't try to waste our time and sidestep the question. You know what the committee and the House of Commons expect of you. You can pass on the message to Mr. Stephen Harper, your leader, who promised to modernize the Access to Information Act. The motion that I read out to you was passed unanimously in November 2005, and then on division in September 2006. This committee passed it yet again in February 2009.

Thank you.

• (1620)

[*English*]

Hon. Rob Nicholson: I have to say, Mr. Nadeau, even just with respect to the wording, that it makes no mention whatsoever of the recommendations from Mr. Marleau, who is the present commissioner. If you're saying to me that you want to see a piece of legislation based only on recommendations from the previous commissioner, I would have to disagree just on that basis alone.

The present commissioner has made a number of recommendations that I hope you will take seriously. I have a feeling that if I comply with that and say, "Here's a piece of legislation based on Mr. Reid's proposals", I think you might be one of the first ones up in the House of Commons. The question might go to me or to the President of Treasury Board: "Why didn't you pay attention to what Mr. Marleau said? He had very reasoned and well-thought-out recommendations. Why haven't you taken those into consideration?"

You know something, Mr. Nadeau? You'd actually be correct, because any legislation, any changes, should take into consideration all these recommendations. You may disagree and say to me that we've looked at these recommendations carefully and we don't like any of them. I would be pleased to have that, but the government is open to looking at these things.

I pointed out to you the Federal Accountability Act, and you ask why we aren't doing more things in this particular area. You know the priority of the economy, for heaven's sake. That has dominated the last six or seven months, and rightly so; it wasn't easy to get the economic action plan through, and all that it has meant.

We have to keep an open mind on all these things, but please don't limit your recommendations just to what Mr. Reid has to say. I think it's only fair and only reasonable to take into consideration the recommendations of the present commissioner.

An hon. member: [*Inaudible—Editor*]

The Chair: Order.

Go ahead, Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

Minister, I have two specific questions.

You've mentioned several times that you thought extending the ATI act to cover cabinet confidences, and also the order-making power, would mean that more issues would end up in court. Can you provide any examples or evidence from provincial jurisdictions or other countries where that order-making power exists, or where

cabinet confidences are covered by ATI, that show more disputes end up in court as a result of those powers?

Hon. Rob Nicholson: I did raise the possibility. Since you've raised the whole question of access to the courts, that was one of the concerns I had with one of the specific recommendations. If the ability is given to the access commissioner outright to not investigate certain complaints, that would have the effect, in my opinion, of possibly overloading the courts, so—

Mr. Bill Siksay: Do you have any evidence of that from other jurisdictions where that power exists?

Hon. Rob Nicholson: On that particular issue, I can have a look and see what information—

Mr. Bill Siksay: It could be very important to back that opinion up with some evidence.

Hon. Rob Nicholson: Yes, but you can see that if you make a complaint to the access commissioner and he or she turns that down completely and your only recourse is to the Federal Court, it only stands to reason that we would see more applications to the court because their issues and complaints haven't been dealt with.

Mr. Bill Siksay: Other jurisdictions have that, so it would be interesting to know.

Minister, in our system I think it is possible for the government to request a standing committee to draft legislation, and I'm wondering if you'd be prepared to take a recommendation forward that would ask the government to ask the Standing Committee on Access to Information to draft new access to information legislation and table it in the House.

Hon. Rob Nicholson: In terms of changes to our parliamentary system, turning over the drafting of legislation to the committee would be a huge change to what we have now. I think the system of having the government consider recommendations and then table information works well now, but that doesn't stop you, Mr. Siksay, or others from introducing private members legislation on any particular issue.

We certainly have that open to us, but I think the drafting of legislation on behalf of the government probably should remain with the government. In fact, I'm quite confident that that's the way it should be and should continue to be.

• (1625)

The Chair: Go ahead, Mr. Dreeshen.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you very much, Mr. Chair.

Good afternoon, Mr. Minister.

I have a couple of questions on sections 23 and 24 from the discussion paper that I want to go through. The Information Commissioner proposed to add an injury test to any exemption that does not already have one. One such exemption is in section 23, which I'm sure you know well. It protects information covered by solicitor and client privilege.

Am I right that in the private sector, and also in other access to information legislation in Canada, there is no requirement that an injury test be met before the solicitor and client privilege can be used?

Also, it seems fairly obvious to me what the injury would be from failing to give adequate protection to communications involving this legal advice between a lawyer and a client in an institution covered by ATIA. Could you comment on that, please?

Hon. Rob Nicholson: If you don't mind, Mr. Dreeshen, I'm going to ask Mr. Kratchanov to say a few words with respect to the whole question of solicitor-client privilege.

Mr. Denis Kratchanov (Director and General Counsel, Information Law and Privacy Section, Department of Justice): I think the recommendation you're speaking about was made by the former commissioner, Mr. Reid, and not by Mr. Marleau. On the subject of solicitor-client privilege, the laws in the provinces vary. Actually, there's a case now before the Supreme Court in which the issue of the relationship between public interest and the application of solicitor-client privilege faces the court, from the Ontario legislation on access. Obviously the decision of the court will bear influence on the laws across the country.

Mr. Earl Dreeshen: Thank you.

I'll move on to section 24, then, as well. One of the Information Commissioner's proposals that concerns me is his strong recommendation to repeal section 24 and schedule II in their entirety.

From what I understand, section 24 was put in place to provide a higher level of protection than that afforded by the other exemptions in the act. Further, I would think after perusing the list of provisions protected by section 24 that many of them pertain to national security, law enforcement, and the protection of personal privacy.

