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Thursday, October 29, 2009

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Chair

Mr. Paul Szabo

Standing Committee on Access to Information, Privacy and Ethics

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• (0905)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): Order. This is meeting number 34 of the Standing Committee on Access to Information, Privacy and Ethics.

Our orders of the day concern the Access to Information Act reform work that we've done. It's the government response received from the Minister of Justice, a letter, a report that was sent to us and circulated to all the members. Just note that the letter is undated, and maybe it is so this can come to us again the next time we make some suggestions.

Mr. Bob Dechert (Mississauga—Erindale, CPC): When did you receive it?

The Chair: I don't know. I got it off the committee's website. The clerk's is undated as well.

Mr. Bob Dechert: When did the clerk receive it, Mr. Chair? When was it received?

The Chair: What we do know is that the government response is in regard to our 11th report, which is about the Access to Information Act and is entitled "The Access to Information Act: First Steps Towards Renewal".

A point of order, Mr. Dechert.

Mr. Bob Dechert: Since you raised the question about when the minister responded, I would appreciate it if you would inform the committee when the letter was received by the clerk, and if the clerk doesn't have that information, perhaps you could request it from the Minister of Justice.

Thank you.

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

Mr. Bob Dechert: A point of information then.

The Chair: There is no such thing as a point of information. But we'll deal with that. Certainly any request for information from committee members can be given straight to the clerk.

We have with us Mr. Robert Marleau, private citizen.

I'm delighted, Mr. Marleau, that you were able to join us. I know you are going to be out of the country after this meeting; you are on a private next effort at retirement. This has to be part two or three.

We very much appreciate the work you have done, and I'm sure the members will have something else to say about some of the history you have left behind.

The issue of access to information has been on for some time. Your predecessor, Mr. Reid, was very active in terms of pursuing reform issues, and in fact the open government act was a comprehensive rewrite of the act. It was a good first step, and since that time we've had an opportunity to look at some of the other areas.

The reason I invited you to come back was a consequence of a little meeting you and I had on the street in front of the West Block. We were talking about how we didn't appear to have the time in this Parliament to do a complete review of the act, right from section 1. Having a look at what has come to be known as quick fixes had its birth, and you presented to us, from your experience and your view, some of the areas we could consider. As you know, the committee responded to that by issuing the 11th report of this committee, and in it we agreed with some of your suggestions and fully supported them, while other parts we thought were interesting but needed a little more maturation. And I think there were a couple that we were not prepared to encourage at this time.

The witnesses we had were a good cross-section of people, of the pros and cons, and I think the committee was quite satisfied that its report was a good first step, thanks to you.

Now we have the government's response to our report, which took some time, and the thoughtful attention of all the members of the committee and the witnesses, and we thought it would be useful to look at that government response in the context of where we have been and where we are, and use things like your report cards and some of the assessments you have had to determine whether or not there is another step, a second step. It will be up to the committee to determine where we go from here. I don't consider this matter to be closed at all. It's an ongoing obligation of this committee to consider.

I understand that you have a very brief opening statement for us.

For the members' information, what I will do is follow our normal pattern of interventions by members, but I encourage members not only just to ask questions of Mr. Marleau but also to use their time to make their own comments on areas of the response or where we are going to help to encourage others to start thinking about your ideas, your response, to where we are right now and where we might go. That will give us a little idea of whether or not there is some cream that is going to float to the surface. We will try that for a while, rather than just having it free form, so that we get a good balance of input from all honourable members.

Having said that, Mr. Marleau, thank you again for coming. Please proceed with your opening remarks.

Mr. Robert Marleau (As an Individual): Thank you very much, Mr. Chairman, for the invitation.

• (0910)

[*Translation*]

I was delighted to accept your invitation.

As you pointed, I am now an ordinary citizen, but my comments this morning are naturally going to be coloured by my experience as Information Commissioner.

[*English*]

As a brief statement—and I apologize for not circulating it to members in advance and in both official languages; I'm a little short-staffed these days. By way of a prologue, Mr. Chairman, I'd like to say that I thoroughly enjoyed the exchanges with the committee and the opportunities to discourse with you. I felt it was constructive, it was non-partisan, it was really an attempt at understanding the issues around some of the need for reform, and indeed I learned much from it.

I had said in my confirmation hearings that if the committee was going to make legislative reform a priority, I would make it a priority. So I was very pleased to see your report in June, and they are now your recommendations. They're no longer my submissions since you made them yours, at least those that you supported, so I'll come at it from that point.

To say that the response from the government is disappointing is an understatement, from my perspective. Your report contains 11,000 words or so, if I exclude the appendices, and the government's response, in English, is 636 words. About 300 of those are addressed to former Commissioner John Reid's initiatives, so it leaves about 300 to 350 words addressing the recommendations that were sent to the government by your committee.

[*Translation*]

There are 762 words in French. As usual, there are more words in French than in English.

[*English*]

Those very raw statistics are I think somewhat demonstrative. The Access to Information Act is not the intellectual property of the government of the day. It belongs to the people. The government has responded that more consultation is required, but as I said before, I

believe it is leadership that's required and not more dithering on reform.

[*Translation*]

There have been consultations for more than 20 years and calls for sweeping reform since 1987.

[*English*]

A former President of the United States—and much is said about Mr. Obama's approach to transparency, but a former President of the United States, James Madison, said in 1822, "A popular government without popular information and the means to acquire it is but a prologue to a farce or a tragedy, or perhaps both."

[*Translation*]

Again, I'm asking you the question I asked you in my last annual report: how long will Parliament continue to tolerate such pervasive negligence leading to the attrition of so fundamental a democratic right? I don't know who drafted the Minister's response, but I find it hard to choose, if they were still with us, between Corneille and Racine.

Thank you.

[*English*]

The Chair: That's a good first step.

Let's just move right on to the members' input.

Madam Simson, please.

Mrs. Michelle Simson (Scarborough Southwest, Lib.): Thank you, Chair, and thank you for appearing. It's nice to see you again, Mr. Marleau.

For the better part of a year, I had the privilege of working with the other committee members on a report that was looking at recommendations to quick fixes, and I was really pleased to be a part of the group. To your point, I think we worked cooperatively, and it was a very good effort. There wasn't any acrimony to speak of, so it was a really worthwhile exercise, in my view, and we did come up with an excellent report that we tabled in Parliament.

That said, I have to say that I share the disappointment, and disappointment is an understatement. The response we received.... Having invested, as a committee, a lot of time and effort, it was dismissed basically out of hand, in my view.

You touched on the fact that you think access to information is a fundamental right. When the justice minister appeared before this committee, he had to leave, and I asked three of his assistants for a one-word response as to whether each thought, as a Canadian, access to information was a human right. They all responded no.

I'm curious as to what your one-word response to that question would be.

● (0915)

Mr. Robert Marleau: Well, without getting into the semantics of what should and should not be a human right, I'll just quote the Supreme Court. The Supreme Court said, in a famous ruling—I think it was in the Daigle case—that it's a quasi-constitutional principle. It doesn't quite have the standing of a right under the charter, or a human right, maybe, but it is part of the constitutional fabric of the country, and it belongs to the people. And the rights of the people diminished is a nation diminished.

Mrs. Michelle Simson: Thank you.

At the time, I know it was a good piece of legislation. The minister responded that the Access to Information Act is a strong piece of legislation. Given the fact that it is over 26 years old, do you feel this is an accurate statement today?

Mr. Robert Marleau: I think it's an accurate statement, stated as the principles that are in the statute. Its application and its administrative management are appalling. I've said in previous reports that the 30-day response time is now an exception. It's not unusual, in the report cards—and I know the office is working on the next round of report cards—that 120, 130, and in some institutions, 200 days to respond is the norm.

It's a strong piece of legislation in its principles. It has become totally out of date to the point that journalists have told me that for them the act is now irrelevant. They pursue other ways of getting information. Those are not my words; those are words from the media community, and I'm sure you can verify that.

So yes, it's strong in its principles. It was a beacon in 1983, but we've been passed, have long been passed, by the provinces, as was demonstrated in my report to you. Even Great Britain is way ahead of us, and they only passed their legislation in 2000.

It is strong in principle, but it is totally out of date in its application.

Mrs. Michelle Simson: Thank you.

Borys.

Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.): Thank you, former commissioner. I'd like to thank you on behalf of all Canadians, my constituents, and obviously, directly, for the work you've done.

It is a fundamental principle of democracy that we see being eroded.

You said in your opening comments that the government has displayed gross negligence when it comes to access to information. I'm not convinced that it's just negligence. The consequence is gross negligence. I'm looking at the patterns and the minister's response, and I can't help but think that the government is engaged in actively undermining the public's right to government transparency. As you said, when the people's rights are diminished—or you quoted our Supreme Court—we have a nation diminished.

Once again, I'd like to thank you for raising the alarm on this situation.

Let's take a look at some of the minister's responses. Before this committee, when we were preparing our report, cabinet confidences....

It's not just journalists who have given up on access to information requests. It's members of Parliament like me. I'm tired of getting blank pages back. There is no way of knowing. There's no third-party review to see whether the questions actually entailed cabinet confidences that would have been disclosed.