At the same time, I understand that schedule II, where the confidentiality clauses in other statutes are listed, now contains considerably more than it did in the mid-1980s. Undoubtedly this is an issue that our committee should examine. However, given the types of highly sensitive information that are protected by this exemption, I frankly don't understand how one reaches the conclusion that the whole exemption needs to be abolished. Certainly I can't envision adopting an approach without there having been an extensive and in-depth research and consultations with affected entities such as Statistics Canada, Canada Customs and Revenue Agency, CSIS, and so on.

Minister, would you agree with me that there must be some alternatives other than the complete repeal or the status quo?

Hon. Rob Nicholson: I think you've raised a couple of very interesting issues. We're always trying to do that balance, which is to protect national security and at the same time ensure that people have the right to know pertinent information, either as it relates to them personally or to issues across the country. It's not only from the standpoint of national security; this piece of legislation has to work hand in hand with the Privacy Act as well. They both have to work together. On the one hand, people have a right to assume that certain information about them is kept private. On the other hand, there is the public right to know. It's that balancing act.

One of the things you indicated in your question is that you'll have to become involved with stakeholders on this, and indeed you will. You have to let them have some input on this before we would go holus-bolus and propose a piece of legislation that would do something such as the complete abolition of section 24.

The Chair: I'm sorry, Mr. Dreeshen, but Mr. Poilievre would like to get one quick question in before the minister excuses himself.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Ms. Simson asked how many new exemptions came in under the accountability act. The answer is one. There was only one new exemption that had not previously existed, and that exemption was recommended by the Auditor General and unanimously supported by the committee. All the other so-called new exemptions already existed before, because the agencies to which those exemptions apply were not even covered by ATI at all before the Federal Accountability Act, meaning that there was a 100% exemption of the whole body. That answers Ms. Simson's question.

My question is, today when you're here listening to members' comment and demands for more access to information, does it not make you wonder why none of them was in favour of going as far as we were willing to go under the accountability act, and why they actually wanted to take organizations off the list that we were trying to add when we moved forward with Bill C-2?

● (1630)

Hon. Rob Nicholson: That's actually a very good point, Mr. Poilievre. I have to say that in your role as parliamentary secretary to the President of the Treasury Board you did an outstanding job in moving forward. I think Canadians can be very grateful to you for all the work you did to bring forward that Federal Accountability Act. I know it wasn't easy.

With respect to why opposition members didn't want to include a number of crown corporations and a number of federal entities, I think I would prefer to leave it to them to try to explain that. I think they'd be in a better position than I would be.

The Chair: Minister, thank you for sharing some of your time with us.

If I may, I'd like to leave you with a final thought. I am a big fan of the judicial axiom that justice delayed is justice denied. We've heard and we've seen in the report cards that 30 days is the exception; it's not the norm. We have probably as many administrative hurdles as legislative hurdles here. I think you can see that some of the items Mr. Marleau has brought forward really relate to how we deal with the backlog.

I know it's not your responsibility—it's Treasury Board's—but I would strongly encourage you as a cabinet colleague to see what you could do to facilitate both administrative and legislative amendments that will make this act work in the manner Canadians expect and deserve.

Hon. Rob Nicholson: Thank you very much. I'm glad to appear before the committee, Mr. Szabo. Thank you for all your input and comments.

The Chair: Thank you, Minister. I know you're leaving now. I should introduce your colleagues.

We have Mr. Denis Kratchanov, who's the director and general counsel, information law and privacy section. Welcome, Mr. Kratchanov. We also have Carolyn Kobernick, assistant deputy minister, public law sector, and Joan Remsu, general counsel and director, public law policy section.

Welcome to you all. Thank you for being here with the minister. I know he was taking down notes briefly, as were you. I understand you don't have any introductory or opening remarks to make, but I welcome any amplification you have on matters we may have covered already, if they come up from the members.

Members still have quite a number of questions, so we're going to begin our second round. Madame Simson and Mr. Wrzesnewskij may be splitting their time, but they can decide how they're going to work this. We'll start there.

Then we have Mr. Dreeshen. You may want to work out some deal there.

Then it's Mr. Nadeau, and then Mr. Hiebert.

Mrs. Michelle Simson: Thank you, Chair.

For all of the witnesses, I have one quick question. We've heard testimony on access to information from a number of witnesses who, without exception, all agree that access to information is deemed to be a basic human right.

In a quick yes or no, would you agree with that statement?

Mr. Denis Kratchanov: It's not something I've called a human right.

Mrs. Michelle Simson: So your answer is no, you don't view it as a basic human right?

Ms. Carolyn Kobernick (Assistant Deputy Minister, Public Law Sector, Department of Justice): Mainly the Access to Information Act is a quasi-constitutional statute. It is an extremely important statute that we have to respect.

Mrs. Michelle Simson: So is your answer no as well?

Ms. Carolyn Kobernick: As we have defined human rights, the answer is no. But is it receiving protection under the Charter of Rights? Yes.

Mrs. Michelle Simson: But your answer is no.

And to the last witness, Ms. Remsu, is it no, you don't see access to information as a basic human right?

• (1635)

Ms. Joan Remsu (General Counsel and Director, Public Law Policy Section, Department of Justice): No.

Mrs. Michelle Simson: With respect to some of the recommendations in Mr. Marleau's report, we've heard expert testimony from various bodies from various jurisdictions who believe that giving the commissioner order-making powers would help alleviate the backlog; in other words, giving him the ability to make sure information is released without going to the Federal Court.

Would you agree with that statement?