The minister responded by hiding behind the Westminster system. He said that this is a cornerstone of the Westminster system. Hasn't this actually evolved, this access to information? There have been changes, including by the mother of the Westminster system. Changes have been made to access to information. New Zealand, for instance, is often pointed to as an example of the way things should happen when it comes to cabinet secrecy and this fundamental right to transparency.

In fact, even here in Canada, provinces... We had the New Brunswick ombudsman state before us that the public body should actively promote open government. We cannot but agree that the government of the current day is doing the exact opposite.

● (0920)

The Chair: Thank you.

The time has expired. I'm going to allow Mr. Marleau to make a statement if he wishes.

Mr. Robert Marleau: Mr. Chair, I don't think I used the words "gross negligence", but you may have deduced, or at least concluded, that that was where I was headed. It is more than just this government. I did say that the access to information is not the intellectual property of the government of the day because the government of the day can now take the initiative to do something about it. It's eroded over 25 years. It's not eroded just in the last 25 months. I just want to be accurate that I wasn't targeting any particular government at this time. Certainly, I'm disappointed that this government has not taken an initiative that I believe it should take in the response to your report.

On cabinet confidences, what the minister said in his testimony, when he appeared before you, was that the current process with the Privy Council works well. Yes, it does work well for the Privy Council. Canadians have complained to me when cabinet confidences were invoked under the statute, but I have no recourse. I have to tell them that the commissioner has no authority. I should put this in the past tense. Canadians complained to me. I was obliged to tell them that they had no recourse. We have to take the government's word. We have to take PCO's word. We have to take the clerk's certificate at face value when he says this is cabinet confidence. We're the only jurisdiction in Canada in that situation. The commissioner can't even state that it is or not. We have to take the word of the government of the day. It works well for PCO.

The Chair: Okay.

Madame Freeman, s'il vous plaît.

[Translation]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Good morning, Mr. Marleau. I would like to begin by thanking you for being here this morning. I also want to commend you on the work you did as Information Commissioner. I welcome the citizen you are today, a citizen with greater freedom of speech.

I would like to start with Mr. Nicholson's response to the many recommendations made by this Committee. These were recommendations that had been studied at length in the past. I would simply like to hear your comments. The beginning of the response states that the government is very determined to make the *Access to Information Act* more open and transparent, yet the following paragraphs state that the government does not agree that the scope of the Act should be broadened — the government therefore disagrees with the seventh recommendation —, does not agree that broader powers should be created and does not agree that the workload should be increased.

The government is saying one thing and then the opposite; it's blowing hot and cold.

This government was elected in 2005 because of the election promise to clean house and be more transparent and open. Unfortunately, week after week, in all of its operations, it manages its affairs amid as much secrecy as possible. Secrecy has become policy.

I want to hear what you have to say not only about the fact that this government, despite its own *Access to Information Act*, prevents Canadians from obtaining information about what is going on in individual departments and the government as a whole, but also these three restrictions: not broadening the scope of the Act, not giving the Commissioner increased powers and not increasing his workload, by allowing the Act to be reviewed every five years. These are the three elements that need to be mentioned. I would like to hear what you have to say in that regard.

Mr. Robert Marleau: Thank you for your question, madam.

It is important to recognize none the less that the current government broadened the scope of the Act at the outset by passing the *Federal Accountability Act*. I stated before this Commission that as commendable as broadening the scope of the Act might be, the government has not addressed the fundamental issue, which is

departments' performance and their slow response to requests. We can be glad the scope of the Act has been broadened, but we have to lament the fact that it complicated matters and placed a heavier burden on government agencies, mine included, without providing additional resources or harsher penalties for slow responses. The fact that the Act was passed without providing the necessary means is somewhat contradictory.

As far as expanding the Commissioner's powers and duties is concerned, the Minister's response was that it was incompatible— or inconsistent — with the mandate of other officers of Parliament. He's comparing apples and oranges. The Information Commissioner does not have much to do with the Auditor General or the Chief Electoral Officer; they are separate creatures. In almost every province, Quebec included, the information commissioner has quasi-judicial powers, the power to make orders.

It is not a matter of reinventing the wheel. It's not like a hair in your soup. It's a reality in Canada. The federal government is lagging far behind the provinces, and the counterpart commissioners in the provinces are critical of that. We are setting a bad example for the rest of the world. There's a contradiction: on the one hand, broadening the Act is something to be celebrated, but nothing has been done in terms of applying it, and the broader scope has made things more complicated.

• (0925)

Mrs. Carole Freeman: I have no more questions. I leave it to my colleague.

Mr. Luc Desnoyers (Rivière-des-Mille-Îles, BQ): I would rather make a comment, because I wasn't there at the time. I'm also not familiar with the accompanying recommendations.

When we study a statute and realize that changes have to be made and extensive amendments are needed, I think we have to do it in order to provide Canadians with better service, that is, quick access to the information they need. While it's true, as you said earlier, that even journalists go elsewhere, we may question the Act and ask ourselves what purpose it serves. I think we have to take a close look at it and make sure that we can make the necessary changes and provide the necessary tools for the people who work with that Act.

That's the comment I had to make, and Ms. Freeman can use my time if she has any other questions.

[English]

The Chair: Mr. Marleau.

[Translation]

Mr. Robert Marleau: I'd like to make a brief comment, Mr. Desnoyers.

My recommendations on the Commissioner's power to make orders pertained only to administrative matters; it doesn't change much. It could, for example, be a question of denying a department permission to charge administrative fees because it is 120 days late and asking the requester to pay \$20,000. It could also be because it was late and is charging research fees 15 months down the road.

I recommended that for so-called administrative matters, the Commissioner have the power to make orders, that is, the power to step in and say that because the client got poor service and there was a 120-day delay, the department cannot charge fees as permitted by law. It wouldn't have been huge, but it adds another dimension: bureaucrats have a duty to respond and explain why fees were not charged. It was something along those lines; it was not, absolutely not, revolutionary.

Mrs. Carole Freeman: Mr. Marleau, do you not think that by perpetuating inaction, it makes access for Canadians more complicated, Canadians are deprived of their rights every time?

Mr. Robert Marleau: Especially in cases where time is of the essence; what good is it to respond 300 days later? All the more when you're being charged \$5,000 for the service.

• (0930)

Mrs. Carole Freeman: In other words, the political will is still not there.

Mr. Robert Marleau: In my last report, I stated that the only solution would be political leadership at the highest level. Bureaucrats aren't the ones who are going to appear before you and tell you how to amend and improve the Act.

Mrs. Carole Freeman: Since it came into force, the Act has been reviewed several times. I myself tabled a motion calling for a study of the Act based on the report by Commissioner Reid. It's been years since we made recommendations concerning the Act. However, it hasn't been amended. That means that there is absolutely no political will in that regard.

Mr. Robert Marleau: I confirmed it. I think there's a lack of political will. This week, I noted that a Member of Parliament asked in a question on the Order Paper for a list of government employees who earn more than \$200,000 a year and he got an answer. I congratulated the Member in question. I don't think he would had obtained an answer that quickly under the *Access to Information and Privacy Act*.

[English]

The Chair: *Merci.*

Mr. Martin, please.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair.

I'm glad I came today to substitute for Mr. Siksay.

Thank you, Mr. Marleau, for being here, but thank you also for what constitutes a really good try at a very difficult job. I can tell you without exaggeration there was a great wave of optimism amongst the access to information community when you took this job, because we felt we would have a real champion, not only one of the most well-respected people on Parliament Hill, but also somebody with the skill and the ability to cut through the problems, if the problems existed at that level, and to at least give us some guidance as to what needed to be done. You've done that very capably, admirably, and exceeded our expectations in that regard. Again, we're very sorry that, for whatever your reasons, you're not going to continue in this role.

I'm fond of saying this, but I firmly believe that freedom of information is the oxygen democracy breathes. I've said it before. It should be what guides us. I'm perplexed and even frustrated that the tone around this table is more of a resigned sadness than anger. The public should be furious that we're being systematically denied the right to know what our government is doing with our money. This is a freedom of information issue that should be right down at the coffee shop level of the nation. If they knew, I think they'd be furious.

When you say it has to come directly from the top, I agree. The one thing the Obama regime did, I think in their first day of office, is to say that the default position of their government is going to be openness, not secrecy. It is the culture of secrecy that allowed corruption to flourish for the last many years that I've been here, and in that historical context I thank you for pointing out that it's not just this government that seems obsessed with secrecy.

I got here in 1997, and there were already good people demanding a revision of the Access to Information Act. People like John Bryden dedicated much of their career...so frustrated they formed an informal parallel committee to study and to develop.... Vic Toews and Reg Alcock were on that committee, senior people, two former presidents of the Treasury Board, who helped craft a really robust revamp of the freedom of information act. I can tell you a former Minister of Justice apologized to me personally, saying he underestimated the push-back. He thought he could fulfill his promises to me personally and to this committee that he would be the one to substantially change it, but he underestimated the push-back from the senior bureaucrats and the powers that be.