Ms. Carolyn Kobernick: The only comment I would make on it is that I don't think you necessarily require an order-making power to effect change. I think, as the minister indicated in his testimony, the Department of Justice was able to manage its outstanding backlog within the organization itself. I think other departments certainly have it within their own capacity to respond to the concerns of the access to information commissioner.

Mrs. Michelle Simson: Who should be held accountable when a department fails? You're getting upwards of 200 to 250 days as the norm to get information, based on the statistics provided by the commissioner. Who should be held accountable, and how do we get this rectified, when you're dealing with a culture of secrecy? Everybody agrees that there is a culture of secrecy and there has been for many years.

Ms. Carolyn Kobernick: In the Department of Justice, what our deputy minister did, under the direction of the minister, was put in place means and processes whereby we would be able to respond in the timeframes that are required. Ultimately, it's the minister, but certainly a deputy minister and assistant deputy ministers have responsibility to ensure that we respect whatever the requirements of the legislation are.

Mrs. Michelle Simson: If they fail to do that, what sanctions would you recommend that a minister should receive? Should there be financial penalties? Should there be some sort of compensation to the requester?

Ms. Carolyn Kobernick: I don't think I'd be prepared to say what type of sanction a minister should receive. Certainly, there are reports to Parliament; it's publicly indicated; and the access commissioner, Mr. Marleau, has issued his own reports. They're tabled in Parliament; they're subject to public scrutiny. To me, that's public accountability at its highest.

Mr. Borys Wrzesnewskij: The minister said I had made multiple allegations. Actually, it was one simple allegation. Legislation in 1999 made it very clear that to destroy, mutilate, alter, falsify, or conceal a record with intent to deny a right of access can lead to criminal charges. We had serious allegations from a superintendent in the RCMP, an officer, that this is exactly what a deputy commissioner was engaged in, in the former commissioner's office.

Obviously, because we didn't get a response to it, this has not been looked into. I'm making it absolutely clear that you don't need a report from committee. A serious allegation of this sort is something that it would be expected would be looked into.

But I have another problem, and it's a question of—

The Chair: We're at five minutes already. Quickly put forward some question they can respond to; otherwise, we'll have to move on.

Mr. Borys Wrzesnewskij: Okay.

In a conference call, former communications director Sandra Buckler named a Canadian Press reporter, Jim Bronskill, as the requester of an access to information request. Now, the protection of the requesters is very important. It was the Prime Minister's director of communications who made this disclosure. Have there been consequences? Have checks been put in place so that journalists aren't named in this way publicly?

Mr. Denis Kratchanov: I can't speak about this particular incident or allegation that you're making, but a few years ago this committee held hearings on this subject. It made recommendations, and the government responded to those recommendations, and I think that's very well known.

The Chair: Okay.

Mr. Dechert, please.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair, and thank you, ladies and gentlemen.

On March 9, Commissioner Marleau told this committee that a significant percentage of the users of the access to information system in Canada were what he would describe as data brokers, i.e., commercial organizations that gather information for their clients and then resell the information to them.

Would you agree that the commercial organizations, such as data brokers or lobbyists or even lawyers in private practice, as I was a short while ago, are very different from individual taxpayers who are looking for their own information, and that these data brokers and commercial organizations should pay a reasonable cost of the provision of that information to them, given that they're going to resell it to their clients at a fairly significant rate?

What would your view on that be, whoever would like to answer that question? I know this is something that's done in British Columbia, for example.

• (1640)

Mr. Denis Kratchanov: You're asking us to make policy, and obviously that's not our role as officials. It's very difficult to know exactly how many requests there are by data brokers, to agree on a definition of what a data broker is and on statistics concerning them. I've never seen reliable data.

Mr. Bob Dechert: Let me ask you another question. Mr. Marleau mentioned that the majority of the complaints he sees come to his office from a very small number of people; in some cases, they're people who make hundreds of access to information requests each year. Given that there's a large cost to the taxpayers in dealing with those complaints and providing that information, do you think the taxpayers have a right to know who those people are who are making hundreds of requests a year and making hundreds of complaints about those requests to the commissioner's office?

Ms. Carolyn Kobernick: It might be something you choose to make policy. It is again a policy decision. At the moment, the identity of the requesters is supposed to be protected. If there is to be a change in that, then it should, I would think, be fully debated.

Mr. Bob Dechert: We heard from one gentleman who admitted that he personally submitted several hundred access to information requests on average each year. I believe he was in the business of looking for information and then writing stories about the information he received, which he then sold to news organizations. That's how he makes a living.

Commissioner Marleau said that the average cost of supplying the information is about \$1,425 per information request. So if this one gentleman is making 400 to 500 requests a year, it is costing the taxpayers of Canada \$500,000 a year or more to fund his business. Then, if he finds something that he thinks is interesting information,

he writes an article and sells it to a news organization. That's how he earns his living.

Do you think that's something that is reasonable for the taxpayers of Canada to fund?

Ms. Carolyn Kobernick: One of Mr. Marleau's recommendations was to have some sort of control over setting of fees. I would just defer to the minister's testimony here today; he said that's something he would invite the committee to take a look at.

Mr. Bob Dechert: Okay.

Thank you very much.

The Chair: Go ahead, Monsieur Nadeau, *s'il vous plaît*.

[Translation]

Mr. Richard Nadeau: Thank you, Mr. Chairman.

In 1987, the justice committee drew up 100 recommendations to overhaul the Act. In August 2000, the President of the Treasury Board and the minister of Justice set up a task force of officials to look at the Act, the regulations and the policies that underlie the current access to information system.