As the former Information Commissioner, you can speak freely now. At what level do you think the logjam exists? If senior politicians, ministers, have been, and I think some still are, willing to change, where is the advice coming from that leads this justice minister to say no? In spite of their 2006 Conservative Party platform, which I have here, we get this letter saying, no, they've considered it, and they've decided it needs more study. Can you shed any light on what level the barriers to reform exist?

• (0935)

Mr. Robert Marleau: First, Mr. Chairman, I'd like to thank the member for his kind comments about my short tenure as commissioner. I must say I received very kind comments from all sides. I was very touched, when I left, by some of you thinking it was prematurely. But for me it was almost on time, in terms of my plans. Thank you very much for those comments.

Concerning the minister who says he got push-back, I'd just answer the honourable member, Monsieur Desnoyers, that you can't expect the deputy minister or assistant deputy minister, or even the access coordinators, to come forward with specific proposals on how to better serve Canadians under access to information. There are people working very hard to do so, but they're at the front line.

I'm not saying deputy ministers don't want change. Some of them have worked very hard to try to improve performance of their department. One of my reports says that the justice department is an example of performance. It's not a stellar example, but it's an example of how you can do better and serve Canadians.

As you well know, the Canadian bureaucracy is not in a leadership role when it comes to policy, and this is a policy issue. It must come from the ministers; it must come from the Prime Minister. There's Minister Toews, who's involved in the sound administration of the statute, the Treasury Board; and there's the Minister of Justice who holds a legislative mandate.

I know public servants; I was one for a long time. If they are told by your leadership that "this is the way things are going to be done", they'll turn it around, they'll do it. But it's not in their own self-interest to take those kinds of initiatives. Most of the deputy ministers I've spoken with who have made an effort to turn this around end up just as frustrated as you, because there aren't the resources and the means. And when there isn't the political will, it's not theirs to exercise.

Mr. Pat Martin: Can I ask you a question, then? If there were that political will, if the Prime Minister announced to his cabinet that they were going to live up to their commitment of transparency and accountability, that from now on the default position is openness, and "we want you to comply to the greatest extent possible with the act, not go out of our way to stymie the act", could improvement occur without legislative change, if that directive came from the top?

Mr. Robert Marleau: I think it would. The act says 30 days, and there's a whole series of exemptions and inclusions. If the Prime Minister or the cabinet said "We want this statute as it exists to be met 85% of the time", I think as a former commissioner I would live with that.

Mr. Pat Martin: Well, I think we'd all be pretty happy with that. Do you think that would be possible without legislative change?

Mr. Robert Marleau: Yes, I think it's possible without legislative change. There's a lot that can be done from an administrative standpoint, as my last report said, without changing a comma in the legislation.

The Chair: We'll have to move on.

Madam Block, please.

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

Thank you, Mr. Marleau, for taking the time to meet with us today. I am a fairly new member of Parliament, but I am very aware of the excellence with which you served Parliament and indeed all Canadians, and I want to thank you for it.

As a new member on this committee this past year, I have learned much about access to information, privacy, and ethics and about the

roles that commissioners play. I've asked witnesses a question about our Federal Accountability Act many times while we were doing this review. On March 9, 2009, you told this committee you believed that the Conservative Federal Accountability Act was the most significant reform to the Access to Information Act since it was first passed. Do you still believe that?

Mr. Robert Marleau: Yes I do believe that it is the most significant since 1983. Actually, there was another one in, I believe, 1997, which was not minor but important in terms of criminalizing deliberate destruction of documents.

It is the most significant, the broadest amendment brought to the statute. It has, as I said earlier, nevertheless enhanced the challenges of performance under the act by making more institutions subject to it and not bringing the necessary changes, in terms of both administrative practices and legislative incentives, to do so.

● (0940)

Mrs. Kelly Block: Thank you.

I was surprised by my colleague's term "gross negligence". Isn't it true that the Liberals were in power for 13 years and did nothing to promote the accountability and transparency of government? They didn't touch the Access to Information Act in 13 years.

Mr. Robert Marleau: For those 13 years, Ma'am, you'll appreciate that I sat as Clerk of the House of Commons, and I had no opinions on the performance of the government.

Mrs. Kelly Block: Okay. Well, again, to accuse us of gross negligence, to criticize us when they did absolutely nothing... There's no credibility when it comes to those kind of statements.

Is it not true that in 2005 the Liberals voted against a Conservative Party motion to extend access to information laws to crown corporations?

Mr. Robert Marleau: I can neither confirm nor deny that. I was a private citizen at the time, and I'm afraid—I hate to admit it—I wasn't paying attention.

Mrs. Kelly Block: Okay. Thank you.

I have also come to understand that a total of 186 institutions were subject to the act in 2006-07, and since the coming into force of the Federal Accountability Act, there are now 255 institutions subject to the Access to Information Act.

Would you like to comment on that?

Mr. Robert Marleau: I think it's a good thing. My office also was made subject to the Access to Information Act. I think I said before at one point that I now feel some of the pain that some institutions feel in trying to meet those deadlines. It's not easy, but it is doable.

Extending it to crown corporations was I think a great advance in transparency. The CBC, which should be a beacon of performance, has had its own challenges.

Mrs. Kelly Block: Thank you.

I will pass my remaining two minutes on to Mr. Rickford.

Mr. Greg Rickford (Kenora, CPC): Thank you.

Thank you, Mr. Chair, and thanks to my colleague.

It's nice to see you again, Mr. Marleau. On another committee last session we had the chance to work together.

I'll build on the line of questioning here from my colleague. I'm struck by the impact the Federal Accountability Act has had statistically. The statement could be made that since the coming into force of the FAA and associated Access to Information provisions on, I believe, September 1, 2007, the Government of Canada has become more accessible, with the larger number of institutions covered by the Access to Information Act.

How many institutions are covered by the act now compared with, say, 2005-06? It seems to be an important year for when things became more accessible.

Mr. Robert Marleau: I think it was expanded to well over 80 new institutions. I forget the exact number, I'm sorry. I'm a little rusty on that right now; I usually like to spit those statistics out pretty accurately. But more than 80 were added, in terms of the breadth.

Mr. Greg Rickford: I have somewhere in the high 60s, but even so, it's remarkable nonetheless.

Mr. Robert Marleau: Among those 60-some there are some crown corporations with subsidiaries, so in fact the individual count is larger than is stated in the annex of the statute.

Mr. Greg Rickford: So we can agree that there was a substantial increase in the number of institutions that were added to the Access to Information Act by the Federal Accountability Act.

Mr. Robert Marleau: Yes, and I've already stated so many times.

Mr. Greg Rickford: Right.

Are you aware of how many requests were processed last year compared with that magic year 2005-06—let's say the difference between the number of requests processed annually in 2004-05 and in 2007-08.

Mr. Robert Marleau: I didn't come prepared for those kinds of question. I came for the government response and the 12 recommendations in your report.

I will go from memory. I recall that it has been growing at a percentage rate of about 6% per year. But the complaints are up much further, in the 80% range. The Office of the Information Commissioner provides you with those statistics. They're published in Info Source, but the percentages are not there.

● (0945)

Mr. Greg Rickford: What I'm worried about is that the opposition claims that more information is censored when documents are released. Maybe because of the time limitations, I'll just ask, is it not true that there is no statistical data to support this conclusion?

Mr. Robert Marleau: There is no statistical data that shows this. It would be possible to gather it through the complaints system in the Office of the Information Commissioner, but that's a very hard statistic to produce as a credible statistic: a one-line deletion can be just as important in substance as a 14-page deletion.

I cannot say, and I think I've said this before to the committee, that in my two years there I found a systematic secrecy or conspiracy of secrecy that was growing or diminishing. As a matter of fact, I challenged my predecessor's view about a culture of secrecy. What we have—

Mr. Greg Rickford: Particularly in the last couple of years.

Mr. Robert Marleau: What we have is a challenged bureaucracy, diminished resources, and what I once called a “fog” over the information. I think today I'd say there's a fog of apathy that is very concerning. So it's not a question that there's growth in—

Mr. Greg Rickford: The fog of secrecy seems to be limited to one cloud hanging over some of these opposition claims.

Mr. Robert Marleau: Well, I said it was a fog over the information, which is different from “a fog of secrecy”. I didn't use those words. But the fog of apathy demonstrated in part in the response from the minister is what concerns me.

Mr. Greg Rickford: Thank you, Mr. Marleau.

The Chair: Thank you kindly.

Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: Commissioner, since 1983, how many commissioners have there been?

Mr. Robert Marleau: There have been four. I was the fourth.

Mr. Borys Wrzesnewskyj: You were the fourth, but were you the first to leave in frustration?

Mr. Robert Marleau: I can't speak for my predecessors, but I can tell you that I did not leave in frustration.

I made two commitments to this committee on my appointment. One, I would have a close look at the management practices, making sure that Canadians were getting value for money, and that I had a bias against the status quo. I spent the first year doing that.

The second year I decided that, since the committee had made it a priority, I would invest in the legislative proposals from my perspective in terms of what could be done in the short term. I also wanted to rejuvenate the report cards so they'd have a larger impact.

So I left quite satisfied in the short-term objectives I had fixed.