In November 2001, John Bryden's committee suggested approximately one dozen urgent recommendations. Parliamentarians also had the opportunity to discuss the Act, since several members of Parliament had brought forward private members bills.

In April 2005, the Liberal minister, Mr. Irwin Cotler, asked our committee to look at a document entitled "A Comprehensive Framework for Access to Information Reform." The Information Commissioner, Mr. John Reid, even submitted an entire bill to the government in October 2005.

On November 3, 2005, Mr. Pat Martin, a New Democratic Party member of Parliament, made the following recommendation:

It is further recommended to the House of Commons that it instruct the Justice Minister to table legislation within the House of Commons, based on the provisions of this Act and these proposed amendments by the 15th of December.

We are still talking about the Access to Information Act.

In December 2005, a certain Stephen Harper, who at the time was running for office in Calgary and was the leader of the Conservative Party, said that if a Conservative government were elected, he would implement the recommendations of the Committee on Access to Information regarding an overhaul of the Access to Information Act.

On September 27, 2006, Carole Lavallée, a member of Parliament from the Bloc Québécois, moved a motion to this committee: "... the committee recommend to the government to table in the House, by December 15, 2006, a new access to Information Act...".

On September 27, 2006, the Standing Committee on Access to Information, Privacy and Ethics made the following recommendation:

That further to the testimony of the Minister of Justice, ... Vic Toews, and the Information Commissioner, the Honourable John Reid, before the Standing Committee on Access to Information, Privacy and Ethics, the Committee recommends that the government introduce in the House, no later than December 15, 2006, new strengthened and modernized access to information legislation based on the Information Commissioner's work...

That motion was tabled in the House of Commons on October 4, 2006.

On February 11, 2009, the Access to Information Committee recommended:

That the committee recommend that the government introduce in the House, by March 31, 2009, a new, stronger and more modern Access to Information Act, drawing on the work of the Information Commissioner, Mr. John Reid [...].

That motion was tabled in the House of Commons on February 12, 2009.

We also know that on March 4, 2009, Information Commissioner Marleau, who is responsible for access to information, made 12 recommendations.

Considering this important series of motions that I have just told you about, can you tell me why the government is still hemming and hawing and not listening to the Access to Information Committee? It's beyond comprehension; it's staggering. Can you give me an answer or have you been muzzled? Will we have to go through access to information to get an answer from you? Thank you.

•(1645)

Ms. Carolyn Kobernick: Our minister has already said that he wanted to hear the viewpoints of all the committee members. That's our answer for the time being.

Mr. Richard Nadeau: Thank you very much.

Thank you, Mr. Chairman. That was very pleasant.

[*English*]

The Chair: Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

You know that one of Commissioner Marleau's recommendations is that the access to information system be opened up to anyone worldwide. Another recommendation is to use the Internet and make a lot of this information available through the Internet and to receive requests for information via the Internet.

Given that, and the fact that foreign governments, and perhaps even enemy combatants such as the Taliban, would then have the right to request information from the Canadian government, do you think it would be reasonable that the taxpayers of Canada know who those people are, if they're foreigners, who are requesting information from the Canadian government? Do you think it would be a reasonable request that the Canadian taxpayers know that a foreign government or the Taliban wants to know, for example, how many tanks the Canadian army has in a warehouse in Montreal?

Ms. Carolyn Kobernick: Again you're asking me to comment a bit on a policy issue. The only comment I can make about that recommendation is that I understand other jurisdictions may have the capacity to allow what we call universal access. There are cost issues involved, and that's something that of course this committee would want to talk about.

Again, the issue that you specifically raise, I would suggest, is appropriate to be discussed amongst people around this table.

Mr. Bob Dechert: Okay.

I would say that, certainly from my perspective, we should know who these people are, if they're foreigners, who are asking for this information.

Thanks very much for that.

The Chair: Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

I want to go through Mr. Marleau's recommendations, the ones the minister didn't address, to see whether the department has any concerns or advice on those specific recommendations.

The first one was that Parliament review the Access to Information Act every five years. Is there anything there that is of concern to the department, or that you folks could give us advice on?

•(1650)

Ms. Carolyn Kobernick: The only comment I would make is that it's not an unusual provision; in other statutes it exists. It's something that has to be discussed again.

Mr. Bill Siksay: What about the timeframe? Is that a usual timeframe?

Ms. Carolyn Kobernick: I think there are other examples of legislation where there is a five-year review, but I think that's about as much as I would say on that.

Mr. Bill Siksay: Okay.

Has the department offered any specific advice on recommendation 2, that all persons have a right to request access to records pursuant to the ATI act?

Ms. Carolyn Kobernick: Whatever advice we have would be advice confidential to our minister. We have, just for the record, obviously discussed and provided what we can in the way of advice to our minister.

Mr. Bill Siksay: Okay. I have a feeling that'll be the answer for most of the questions I'm going to ask—

Ms. Carolyn Kobernick: Probably.

Mr. Bill Siksay: —so maybe I'll go someplace else.

Let's try this. Your department improved its record on ATI under the existing act in the last year fairly dramatically, from an F to an A, in terms of the commissioner's reporting. I have a feeling that some of you are probably involved in that change. Can you tell us a little bit about what happened in the Department of Justice that moved the report card from an F to an A? What was it you folks did that improved your record so dramatically?

Ms. Carolyn Kobernick: Just for the record, none of us here is specifically responsible for managing access to information requests within the department. We all run fairly substantive shops.

Denis, if you want, perhaps you can talk about how we're organized and structured.