John Grace, I think, was a great commissioner, and he's not here to confirm this, but we had lunch early on and he basically told me that what I would find most challenging was to keep up my optimism over a period of seven years. I won't say he left frustrated, because I think he had considerable impact.

In these ombudsman jobs you expect a certain amount of frustration. It comes with the territory. You don't have full control. You can only influence; you can push. You can rip your shirt off on Sparks Street once a week, but that's not very effective. So you hope that by being tenacious you'll make a difference.

I left quite satisfied. I'll let you decide whether I made a difference or not, but I didn't leave in frustration, sir.

Mr. Borys Wrzesnewskyj: You've noted that there has been an evolution when it comes to access to information. I guess people using the system have been frustrated over the years and it has gotten worse. As opposed to bureaucratic delays and sometimes the appearance of a maze, people have given up on the system. You referenced that journalists have given up, and I've referenced that parliamentarians have given up on using the system. So as opposed to just frustration, that access to information door seems to have been closed. We're virtually facing a wall.

It's nice to play pretend while we've now allowed access to many more institutions, but when that access is just theoretical, when you cannot in fact access and you're facing a wall, then you've not actually provided anything.

What I find fascinating is that, in the past election, the Conservative Party election platform, "Stand up for Canada", pledged that cabinet confidences would not be excluded from the commissioner's review. Obviously that hasn't happened. That's another disturbing development where a commitment made has not been kept.

We've seen the frustration level progress to people throwing up their hands and saying they can't use the system. It used to be 30- to 60-day periods. We're up to 250-day periods, and there's a new twist to this. Things are sent by the departments for so-called PCO consultations, and the PCO has found another mechanism that they're utilizing these days. They send out notes stating 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?

So they delay and delay, way beyond what is allowable, and then send out these notes asking if you're still interested. Often information is of a timely matter.

• (0950)

The Chair: If you want to ask a question, that would be helpful.

Mr. Borys Wrzesnewskyj: What do you think of these situations, especially when you're dealing with requests such as requests to the Department of Foreign Affairs, information on detainee transfers, which have been delayed I guess about 350 days, or acquisition of Chinook helicopters at huge expense to the taxpayers, another 350-day delay?

The Chair: We'll move it over to Mr. Marleau for an appropriate response.

Mr. Robert Marleau: Previous commissioners and my two annual reports have all commented on the situation you raise. Consultations with PCO, Foreign Affairs, were identified in the last set of report cards as being a systemic problem, a systemic issue.

I recognize that horizontal government and horizontal issues, the complexity of government, do require intergovernmental consultations. Bad enough that we have a three-tiered system among federal, provincial, and municipal governments. If you ask the questions at three levels, you get three different answers on the same subject. I've experienced that myself. You got the whole story, but you got it partly from each level.

It is unacceptable that consultations delay the legislative time of 30 or 60 days, with consultations included. The law is the law. When you get stopped by a police officer and he says, "You were going over the 30-mile limit", and you say, "But I was only going 55 miles an hour and, really, I need to go 85 to get there on time"... It's ridiculous. The law is the law. It says 30 days and they're violating the law.

The Chair: Thank you.

Mr. Rickford, please. Do you want to pass?

Mr. Greg Rickford: I have no questions.

The Chair: Mr. Dechert, please.

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

Mr. Marleau, it's good to see you again.

I want to echo some of the comments made earlier about my gratitude and those of my colleagues about your service to Canada, both as Information Commissioner, and previously, with all your other service to the Government of Canada. I hope you enjoy the time with your family and your grandchildren and travelling. It's a well-deserved retirement. So thanks for all that service.

I was interested to hear some comments from my friends across the way. You may recall that when we last met I mentioned an article that was written in the *Toronto Star*, which was really quite alarming. It was dated November 1, 2003. I'd be happy to share it with Mr. Wrzesnewskyj and others.

The headline is “Red File Alert: Public Access at Risk”, and it sets out in detail a description of what was in place under the government at that time, called the coordination of access to information requests system, CAIRS. It was really quite a troubling system, where the Prime Minister's Office of the day would look at all the access requesters and see the ones that were coming from parliamentarians and journalists and red-flag them for review.

Alasdair Roberts is a professor of law and somebody I went to law school with, and I think one of the world's leading experts in the field of access to information. He said:

Media [and parliamentary] queries are sidelined while others are moved through unimpeded. [It shows] journalists' requests take longer than average than other types of requests. “Everyone is entitled to equal protection and treatment under the law”.... “There is no provision in the law that says that journalists and politicians get second-class treatment.”

In this very interesting article, it refers to Mr. John Bryden, to whom Mr. Martin referred to earlier, who was a Liberal member of Parliament at the time, and he said:

“And what I mean by the Prime Minister's Office is primarily...the communication team in the PMO...”

...John Bryden, a long-time critic of his government's handling of access issues, says the process is designed to hide mistakes rather than to increase transparency and openness.

“What you are encouraging is an attitude that we want to cover up our legitimate mistakes”.

“The difficulty with screening in order to prevent embarrassment is that you are actually destroying the advantage of having transparency in the first place,” says Bryden....

The most contentious or politically dangerous flagged files are tagged for closer review, using designations such as “sensitive” or “interesting.”

Information Commissioner John Reid, then went on to say, when he was interviewed for this article:

“What we are seeing...is a greater use of the time-delay factors that are built into the act: ‘We can't do it in 30 days, we need 90 days.’

“I have now instigated a study to find out whether there is anything going on at all.”

Delays are the order of the day for Red File requests to the Privy Council Office, which handles requests for information involving the Prime Minister and his staff.

Just for the record, that would be Prime Minister Chrétien.

Records of all PCO requests completed last year show one out of every four media requests—14 of 58 requests—were tagged for further review. The average time to process these requests was eight months.

“That's pretty phenomenal,” says Reid, of the finding.

Only two media requests were released within 30 days.

And it can go on.

Were you familiar with that system, Mr. Marleau, known as CAIRS, or the coordination of access to information requests system? Have you heard about that?

• (0955)

Mr. Robert Marleau: Yes, I am quite familiar.

Mr. Bob Dechert: And does that exist any longer?

Mr. Robert Marleau: No, it was abolished last year by Treasury Board and hasn't been replaced with anything to date, to my knowledge.

CAIRS was put in place by Prime Minister Mulroney in 1989, I believe, as a management tool so government would know what it's

releasing and where. I don't have a problem with that as a concept. I think it's sound management to know what the government knows.

By abolishing CAIRS now, Treasury Board has delegated to each government department the responsibility to track what they release. So there is no central repository where another department can find out what's been released, and that I deplore. I think it should have been replaced with something.

What happened is that a smart journalist was using CAIRS, extracting the information, mirroring it on his own website, and then making it available to everyone using the Access to Information Act.

Mr. Bob Dechert: Do you agree with your predecessor's comments, though, about the delays?

Mr. Robert Marleau: Yes, and indeed he started a systemic review on the delays. It was a complaint by the National Newspaper Association on amber alerting. As to where CAIRS was being used to manage amber alerting wasn't established. It was established that amber alerting was going on.

I've said before this committee that I don't have a problem with amber alerting so long as you meet the 30 days. If there's a sensitive issue—

Mr. Bob Dechert: Of course, Mr. Reid said it was eight months in most cases.

Mr. Robert Marleau: That's right.

We found the media wasn't particularly badly treated; parliamentarians were treated worse.

The Chair: Thank you kindly.

Madame Freeman.

[Translation]

Mrs. Carole Freeman: Mr. Marleau, I know you came here to rebut Mr. Nicholson's response. I get a sense that we're making history on the *Access to Information and Privacy Act*. I simply want to go back to that response. Basically, it means that the government doesn't want to broaden the scope of the Act or give the Commissioner additional powers. The government in fact wants to further reduce access to information. You told me earlier that a very big step had been taken when the *Federal Accountability Act* was passed.

If that big step was to open the doors of more Crown corporations, the fact remains that you don't have more resources, means or staff. Nor do you have more powers or internal mechanisms. You're given absolutely nothing. Your workload is actually being increased, but you can't do the work regardless. Explain to me again that and the contradiction.

• (1000)

Mr. Robert Marleau: The government's response deals with two aspects. Incidentally, I don't want to give the Committee the impression that I'm frustrated or bitter.

Mrs. Carole Freeman: No, you're about to retire, and I'm very happy for you. You've done a great job. We realize that the Committee's work has drawn some criticism. I find this response completely disheartening. You may not be frustrated, we, on the other hand, are starting to feel that way. From a democratic standpoint, it's getting to be completely absurd. Canadians who use this structure have the right to access information. We are accountable to those people, who are also taxpayers.

You don't seem frustrated to me. It's up to us to carry on. The fact remains that on this front, the political will isn't there.

Mr. Robert Marleau: My attachment to the institution of Parliament is so strong that I share your despair. In my opinion, the institution that is Parliament deserves at least a real response. I think there's something a bit cavalier about this response. It sort of says that it's their Act, they're going to consult, things will get done eventually and the nature of the Commissioner's role must not be changed. I find that in terms of substance, there's not much to it.

Mrs. Carole Freeman: Your term is very weak. In fact, it's not even appropriate.

Mr. Robert Marleau: I promised myself that I wouldn't be so hard this morning, but I can't help myself. I find that it's not very broad in scope; it's an affront to the work this Committee has done. I'm not a member of the Committee and perhaps I shouldn't interfere like this, but when Parliament devotes so many resources and so much time and a majority report is tabled, it seems to me that a real response is in order and we should not be told to consult or that they're going to consult.

I realize that under the Constitution, the Executive branch can amend these laws. It certainly has a monopoly on the financial aspect of this initiative. This Act does not belong to the government or the Executive; it belongs to all Canadians.

Mrs. Carole Freeman: Thank you.

I would like to make one comment to the members of the Committee. When a party is in power, one could say that it has no interest in making the *Access to Information Act* more open. I've seen my colleagues who went looking in the past.

What do you think now that you've become an ordinary citizen? Once a party is in power, it doesn't necessarily want to open up every issue—especially the current government.

Mr. Robert Marleau: I was appointed Deputy Clerk under the Trudeau administration, Clerk under the Mulroney administration, Acting Privacy Commissioner under the Chrétien administration and Information Commissioner under Mr. Harper's administration. I've seen it from every angle. I've seen the debates from both sides. There are some things that are natural to some extent. It's easier to say things when you're in opposition and then to explain them when you're in power.

I prefer not to comment on performance from one government to another, other than to say that the Act has been eroded since it was passed. The Committee studied the Act in 1987, and successive commissioners stated that it had to be reformed. It's a bit like a teenager: if you don't pay attention, he goes the wrong way.

Mrs. Carole Freeman: It's getting out of hand, and that's what we're seeing: it's really getting out of hand. Thank you.

I will conclude by saying that the current government was elected on a promise of transparency. This is a crystal clear sign that it is not at all committed to transparency and that the reform of the *Access to Information Act* that we expected shows a refusal to give Canadians a fundamental right.

● (1005)

[English]

The Chair: *Merci, Madame.*

Mr. Poilievre, *s'il vous plaît.*

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Thank you very much, Mr. Marleau. I don't want to be repetitious, but this might be our last opportunity to thank you for your decades of service. You've really had a brilliant career, and there's a lot to celebrate as you look back, and hopefully as you look forward as well.

My question relates to the enhancements to the Access to Information Act that were contained in the Federal Accountability Act of 2006. I think you've indicated that this was the most far-reaching expansion of the Access to Information Act. What I want to get at here is that, in theory, opposition members seem to suggest that the Federal Accountability Act should have gone farther. But when you start to ask them for specifics, they fail to produce any. In fact, in some instances, members of the opposition believe the Federal Accountability Act went too far in expanding ATI.

For example, they opposed bringing the Wheat Board under coverage of the Access to Information Act. So what we see oftentimes is that you have certain interests that are particularly powerful constituencies to the opposition that cause them to depart from the overall principle of openness, but then in broad strokes and theoretical application, they say it should be enlarged. How do you view that contradiction?

Mr. Robert Marleau: Well, I think in the recommendations that I made to the committee, Mr. Chair, I even advocated a broader scope. I included the courts in those recommendations and I included Parliament, and by Parliament I mean the three constituent parts of Parliament, the House of Commons, the Senate, and the Governor General, in terms of their administrative responsibilities.

The minister does talk about judicial privilege and parliamentary privilege. I know something about parliamentary privilege, maybe less so than judicial privilege, but what is the cost to judicial privilege to find out how much lunch costs for the Supreme Court justices? Very little, I think. How many drivers do they have? How many cars? What's the car pool? There is a whole series of administrative issues that we should know about as Canadians.

So in terms of the broadened Federal Accountability Act, I've applauded that. I've certainly applauded the broadened ATI through the Fed AA and I think there's more to be done. I think any federal institution subsidized or paid for by the taxpayers ought to be subject to ATI, always respecting whatever constitutional or traditional privilege applies. We're not talking about making members' offices access to information, but the administration of the House and the Senate ought to be.

As a taxpayer, I pay for that. I should know either through ATI or voluntary disclosure. I was clerk when the Board of Internal Economy decided to do a certain voluntary disclosure about members' expenses and it was a big step forward. Every year your expenses by category and members' offices are published and I think Canadians have a right to know that.

Mr. Pierre Poilievre: Do you think the offices of members of Parliament should be subject to ATI?

Mr. Robert Marleau: No, sir. I make that crystal clear. I'm talking about the administration of the House of Commons and the administration of the Senate.

If I want to know how many buses are run on propane, I can't ask right now. If I want to know what the expenses are for a Senate initiative, a cafeteria in the East Block, I can't ask that. Neither can the media.

What a member does as a member is privileged, in my view. Your files, your interaction with constituents, your legislative proposals, anything that is party related, I think all of that has to remain within the purview of parliamentary control. But the administration of Parliament, including the Governor General, I think ought to be transparent.

• (1010)

The Chair: Okay, I think we're done. It's right on five minutes.

If I may and maybe just to promote a little broader discussion, one of the things we can do is look at where we've been and I'm really interested in where we might go.

Mr. Marleau, proactive disclosure seems to be one of the venues that has been used internationally. In Mexico, for instance, the government just puts everything on the web, other than those things they believe are confidences of national security, etc. Is that something we should consider, along with other innovative or new thinking as to how we can address the right to know?

Mr. Robert Marleau: My response is, absolutely. Proactive disclosure requires no legislative amendment. It's a matter of policy and leadership.

The Treasury Board minister, following a certain amount of abuse by senior public servants, including the Radwanski affair, which I know something about, ordered that all expenses, restaurant and travel, travel category and hotel expenses and otherwise be posted on the respective websites. To this day, I think the number of requests that used to be filed to get those has disappeared. It's evaporated. Indeed, the complaints to my office because they were being delayed have evaporated. Because it's posted. There's a whole ream of information.

On the one hand, the government could do a snow job on the public by putting so much up there. It would be very difficult to find out what's important and what's not.

The Chair: Well, storage on the web is not a critical issue.

I have one last quick point, and maybe it'll stimulate further consideration before this meeting ends. Do you think there is any one area that stands out as being the greatest risk under the current scenario, the current situation we're in, the greatest risk to Canadians as a consequence? Is there any looming, say, damage that can be done to our parliamentary system, to our democracy, to our rights, to our whatever by not addressing or anticipating conditions as the velocity of information increases?

Mr. Robert Marleau: As I've said before, if the voter cannot cast his or her ballot in the full knowledge of what is going on in government—whatever the party positions are—then it's a fundamental right terribly diminished.

There's a crisis in the information management of government related to this—that's in one of my reports—but that's curable through administrative means, money, and resources. If anything, this fuels the apathy of citizens. The institutions lose credibility, and to some degree I think Parliament loses credibility if it cannot influence the executives to take needed action—I'm not saying all of the action. But you as parliamentarians lose some credibility when you get this kind of response.

The Chair: Thank you.

On my list I have Mr. Martin, Ms. Simson, Mr. Dechert, and then Mr. Wrzesnewskyj.

Mr. Dechert, do you have a question?

Mr. Bob Dechert: Was your intervention just now part of the Liberal round?

The Chair: No. The chairman's discretion is to keep the meeting going smoothly, and I hope that my two little questions were constructive.

Mr. Martin, you have five minutes.

Mr. Pat Martin: Thank you, Mr. Chair.

I might not use the total five minutes, because I think we've really gone into the reaction to the letter from the Minister of Justice and his reaction to the 11th report.

But I want to dig a little deeper on the last point you made, Mr. Marleau.

This era coming will be one of belt-tightening and deficit reduction, although the deficit has come back again. They're going to be scrambling for cost-saving measures. I wonder if there's any way to assess with any accuracy the total cost saving to government of full disclosure. Not just your office will need more money to do your job better in the current scenario, with the number of ATIP coordinators agonizing over complex requests for 6, 7, 10, 11 months sometimes, and the number of complaints put into your office.

If you took the total aggregate amount spent on labour in administering a program that doesn't work—just blue-skying it—how much could the government save by voluntarily posting all this information and letting the chips fall where they may? In the next federal election they could run as the first government to have the guts to be truly transparent. It seems like a pretty good platform to me.

• (1015)

Mr. Robert Marleau: The current cost of administering ATI is over \$30 million. I think the attributed cost of the average request is about \$4,000. There's a whole bunch of indirect costs that are not calculated there. If you increased it to \$50 million to make this statute more efficient, what is that in the budget of the nation? What is it in perspective to the current surplus? What is it amortized over the life of a nation?

When we passed the charter in 1983 there was a tremendous cost to that, but people viewed it as amortized over the life of a nation. So the minister's response about what it's going to cost the courts, that the courts will be too busy, and that we need to establish what it might cost, is a very weak argument. To post information there are certainly costs, but they already have it in digital form. So you're looking at storage issues and how you would access that information from your own computer.

Norway just posted every single tax return of their citizens. It's not universally popular, and I'm not advocating this for Canada, don't get me wrong. The Swedes provide that you can access someone else's tax account and find out what your neighbour is paying. The principle there is that you should know what contribution a citizen is making to support the government apparatus. In Oslo there were so many requests they decided this year to post them all.