The only comment I would make is that we were all required, as part of our responsibilities, to ensure that timeframes were respected. That was the obligation we had, as officials in the department running our shops.

Denis.

Mr. Denis Kratchanov: Perhaps I can add that adequate resources to the ATIP office is something that's very important, and that the department took that role seriously. New staff was hired in the ATIP office to deal with the requests. But it's not simply there that the responsibility for success lies. Every employee, every manager in the department, was asked by the senior levels of the department to commit to meeting deadlines when access requests come in and to find the records that are requested and provide them to the ATIP office within a very short timeframe.

You have to remember that within 30 days of the initial response you have to receive the request and do the initial processing of that requesting, which is sent to different parts of the department and is then handled by various people in the department, who sometimes have very little experience dealing with the access act. These people have to find the records that are relevant to the request, do a first read of them, and provide some comments to the ATIP office. That obviously all takes time. Then the ATIP office will have to apply exemptions, if any, and perhaps consult with other departments or with third parties.

Certainly, if there was a success, it was not only because of one part of the department, although the ATIP office obviously deserves the greatest share of that success, but also because there were commitments by senior levels in Justice that were taken up by managers and employees throughout the department.

Mr. Bill Siksay: Thank you, Chair.

The Chair: Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: Thank you, Chair.

We've heard from a number of witnesses, including the commissioner, about this ongoing process of amber lighting requests made by members of Parliament. Do you agree with the policy of amber lighting, of slowing down a member's access to information requests as opposed to a written response if you don't have them? As a Canadian citizen, would you feel comfortable with this?

Mr. Denis Kratchanov: We don't agree with the slowing down of any access request. I think the Information Commissioner conducted quite a lengthy investigation a few years ago. Actually it was completed last summer, I think, because of a complaint of the Canadian Newspaper Association. The commissioner himself recognized that there was nothing wrong with the fact of the department—

• (1655)

Mr. Borys Wrzesnewskyj: They would pay special attention. We're talking about slowing things down.

Mr. Denis Kratchanov: —preparing documentation for ministers when access requests are being processed. That doesn't mean slowing down the request, and certainly we don't approve of any slowing down of access requests.

Mr. Borys Wrzesnewskyj: As a member of Parliament, I can tell you things have certainly slowed down. In fact, I'll once again restate the numbers prior to 2006: 30 to 60 days, on average, and we're now, on average, 150 to 250 days.

Who within your department would be the person that red flags requests?

Ms. Carolyn Kobernick: I'm not sure I understand the red flagging issue.

Mr. Borys Wrzesnewskyj: If there's a request that is deemed politically sensitive, that would be red flagged, who would be in charge of that?

Ms. Carolyn Kobernick: I have no knowledge of that process.

Mr. Borys Wrzesnewskyj: Okay.

Since the Minister of Justice is also the Attorney General, let's turn to a situation that recently occurred. You had an access to information request to the RCMP and documentation that involved former Conservative Bill Casey, who was unceremoniously removed from Mr. Harper's caucus. There were allegations, which were not substantiated, of criminality, and the RCMP released an access to information request that had all the names removed, except for in one spot Mr. Casey's name was left. He's a member of Parliament. It was during that whole pre-/post-election period we saw in 2006. The RCMP got themselves involved in the election campaign as well. But this request went out with Mr. Casey's name on it. What is your department doing to follow up, to make sure that this was done inadvertently and that this sort of situation would never arise again?

Ms. Carolyn Kobernick: I actually, again, have no knowledge of that, no personal knowledge at all, so I can't really comment on that.

Mr. Borys Wrzesnewskyj: Okay. Well, then, let's just keep it simple.

Do you think it's a good, bad, or dismal record to go from 30 days to 60 days, on average, to 150 days to 250 days, on average, to respond to a request?

Ms. Carolyn Kobernick: The only comment I would have is that we in the Department of Justice have tried to maintain our own deadlines. I think we've been successful. The minister has spoken to that. I think it would be presumptuous of me to really speak about other departments. Perhaps they have reasons, I don't know. That's all I would be prepared to say.

Mr. Borys Wrzesnewskyj: One of the fundamental principles of democracy is the transparency of government. It goes back to what our chair had said previously, that if you don't provide this access... and that's what we're heading into. We're getting letters from departments saying that because of PCO consultations, things have been so delayed, that a certain amount of time has passed from when the request was first made, and because of the delay, they ask whether or not you're still interested. It comes back to this whole business of transparency, the government's democratic process, and fundamental justice—justice denied.

Ms. Carolyn Kobernick: I'm sorry, is there a question?

I don't mean to be disrespectful. I think what you're saying are truths. I wouldn't argue with you that—

Mr. Borys Wrzesnewskyj: So the transparency of government in a democracy is a fundamental principle. You didn't say it's a right, but at least the transparency of government....

Ms. Carolyn Kobernick: Yes.

Mr. Borys Wrzesnewskyj: And what we have is a lack of transparency, and, in an Orwellian way, access being denied to Canadian citizens and to members of Parliament.

Ms. Carolyn Kobernick: It's an interesting type of question. I think I would agree with you that transparency in government is certainly paramount. I leave the government members here to talk about their views of the government, which is open, transparent, and accountable. I think I'll leave it at that.

• (1700)

The Chair: Thank you.

Madam Block.

Mrs. Kelly Block: Thank you to our witnesses for coming today.

I just have a couple of questions.

Currently the act gives access to approximately 30 million Canadians and others with direct ties to Canada. Mr. Marleau's recommendations would expand this to four billion people. What do you think the implications of giving the act a global reach would be? And then, more specifically, what would the implications be with regard to the volumes in your own office?

Ms. Carolyn Kobernick: I'm having difficulty hearing just the end of that question.

Mrs. Kelly Block: First I want to know what you believe the implications would be of giving the act a global reach. And also, then, what would the implication be in your own office, for example?

Ms. Carolyn Kobernick: On the first point, I think I've already made a reference to the fact that increasing access to a larger audience increases costs. I think this committee would like to talk about the implications of that. Certainly I couldn't speak further than that.

With respect to our own office, I would think it would be the same. As Denis has mentioned, we've already had to add additional resources in order to go from an F to an A—not insignificant resources, is my understanding. That would be something that I think every government department would be required to do.

Mrs. Kelly Block: Thank you.

The Chair: Monsieur Nadeau, then Mr. Siksay, and then the chair has a quick question.

[*Translation*]

Mr. Richard Nadeau: Thank you very much, Mr. Chairman.

Ms. Kobernick, I don't want to put you in an awkward position, far from it. If you have any power to make recommendations, could you tell the minister that it would be a good idea to draft a bill to modernize the Access to Information Act? I'm just tossing out that idea, and I will let you think about it.

Mr. Chairman, I'm giving the rest of my time to Mr. Borys Wrzesnewskyj.

[*English*]

The Chair: He can get on the list. We're not finished. We'll finish when members are finished. Are you finished?

[*Translation*]

Mr. Richard Nadeau: I apologize, Mr. Chairman. I know that other committees do this, that is to say, they allow members to use

their time as they see fit. So I'm giving the rest of my time to a colleague. That's all.

[*English*]

The Chair: It's not necessary to transfer. The member will have his chance to speak again. He'll get his full chance.

Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

I want to thank the officials from the department. I don't want to ask you the political questions, and I know that's often difficult in this circumstance for you, but one of the commissioner's recommendations is that the Access to Information Act be amended to provide him with an advisory mandate on proposed legislative initiatives. It would strike me that that's sort of the kind of work you folks do in the department and for the minister. I'm wondering if you see this as sort of a departure from usual process, if you see any conflict between your roles and the roles of folks in the commissioner's office who might do a similar function, and if there are other places where the kind of work you do is duplicated or performed in other agencies or commissions.

Ms. Carolyn Kobernick: It would be a departure from the usual process, as I think our minister has indicated, and again, something for this committee to look at. If he's asking for that opportunity, perhaps it will be something other officers of Parliament would seek to have as well.

He does have an opportunity to comment on legislation once it's been tabled in the House. And I think, as our minister has said, that's the appropriate way to work with legislation, with draft legislation.

There was another part to your question at the end, but again, I didn't catch that part. I'm sorry.

Mr. Bill Siksay: Well, I think you were addressing the idea that this is a departure. Do you know that this doesn't exist, to your knowledge, with other departments and commissions or separate offices that have that specific kind of mandate?

Ms. Carolyn Kobernick: I don't, but my understanding is not necessarily federally. Perhaps someone else is aware if something exists provincially, but I'm not aware of it.

Mr. Bill Siksay: Okay.

Thank you, Chair.

The Chair: Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj: Thank you, Chair.

I understand that two requests to the Department of Foreign Affairs for information on detainee transfers are being delayed. They're at 290 days and counting.

We have a request at the Department of National Defence for information on the acquisition of Chinook helicopters. It's been delayed for 330 days.

There's a policy now that even for something as simple, for instance, as the Service Canada youth employment strategy and summer work experience program, search fees are being applied. For example, on a request for rejection letters in May 2007, Service Canada said that 570 hours would be required for these letters that all went in just in one month, for a fee of \$5,650.

What I'm providing are specific examples that show.... I used the term "Orwellian" previously, not lightly but because that appears to be what's going on. We have a government that claims they've expanded the access, yet in fact the statistics are showing the exact opposite, and we're getting at the fundamentals of democracy, the principle of openness.

There's an incredible amount of frustration among MPs that their requests are being delayed, in some cases by a year, and we still have no answers. We hear we're being amber-lighted. Journalists are being amber-lighted. Do you not agree that this type of secrecy and Orwellian approach to access to information in fact totally subverts the intent of the act?

• (1705)

Ms. Carolyn Kobernick: No. I have no knowledge of the cases you've brought to committee, so I actually have no comment on that.

Mr. Borys Wrzesnewskyj: That wasn't the question. We're getting at the principles. I provided a series of examples.

Let's go back to the case of Canadian Press reporter Jim Bronskill. The former director of communications for the Prime Minister, Sandra Buckler, publicly, in a conference call, gave out his name. I think most people would feel terrible about that. Are you aware that a new policy has been put in place such that the current communications director would never do something of this sort?

We don't want journalists to be put under that sort of pressure, or to think that perhaps somehow they're even being blacklisted.

Ms. Carolyn Kobernick: Go ahead, Denis.

Mr. Denis Kratchanov: I can only repeat that the name of a requester is personal information that's protected under the Privacy Act. It's not information that should be shared—

Mr. Borys Wrzesnewskyj: Exactly—

Mr. Denis Kratchanov: —outside—

Mr. Borys Wrzesnewskyj: So—

The Chair: Excuse me. The only reason I've been interrupting a little bit is that I keep thinking of our good resources in the translation booth. If we talk over each other, they cannot get the proper response or question, so have a little patience, please. Let someone finish speaking and then we'll move on to the response or a new question.

Mr. Borys Wrzesnewskyj: Exactly. The privacy of the requester is to be protected, but here's a journalist, and the communications director for the Prime Minister, publicly, in a conference call, gives out that name.