It's doable. There's a cost to it, but I'm sure the access requests would go down and the cost of processing these requests would go down. It would be nice to see ATI coordinators going the same way as bank tellers. I don't advocate that as much, but that's what technology would do.

Mr. Pat Martin: It would be like the Maytag repairman waiting for his phone to ring.

Mr. Robert Marleau: Well, in that case it was because there were good machines that he was not called on to fix; this machine badly needs repair.

Mr. Pat Martin: So the analogy fails there.

Mr. Chairman, while I still have one minute left, I'd like to move a motion that this committee reports to the House of Commons its disappointment with the response of the justice minister to the 11th report of the committee on the renewal of the Access to Information

Act, and that it expresses in no uncertain terms the frustration of this committee over the last many years of the inability to make any meaningful impact on the access to information regime.

I hope that's in order.

An hon. member: Is this a verbal motion?

Mr. Pat Martin: I think it's in order when we're on this subject.

The Chair: It is in order for members to make motions. This doesn't require notice since it's concerning the matter before the committee, so it is in order.

But before we consider it, I would ask the member to write it out.

• (1020)

Mr. Pat Martin: I'd be happy to.

The Chair: Then we could read it back to the committee precisely as the member would like to propose it. We will deal with it at the next opportunity.

Mr. Greg Rickford: Can we write it in French and English, please? It will have to be translated for the benefit of our members. I may have a preference for reading it in French.

The Chair: Thank you, but you're not right.

I have Madam Simson, please.

Mrs. Michelle Simson: Thank you, Mr. Chair.

I'm looking for some advice, because of your expertise.

By the way, I'm reluctant to speak for any committee members, but I did find this response to the work we did insulting. I don't really want to disagree with Mr. Martin on this point, but it is an "apathy".

I am actually quite frustrated and very angry at the response we got. He goes into the history of looking at this and studying that. Then it comes to last spring when the committee started examining your 12 proposals—these were 12 quick fixes that essentially we all agreed upon—and later in the letter he says that more extensive study is required.

I'm putting you on the spot, but what did we miss? What more could we have done to get the government's attention to have these revisions done? We had umpteen witnesses. We spent a lot of time on this. It wasn't that we just glossed over it. Can you offer any direction, perhaps even just to me, as a committee member?

Mr. Robert Marleau: I'd love to give you procedural advice; I used to do that at one time.

The committee has the power to send for persons and papers, and I think that's the breadth and scope you might want to look at. You can't force the minister to appear by a motion of this committee, but you can report to the House and the House can force him to appear.

I've known Mr. Nicholson for a long time—I swore him in as an MP, in 1984—and in no way do I want to diminish his commitment to what he's doing or his relationship with the House. But I know that in Great Britain this kind of response would have the minister sitting in a series of meetings engaged in considerable discourse as to where you go from here.

This is an exercise. That's why I threw this question back to you in my report: how long can Parliament tolerate the gradual and systemic—I won't say premeditated—atrophy of a fundamental right of Canadians?

I don't know if I answered your question, procedurally or otherwise.

Mrs. Michelle Simson: I appreciate the direction, and it would be up to the chair to follow up. It would certainly be worthwhile.

What I took from reading this letter was that the committee was sent away to basically chase its tail. I feel I got a great education from it. But as for amending legislation, which is on the books, and making a first step towards getting it stronger, this response let down all Canadians. We were dismissed out of hand.

I won't ask you to comment on that. That's my personal opinion.

Thank you.

The Chair: Thank you.

Mr. Dechert.

Mr. Bob Dechert: I'd like to give my time to Ms. Block.

The Chair: Ms. Block, then.

Mrs. Kelly Block: We've heard from many commissioners regarding different acts. I was a member of the procedure and House affairs committee in the last session, and I heard from commissioners there. I would like to know what, if any, connection or interdependence exists between the different acts? If changes are made to the Access to Information Act, does that have any impact on the Privacy Act or any other act? Do commissioners work together on some of the recommendations that come forward or on policies that are being developed?

•(1025)

Mr. Robert Marleau: There's very little interconnection. Statutorily, between the ATI Act and the Privacy Act, there is a link, and that is the protection of privacy. Under the ATI statute, there's the same sort of vigilance towards protecting privacy and disclosure as there is in the Privacy Act. That's the only link.

With respect to the minister's response about the ATI commissioner changing to a quasi-judicial role inconsistent with that of a parliamentary agent, that doesn't hold water for me. There is nothing in common between me and the Chief Electoral Officer of Elections Canada, except that we both report directly to Parliament. We get together as commissioners with the Auditor General and the CEO to talk about parliamentary issues. We talk about how we should conduct ourselves in relation to Parliament. We sometimes seek each other's advice before a committee appearance. It's all about this very privileged relationship that we have with this institution and the oversight that we exercise statutorily over various institutions. To change the core of one statute, say, that of Elections Canada, would

be totally irrelevant. To change the core of what the Auditor General does, other than when she will audit me, is totally irrelevant to me. We have seven or eight parliamentary agents federally. I made a declaration to the lobbying commissioner every year because I was a GIC appointment. The idea that a change here would have an impact over there I don't think washes.

Mrs. Kelly Block: I know that one of your recommendations is that the Access to Information Act provide a public education and research mandate. I believe we heard that from the Privacy Commissioner as well. Are there any discussions about whether that should be a broad policy for all acts, or whether there should be a certain amount in the budget set aside for it? One of the things that we never quite established was how much that was going to cost. This was one of our concerns. It was asked for, but we never understood what it was going to cost. Can you comment on that?

Mr. Robert Marleau: That recommendation did not just come out of my head. It was a specific recommendation of a royal commission, a one-man commission headed by former Justice La Forest, who looked at privacy and access to information and noted that privacy has, in PIPEDA, an education mandate. Therefore, the Access to Information Commissioner should have the same. It's also a question of credibility.

Right now, if there is any education being done, it's being done by the Treasury Board Secretariat. How credible is that, given their performance on the statute to start with? It's not very credible in my eyes. How much would it cost? It could start small. There is no budget for it now. Maybe it's \$100,000. Let's take whatever is in the budget of the Privacy Commissioner and give me half or give the commissioner half. It's a start. We technically don't have the authority to print an information pamphlet and hand it out to schools, for instance. On the education side, we are limited to resources sacrificed elsewhere or reallocated.

In the modern world, with websites and that sort of thing, it need not cost a whole lot of money. There's a front-end cost to setting it up, and then it's like the information office for Parliament. I was the clerk who started it, and there were front-end costs. Today, it has paid tremendous dividends. You have a national teachers' institute that brings in a whole bunch of teachers every year to learn about Parliament, about the life of an MP or senator. There's a cost attendant to that. I think that every federal institution—particularly one that has an oversight role—needs a certain amount of ability to educate people about ATI, to tell people what their rights are and how to access the information they need.

•(1030)

Mrs. Kelly Block: Thank you.

The Chair: Thank you.

Colleagues, just for your reflection, I would like to confirm and read into the record the motion that has actually been submitted to the chair by Mr. Martin.

We still have Mr. Wrzesnewskyj, Mr. Dechert, and Mr. Poilievre, and if we have time maybe we'll get a chance.... But I want you to know what the wording is that's been proposed before the committee. It is moved:

That the Committee report to the House its profound disappointment with the response of the Minister of Justice to its 11th report entitled "The *Access to Information Act*: First steps towards renewal".

That is the motion that has been moved by the member for the committee's consideration.

We have Mr. Wrzesnewskyj, followed by Mr. Dechert, and then Mr. Poilievre.

Mr. Borys Wrzesnewskyj: The cancellation of CAIRS was referenced earlier by Mr. Dechert. It was quite an important tool. Like any tool, it can be used in a positive or a negative way. There was reference to negative usage by the government in terms of amber lighting, but it was also a tool that would allow members of Parliament and journalists to actually track what is going on with access to information requests, both individually and also to see whether or not there are patterns.

With this tool gone, have we diminished our abilities to access information, in terms of how the process works, that particular aspect of it? Was it a tool of benefit to journalists and MPs on individual issues that may be amber lighted and to see a pattern of whether a government is living up to its commitment to transparency?

Here's the second part to this. Since it was cancelled, has amber lighting continued as a policy of this government?

Mr. Robert Marleau: There are two issues related to CAIRS. The first is that, to be fair, I have to tell you that my office was consulted about CAIRS and its abolition a year before I came into office. And again to be fair, that database, which was going back to 1989, had really reached its shelf life, its maximum capacity, and it was becoming expensive to maintain and was really not worth the investment to enhance it. I accepted that from Treasury Board as the reason. My office, however, said that was okay, but it was necessary to replace it with something else because it was serving access requesters for the kinds of things you are raising. They chose not to do that.

Consequently, we received a complaint about it and there is an ongoing investigation. I don't want to get into too much of what I know and what I don't know, since I've left. The office will eventually make a recommendation.

To me, it's an absolutely logical management practice that the Government of Canada should know what it's releasing in its totality and what trends are there. If you anticipate those trends, you can better serve Canadians.