In other situations, you have a deputy commissioner in the commissioner's boardroom trying to do a switcheroo of documents, and the minister does nothing about it, and then you have the elected representatives of the people, the very representatives that people

have elected and have chosen to represent them, being amber-lighted by that same government that's breaking the intent by giving out names of journalists.

We have a serious issue here.

The Chair: We have less than half a minute left. We should allow some time to respond.

Mr. Borys Wrzesnewskyj: Does this not show a pattern of secrecy that's just unacceptable and is fundamentally undermining the principle of transparency in a democracy?

• (1710)

Ms. Carolyn Kobernick: We're not going to comment on that.

Mr. Borys Wrzesnewskyj: Thank you.

[Translation]

The Chair: We are going to move on.

Mr. Lévesque, please go ahead.

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Please pardon me for not speaking earlier, but I was thrown into the fray without any documentation. So, after hearing both you and the minister, I am really wondering about some things, just as all our fellow citizens are wondering. They are telling us that not a single minister within this government is allowed to make his own decisions, and that the Prime Minister is running the entire show. We know that ministers have assistants. People are wondering if the deputy ministers are telling the ministers what they should do or is it the other way around?

I wonder what happens when two proposals are tabled with the department. I sit on two other committees, and generally speaking, deputy ministers and assistant deputy ministers make recommendations to ministers. In this particular case, there appears to be a detailed proposal—which unfortunately I have not read—and Commissioner Marleau is tabling 12 recommendations that could be included in the main proposal.

As the deputy minister or an assistant deputy minister and advisor—after all, I suppose that you are lawyers with a great deal of experience—you should be able to provide advice to the minister. Has the minister asked for a study of the two recommendations? Has he perhaps asked the department to prepare a bill that would be tabled with the committee for review?

Ms. Carolyn Kobernick: In my opinion, we provide advice to our minister, but we also receive advice from the minister. He is the one who has decided that it was important for the committee to study the report and the recommendations from Information Commissioner Marleau. He has spoken. So those are his instructions at this time.

Mr. Yvon Lévesque: You yourself have not received a mandate to make recommendations to him. He has not asked you for your advice as such?

Ms. Carolyn Kobernick: Any recommendations I may have made to the minister are between him and me. It is confidential.

Mr. Yvon Lévesque: Could you whisper them into my ear?

Some members: Oh, oh!

Ms. Carolyn Kobernick: I don't think so.

Mr. Yvon Lévesque: Thank you.

[English]

The Chair: *Merci, monsieur.*

Madam Block please.

Mrs. Kelly Block: Thank you, Mr. Chair.

My colleague Mr. Wrzesnewskyj is trying very hard to paint a very bleak picture of access to information. But is it not true that the reforms made by the Conservative's Federal Accountability Act are the most significant reforms to ATI since the act was passed in 1983?

Ms. Carolyn Kobernick: I think Minister Nicholson himself has spoken to that, and those are the most significant ones since 1983, yes.

Mrs. Kelly Block: Thank you.

Is it not also true that reforms introduced by this Conservative government expanded the act to cover many organizations, like the CBC and the Canadian Wheat Board?

Ms. Carolyn Kobernick: Yes, that's correct.

Mrs. Kelly Block: Given Mr. Marleau's recommendations, and given the actions taken by this government in just over three years—and I'm speaking to the recommendation that he made to review the ATI every five years—would it not be fair to say that we are already following this recommendation in practice?

Ms. Carolyn Kobernick: It's an interesting approach. Yes, it is, and certainly you as a government are looking at the Access to Information Act. Yes, you are.

Mrs. Kelly Block: Thank you very much.

The Chair: Thank you.

I have a couple of points. I talked to you briefly, earlier, at the beginning of the meeting about the questions of the researchers that have come up. I think we have touched on a number of them. I actually spoke to the minister about it as well. He has agreed that if we would forward those that have not had a response to them, efforts will be made to provide written responses to some of the researchers' questions. Will we be writing directly to the minister, or would you suggest one of you?

Ms. Carolyn Kobernick: Directly to the minister, I think; they'll be passed on to us for response.

• (1715)

The Chair: Okay. It will be coming from the clerk.

Before you leave, the justice department and the report card: it is extraordinary to go from an F to an A in a very short period of time. Congratulations. I'm not sure I understand how that happened. I can speculate. I can speculate that somebody said, "Boy, F is not good enough", and the riot act was read, and all of a sudden, as I think was indicated by Ms. Kobernick, it's expected of all departments. Expecting is one thing, delivering is something different. The justice department did deliver.

What changed between the F and the A in terms of the activities in the justice department? What changed?

Ms. Carolyn Kobernick: I think, as Denis Kratchanov indicated in one of his earlier responses, the deputy minister mandated and required all of us in the department to pay attention. He also was prepared to devote additional resources, because it does require significant additional resources.

I think we need both attention and resources. One cannot underestimate the cost of the attention.

The Chair: What has been the department's experience in terms of human resources turnover, or shortfall, or vacancy rate?

Ms. Carolyn Kobernick: A lot of my information is not.... It's pretty general.

The Chair: I'm not going to quote you. Just generally, do you have an HR problem?

Ms. Carolyn Kobernick: Generally an HR problem? You mean on the access side.

The Chair: Yes.

Ms. Carolyn Kobernick: I don't know if we do in the department. I have heard it is an issue that there are not enough trained individuals able to work with the access act. Obviously, we seem to have enough if we've been able to go from the F to the A, but that was not without significant efforts on the part of other officials in the department.

The Chair: Okay.

With regard to this act, other than expanding its scope of application, this is still the same nuts and bolts legislation—other than section 67.1, I think, which was a private member's item that amended it.

I guess what I'm saying is that there has been some evolution in information in terms of how it's communicated, where it's located, the rules of the game, the accessibility. I think someone mentioned that when this act was brought in, the big computer was a Commodore 64. That kind of gives you a benchmark for what's happened in the world. It doesn't mean that a good bill, good legislation, can't operate even when you get significant improvements in technology.

The Minister of Justice is responsible for this piece of legislation. Is there a body within the justice department that has been monitoring international changes in approach to access to information legislation?

Ms. Carolyn Kobernick: Approaches to access in terms of how we manage the information, or the actual legislation?

The Chair: In terms of updating legislation, for instance. What are they doing, and why?

Ms. Carolyn Kobernick: Joan, do you want to speak to that?

Ms. Joan Remsu: My section, the public law policy section, does try to keep abreast of what the trends are internationally, what other countries are bringing forward. That includes the Commonwealth Secretariat, which in 2002 did a draft model bill that was taken up by a number of countries seeking to implement freedom of information regimes.

I think you had Mr. Tromp before you at one point. Of course we've read his report. Recently an Australian author—I forget the name—was speaking about a new approach in Australia, about the importance of taking into account how technology is affecting knowledge management and what kind of impact that would have on freedom of information and access to information regimes.

So yes, we are doing as best we can to keep abreast of what is going on internationally and to factor that into our work.

Thank you.

The Chair: So it wouldn't be a surprise for you to maybe get some of the recommendations that might come before this committee. Maybe some work has been done as opposed to just becoming aware.

Has there been any assessment of the effectiveness of certain trends or changes that might have occurred internationally or are being discussed and may be desirable to consider with regard to our own legislation?

• (1720)

Ms. Joan Remsu: You raise an interesting point, because we can only go so far in trying to assess how effective or useful another country's reforms have been. I'll tell you quite personally that at times I've had to resist picking up the phone and calling the United Kingdom and saying "How does this really work? How do you operationalize this? What are the resource implications? What kinds of time delays are there? And what kinds of conflicts have you had in implementing your new exemption schemes?"

So we have done our best to assess what the impact is and what the value of reforms is, but imagining it from our perspective here in Ottawa and finding out how the departments have actually implemented it are two different things.

The Chair: I appreciate that, and it is going to be helpful, because you know that our work is somewhat limited to the 12 areas, the so-called quick fixes, that the commissioner has raised with us.

Finally, when the minister was here he talked about items 4 and 11. I just want to clarify something here. Some of the discussion we've had with other witnesses and among members of the committee had to do with backlogs various and sundry, and one of the issues was frivolous and vexatious matters. Also, we discussed the recommendation about the commissioner's role and whether or not he can do an almost triage process whereby he's not going to follow first-in, first-out, but he's going to prioritize. This is kind of bending the rules a little bit, but it's helping to get the job done a little bit better.

I'm not sure if the minister thought of it in those terms. Item 4 could be applied to frivolous and vexatious matters, but item 11 is really not applicable if you're talking simply about trying to head off things that are just going to tie up resources for requests that are not credible. How do we handle frivolous and vexatious matters? Are you familiar with anything from discussions with any other jurisdiction that would give the commissioner some leeway or discretion with regard to what he reasonably believes to be frivolous and vexatious requests?

Ms. Carolyn Kobernick: I'm not aware of anything. That would require some discussion and some research, and I would think that's one of the reasons the minister has suggested that it be raised here.

The Chair: I thank you kindly for bearing with us, and for well representing the department and the minister in his absence.

It's always interesting to have people come before us. We come from different directions. It's rapid fire sometimes, and sometimes it's speeches, but I think all of the intent is to try to get as much of the discussion and dialogue on the table as possible.

We certainly are going to be doing a report. We look forward to doing our report to the minister, to tabling it in Parliament, and to carrying on a dialogue. But you probably would agree that for this committee to do a review of the entire Access to Information Act and propose updating it in its totality would be an onerous task that would not be possible given the resources we have.

So I think your expectations—and I hope the minister's expectations—are that we're going to look for those areas in which we can achieve some potential recommendations for efficiencies, or determine where the most significant bottlenecks may be or where resources or maybe management or leadership is needed. These are words that have come up, which seem to have been demonstrated in the justice department, but other departments may not be totally up to speed.

We're hoping there will be an appetite for making amendments to the act as opposed to doing a rewrite. I don't think, at this point, doing so should be considered to be anything other than making some amendments that the committee would like to be considered, and strongly encouraging the minister to consider, as well as potentially bringing forward some amendments to the existing act. That's where I think we're coming from.

We thank you again for being with us today. The witnesses are now excused.

We are not finished yet. We have one more item to do.

Colleagues, at the very last meeting, last Wednesday, we were.... We're not going to go in camera. It'll take some time, and it's not necessary.

This has to do with item 10, the very last item.

• (1725)

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Doesn't the agenda state that this discussion is in camera?

The Chair: I'm not sure if it's necessary.

Mr. Russ Hiebert: The agenda states that it is in camera.

The Chair: Well, that's okay, but I'm suggesting that we could do it very quickly. I have a simpler solution to what we have to do. It's okay. Normally when we discuss reports, we would go in camera, but we have one item left, and it will take one minute.

Mr. Russ Hiebert: Mr. Chair, I respectfully ask that you follow the agenda and that we move in camera, please.

The Chair: All right. We will suspend and go in camera.

[Proceedings continue in camera]

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