If you don't get the pension cheques out in 30 days, you hear pretty fast. Why can't we get some of this stuff out in 30 days?

I have no problem with CAIRS as a concept, and I think it can be of service to users as much as it is to the government of the day.

Is there amber lighting still going on? We did a systemic study on that and we made four recommendations to Treasury Board. One of them was to cease and desist, and most departments complied. I have no doubt that certain amber lighting is still going on. There is a stronger effort being made where it is going on to keep to the time lines, and that, too, I don't have a problem with. If a minister is going to get a question in question period because something has been released, I don't have a problem with communications between the minister's office and the ministry to prepare answers and explanations. But don't take 130 or 140 days to do that as the reason why the response doesn't get out in 30 or 60 days.

Some users fundamentally disagree with me. Some of the witnesses who appeared before you think that's the wrong position for a commissioner to take. It's the government's information, then they release it. That they be ready for that release, good or bad—it could be good news.... There are so many missed opportunities on good news releases that if they knew what they were releasing they might be able to take advantage of that as well.

•(1035)

The Chair: Thank you.

Mr. Dechert, please.

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

Just following up on CAIRS for a moment, since Mr. Wrzesnewskyj raised it, Professor Roberts also said in that same article in 2003 that "No other country maintains a government-wide data base like CAIRS. CAIRS is a product of a political system in which centralized control has become an obsession." What do you think of Professor Roberts' comment, given that date and time and what was going on then?

Mr. Robert Marleau: I think, given that date and time, he was probably well founded in his judgment. It ebbed and flowed from 1989 until then. It became a tool for users to the point that the commission now has a complaint because it was shut down. Whereas Mr. Roberts was complaining about its very existence, many of the users, particularly the media, were now looking to this as a source of information in terms of trends, in terms of what's being released in DND versus Foreign Affairs on the same issue.

That's why I say I don't have a problem with it, if it's not abusive.

Mr. Bob Dechert: But it had been abused at some point in the past, right?

Mr. Robert Marleau: At least in Professor Roberts' opinion.

Mr. Bob Dechert: In Professor Roberts' opinion, indeed.

Let me ask you a question about the number of information requests that have been processed in the last five years. I note from your own statistics that in 2003 the number of requests that were processed annually was 22,125, and that increased in the 2007-08 year to 30,530. That's a pretty substantial increase in the number of information requests processed; it's roughly a 38% increase over five years. To what do you attribute that increase in the processing of information requests between last year and 2003, for example?

Mr. Robert Marleau: As I said in previous testimony, part of it was the Fed AA amendments to the ATI.

Mr. Bob Dechert: So it opened up a lot more agencies to information requests?

Mr. Robert Marleau: Right, but not all of them.

Mr. Bob Dechert: Fair enough.

Mr. Robert Marleau: But the complaint side has grown by 80%, and that's not all the Fed AA. It's partly the Fed AA, but not all of it.

Mr. Bob Dechert: I'm going to ask you about that in a second, but certainly it's fair to say, isn't it, that a lot more information is getting out than was getting out in previous years in the regime that existed prior to 2006?

Mr. Robert Marleau: I would state that a lot more information is accessible.

Mr. Bob Dechert: Right. That's a good thing.

Mr. Robert Marleau: It's a very good thing, and a lot of it is terribly delayed.

Mr. Bob Dechert: Okay. Let me ask you about the complaints about delays. I see from your statistics that two individuals or organizations represent 25% of all the complaints before your office. One is described as business, 17%, and the other is described as media, responsible for about 12%. What's the annual budget of the commissioner's office again?

Mr. Robert Marleau: I think it reached \$11 million in the last round of estimates.

Mr. Bob Dechert: Okay, \$11 million. So two organizations or two individuals are responsible for roughly \$3 million to \$4 million of the cost of the commissioner's office to investigate these complaints? That's a rough calculation.

Mr. Robert Marleau: That's one way of querying it. Depending on the nature of the complaint, depending on the breadth and that sort of thing, it's hard to put a per complaint cost.

Mr. Bob Dechert: It just seems the whole rest of the world is 75% and then two individuals or two organizations are 25%. They're generating a lot of work for the commissioner and your staff.

Mr. Robert Marleau: I felt that was an issue I had to address as commissioner. You may remember I brought in triage of cases. A lot of these users were very upset. I just felt the little old lady from Moose Jaw using the act for the first time needed as equal access as those who were bombarding—

Mr. Bob Dechert: I couldn't agree with you more. As you know, my concern has always been—going back to the months when we had our discussions—that a small group of individuals or organizations are using the system excessively at virtually no cost, but at great cost to the taxpayers.

I think you told us that the cost of complying with an access to information request was roughly \$1,500 per access. Here you've got two individuals or organizations—probably a media organization is one of them—generating thousands of information requests that cost the government and the taxpayers of Canada and all those hardworking Canadians at least \$1,500 to respond to. When they don't like the amount of time it's taking to get them that information, they put a complaint into the commissioner's office and that generates maybe another \$3 million to \$4 million worth of cost to the taxpayers.

Do you think there's any argument there for attaching a reasonable cost to a business organization, like a media organization or a data collector, like a government relations firm or a law firm, to supplying that information they're going to resell to their customers?

• (1040)

Mr. Robert Marleau: There are jurisdictions that do that, but it doesn't work very effectively, because there are so many ways to get around it. However, three of my recommendations to the committee, which you've supported, go to address some of those complexities or issues.

One is giving discretion to the commissioner to investigate. So when I see or deem a use abusive, I can decline to investigate.

The other is to grant departments—and for this I'm not very popular among, particularly, those users—specific extensions for multiple submissions of requests. Where a department is being targeted by a user with a large number of requests, which you know they can't meet within 30 days because of the sheer volume, they should be able to consult with me and ask what a reasonable amount of time to fix that is. If they get agreement from my office, they can go ahead. Now, the requester is not very happy, but I think there's a reasonableness there that has to be brought into play.

The discretion of the commissioner, if you put those together, would I think bring some of these issues, through dialogue and discourse—I'm not saying an absolute refusal—with some of these users who... I can't impute a motive, good or bad, financial or otherwise.

You may remember this chart I circulated to the committee.

Mr. Bob Dechert: They're both business organizations.

Mr. Robert Marleau: The red one is a publicly admitted data broker, and red means that he opposed every recommendation.

Mr. Bob Dechert: They are for-profit organizations, aren't they?

Thank you, Commissioner. I thank you again for your service.

The Chair: Colleagues, I've been around for a long time, and I want to make a suggestion.

I think this committee has done good work, and I think we still have an opportunity to build on what we've done. I'm going to suggest, Mr. Martin, if it's okay with you, that we stand your proposed motion and extend an invitation to the Minister of Justice to come back to our committee so we can discuss this further. I think we've heard one side. But the minister may want to clarify or deal with some of the reaction to his report. That would maybe give us a better basis on which to discuss the conclusions of this committee. I'm pretty sure that a motion of that nature could be discussed for an awfully long time, and I'm not sure it's a good use of our time.

The reason I also make it is that I was informed this morning that on November 5, which is a week from today, the Privacy Commissioner, or the deputy, were to appear on the quick fix report on privacy. They are not going to be in the country. We have a full meeting open, and we could request that a week from now. The minister might give us an opportunity to speak with him about this report in a week. That is my suggestion to the committee, but I'm open to input from the members.

We'll have Mr. Dechert, and then Mr. Martin.

• (1045)

Mr. Bob Dechert: Mr. Chair, could I suggest that the committee ask the minister if he would be interested in making a further written response to the committee?

The Chair: We certainly can do that. It depends on what the wish of the committee is. Certainly another option would be to simply exchange written correspondence. The members may have some thoughts on that.

Go ahead, Mr. Martin.

Mr. Pat Martin: Personally, I don't think Mr. Dechert's recommendation would be very fruitful. They gave this letter a lot

of thought. I think every word and every phrase was very carefully chosen and probably agonized over, to tell you the truth, to minimize what constitutes an insult to the committee or to couch it in terms that we would find difficult condemning them for. But condemn them we should.

I see the reasoning in your perhaps not dealing with my motion today, because we've seen Conservatives filibuster committees and it's just an exercise in frustration, but so is bringing the minister before this committee.

I remember we did that with the Liberal justice minister after he completely shafted this committee. Let's just be realistic here. We had a firm commitment from that minister and that government that, yes, they were going to revamp the Access to Information Act and that he would in fact table legislation. Instead of tabling legislation, he tabled yet another discussion paper and recommended that this committee consult further.

We don't need any more consultation on this. Everybody knows what needs to be done. For 15 years they've known what changes need to take place. It's stalling, it's ragging the puck, it's a delaying tactic, it's trying to exhaust the energies of this committee so you'll simply drop it, put it on the too-hard-to-do pile, and move on to something nicer and more satisfying to deal with.

You can put my motion on hold, if you like. Well, I'm not sure. I think I have the right to insist that it be dealt with today, and I might still do that, but I can advise you that you are setting yourself up for a whole lot of hurt if you think you're going to get any satisfaction from dragging the minister in here. I think the time has come to express the profound frustration and disappointment of this committee in the House of Commons, in Parliament, and tell the world that you're disappointed in this minister and this government's unwillingness to live up to their campaign promises to the people of Canada.

The Chair: Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: I concur with the feelings and the sentiments of Mr. Martin, but I also note that this committee spent a great deal of time working on this particular report—10 sessions, 7 sessions with witnesses—so that our recommendations would be well-founded and made on strong, firm foundations. The former commissioner was quite right when he said the response was cavalier. It was cavalier in style, but I also concur that it was carefully thought through and it was dismissive with purpose.

I like Mr. Dechert's suggestion that we need something further in writing. There were 12 specific recommendations, and we spent a great deal of time on every single one of those. We have 11 parliamentarians on this committee, representing all parties from virtually every region of the country. We virtually had consensus on all of these very important points, and to be dismissed out of hand is disturbing and it fundamentally undermines the democracy of our country and its transparency.

We've waited this long, and November 5 is a week from now. I would in fact be encouraged if the minister, if he were to appear, would take Mr. Dechert's suggestion that, prior to that, we be provided with something on paper addressing each of those 12 recommendations and why in each case he has said no. He has said no to this committee 12 times, so why has he said no to each one of those? He may have very good reasons, but we'd like to hear them.

I think the combined suggestions of Mr. Szabo that he appear and the suggestion of Mr. Dechert that he provide us with something on paper would serve this committee well. I'm willing to be patient for another week.

• (1050)

The Chair: Yes, Mr. Dechert.

Mr. Bob Dechert: This is simply to clarify, so that Mr. Wrzesnewskyj understands what my suggestion was. It was simply that I think it would be reasonable for this committee to make a request to the minister to ask him if he would care to make a further written response to the committee.

The Chair: Sure. I understood that as well.

Because we have 10 minutes, I think we are at the point at which we really want to get some direction for the committee on whether we're going to make this motion or whether there seems to be a consensus as to an invitation for a further written response or an invitation to appear.

Mr. Poilievre is going to speak on behalf of the Conservatives.

Mr. Pierre Poilievre: I have to confess, I am a little bit perplexed as to where we are now in the proceedings. Are we continuing to question a witness, or are we discussing...?

The Chair: The list of questioners for the witness ran out; there was nobody else. Then I moved on.

Mr. Bob Dechert: Mr. Chair, with respect—and you can check the transcript—I specifically asked you if we were going to continue questioning Mr. Marleau and you said, “Yes, but I just want to clarify what we were intending to do with the motion first.” I challenge you to check the transcript on that. You were very clear on that.

The Chair: We are, but there was nobody on the list.

Mr. Bob Dechert: That's not true. I indicated I wanted to be on the list.

The Chair: Okay, I hear you. Let's just—

Mr. Bob Dechert: Could somebody read the transcript—

The Chair: You let me know when it's my turn to talk.

Mr. Bob Dechert: I would formally request that you read back the transcript, please.

The Chair: We don't have a transcript, but the clerk keeps the list—

Mr. Bob Dechert: Then why did you—

• (1055)

The Chair: Excuse me, Mr. Dechert, be patient.

The last speaker having questions for Mr. Marleau was Mr. Dechert.

Mr. Bob Dechert: Now may I respond?

The Chair: When I'm finished. I'll give you an idea of when I'm finished.

When you finished and I came to the clerk, Mr. Poilievre had his name on the list. He was not in the room and I couldn't call him. Subsequent to that, Mr. Rickford, after I then made this intervention about trying to suggest.... At that point, once there's nobody in the room—

Mr. Borys Wrzesnewskyj: A point of order, Chair.

The Chair: Excuse me.

My view was that we were at the point where there were no more rounds of questioning for Mr. Marleau, but because there was a motion, theoretically—and maybe in fact—once a member makes a motion, all things stop and you have to deal with the motion.

I say to Mr. Dechert and all honourable colleagues that I dealt with it this way because I think you've all been around long enough to know where this might go. I'm trying to find a way in which we can deal with this in a fashion that allows all interested parties, including the minister, to have a position on the table, before the committee makes any decision as to whether or not it wants to go to the House.

If the members want to push the “follow the rules” exactly, then the chair has been in order, and hearing anybody speak after Mr. Martin moved his motion was improper. That's where we are.

At this point, if members would like to carry on a conversation with Mr. Marleau and ask a question—he is here for another few minutes—I'd be happy to do that. He'll be out of the country for the next two weeks, so this is it. But if you'd like to have some input with regard to where we go from here, that's also welcome. We'll see where we are. Keep in mind that Mr. Marleau is only here for another five minutes.

There's a point of order from Mr. Wrzesnewskyj, and make sure it's a point of order.

Mr. Borys Wrzesnewskyj: Thank you, Chair.

A certain type of conduct and behaviour should not be acceptable. Of course, there's an attempt here to go back and filibuster our particular discussion.

The Chair: Order.

Mr. Borys Wrzesnewskyj: The point of order is that when Mr. Dechert motioned toward the chair in a way suggesting that the chair was Pinocchio in this manner, it is not the type of conduct that should be acceptable in a parliamentary committee and I think he should apologize to the chair for his conduct.

The Chair: Thank you. That's not a point of order. I'm a big boy; I can take it.

Mr. Poilievre, I'd like to hear from you, please.

Mr. Pierre Poilievre: Before you do, I'm still not quite clear on—

The Chair: It's whatever you want to do, whatever you want to say. You know where the committee is right now. If there are no further speakers, then I have to ask Mr. Martin if he wants to move his motion.

Mr. Pierre Poilievre: So I can talk about anything I want at this moment in time?

The Chair: As I indicated, if you would like to ask Mr. Marleau some questions or you would like to give the committee your views as to where we go from here....

I thought it was a good idea that we at least offer the minister an opportunity to respond to Mr. Marleau's assessment and reaction. That's new information. If that's not the view of the committee, then we have to consider a motion to report.

The chair does not tell the committee what we're doing; it responds to the committee's wish as to where we go from here. So I'm looking for some words of wisdom from the honourable members.

Mr. Pierre Poilievre: I will try to fill my words with all kinds of sagacity, then, Mr. Chair. I will do so by offering a motion of my own.

I think Mr. Martin will appreciate this motion. I know he has a long history of working on the issue of access to information; he's very passionate about it, very knowledgeable on the subject. I'm hoping we can, as committee members, work together on this to continue the dialogue with the government.

I think it would be helpful if we put the discussion in its proper context. That's why I propose the following motion, which is a factual statement coming from our witness. It is merely a reiteration of something he has already said.

My motion reads as follows:

The Federal Accountability Act is the greatest reform to the ATIA since that act came into force in 1983, and—

The Chair: Order, please.

I've made a mistake and I want to correct it quickly.

Mr. Martin in fact did make a motion and it's on the table. He can withdraw it; I can't ask him not.... I misspoke by saying I would see whether Mr. Martin wanted to move his motion; he had already moved it.

As you know, Mr. Poilievre, you can only have one motion on the floor at one time. So we could have amendments to Mr. Martin's motion, but we can't entertain a second motion once there's one on the floor.

I'm indicating to you that I will not be accepting your motion at this point.

Mr. Pierre Poilievre: That's fair enough.

At the same time, there has to be a way that we can have the minister respond to the new information that has come forward from Mr. Marleau. Perhaps an intermediary step would be to contact the minister through the chair to see whether he has a response. That might take us some distance.

I know what Mr. Martin is getting at. I have said in my remarks that he has a long history of working on this file—as have you, Mr. Chair—so I can appreciate the desire of members of the opposition to move with haste. At the same time, I think we should be deliberate, and if we could prepare a letter on behalf of the committee indicating what we've heard from Mr. Marleau, asking for a response with a deadline, then I think we probably would move the file forward faster than instigating more confrontation and more clashing. That's how I would propose we move forward.

• (1100)

The Chair: I thank you for that.

Colleagues, it is now 11 o'clock. There is another committee scheduled to be in this room now. We are bumping our heads.

I have listened. We have not in fact reached a total consensus. I'm going to accept Mr. Poilievre's suggestion that it does not hurt to ask the minister whether he has any further response to the committee, taking into account what has happened here.

At our next meeting, Mr. Martin's motion is alive and well.

An hon. member: Is it alive and on the floor?

The Chair: It is. Unfortunately, I can't entertain any more speakers because the meeting has to be adjourned.

I will forthwith get a communication to the minister. He will have access to all the comments that have been made at this meeting; I'll make sure he has it. We will see what I can report back.

I should say again that on November 5, the privacy people cannot be here. So don't plan for that. I'm going to see whether PCO officials would be prepared to move up from the week after we get back to next week, if that's an option and we can't fill that slot. I will keep you informed so that you know exactly what we're dealing with before you come to a meeting.

Mr. Marleau, I have no time to say this, but quite simply, on behalf of all of the committee and all Canadians, I want to thank you for the service that you provided, not only to us but to all Canadians, with wisdom, with passion, and with class. Thank you.

Some hon. members: Hear, hear!

The Chair: We're adjourned.

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