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Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

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• (1530)

[Translation]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)):
Good afternoon, everyone.

We will now begin the 83rd meeting of our committee.

During our first hour, we will be continuing our study of Bill C-461. We have with us Mr. Rathgeber, the member who sponsored Bill C-461. We ran out of time when Mr. Rathgeber was last here, and the committee wanted to invite him to appear again. First, he will spend a few minutes making his statement, and then the committee will have a chance to ask questions, as usual.

I will now hand the floor over to Mr. Rathgeber, so he can make his presentation.

Please go ahead, Mr. Rathgeber. And thank you for joining us again.

[English]

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair, and honourable members.

I am pleased to reappear before the House of Commons Standing Committee on Access to Information, Privacy and Ethics to answer further questions on my private member's bill C-461.

Bill C-461, the CBC and public service disclosure and transparency act, attempts to bring greater transparency to the Canadian Broadcasting Corporation and to salary disclosure in the federal public service generally.

As you know, your committee meetings have to some extent been derailed and interrupted by motions and several unscheduled votes in the House of Commons. Accordingly, I am pleased that the committee has shown interest in this legislative proposal and scheduled extra meetings to properly assess and vet this important legislative initiative.

Mr. Chair, with your consent, I would like to briefly summarize the evidence that the committee has heard thus far, and then I will take any questions the members might have.

Members, what you have not heard as evidence is as telling and as interesting as what you have heard. For example, not a single witness has supported the government's dubious proposition that the benchmark for specific salary disclosure for federal public servants should be raised to \$329,000. Both the National Citizens Coalition and the Canadian Taxpayers Federation have testified that the

proposed benchmark of DM-1 or \$188,000 is too high and ought to be lowered to \$100,000 to mirror Ontario's sunshine list.

Moreover, although the CBC and the journalist guilds oppose the provisions that allow the Information Commissioner to review access decisions of the CBC based on a prejudice or injury-based test, neither of them expressly supports the government's signalled intent to introduce an amendment providing for an exclusion for journalistic source documents.

The Information Commissioner meanwhile is firmly opposed to the prospect of another exclusion to replace the currently much-maligned exclusion in section 68.1 of the Access to Information Act. She seemed incredulous that the government would replace an exclusion subject to an exception with a discretionary exemption thereafter subject to an exclusion. Clearly this would constitute, to use the words of the Federal Court of Appeal, "not a model of clarity...[and a] recipe for controversy", all of which Bill C-461 is designed to prevent.

Moreover, the Information Commissioner reiterated that journalistic source privilege has never been raised—not a single time—in a dispute between the CBC and someone seeking documents, and that journalistic source privilege, according to the Supreme Court of Canada in *Regina v. National Post*, is not absolute and must be examined on a case-by-case basis to determine its applicability.

Finally, and this is important, Mr. Chair, as personal information is exempt from disclosure pursuant to the Privacy Act, concerns that names of confidential sources will somehow be disclosed to the public through access requests are entirely unfounded.

We did, however, hear some interesting evidence that could prove helpful. I would ask the committee to consider amendments that will ultimately improve this legislation.

There has been some admittedly credible evidence that Bill C-461's attempt to protect the independence of the public broadcaster is inadequate and will lead to excessive disclosure. Perhaps. However I remain convinced that excluding documents merely relating to activities is much too broad and has led to such questionable results as CBC's refusal to release how many vehicles are contained in its vehicle fleet.

It has been suggested that freedom of expression could be added to independence to provide a greater comfort level. I would support that, provided the Information Commissioner is allowed to review contentious decisions to ensure the protections and exemptions are being applied appropriately.

As indicated, both the National Citizens Coalition and the Canadian Taxpayers Federation have testified that the salary disclosure benchmark of \$188,000 is too high and ought to be lowered to \$100,000. I agree with their first submission but suggest that \$160,000 is a more realistic benchmark. As members know, \$160,000 is the approximate salary of a member of Parliament. Although any chosen benchmark will be arbitrary, I would submit that an MP's salary is as defensible as any other proposed benchmark would be, because Parliament would be requiring no greater disclosure from federal public servants than its own members are subject to.

• (1535)

A related issue, Mr. Chairman, is the use of the words "specific salary" in Bill C-461. It is uncertain whether the term "specific salary" includes the up to 39% performance variances, otherwise known as bonuses, that the top mandarins may be entitled to. It is certainly the intent of the bill that such bonuses be disclosed. Accordingly, the committee may wish to consider an amendment to clarify that all executive compensation, that is salary and bonuses, ought to be subject to access to information requests.

Finally, what hadn't occurred to me until I heard the Information Commissioner last Wednesday was that she believes that the transition provisions contained in the current version of Bill C-461 are inadequate, as rejected applications for disclosure might subsequently be resubmitted under the new, more transparent rules. The current wording of Bill C-461 suspends operation for 90 days to allow there to be a mechanism to deal with applications that are in the queue.

But she's quite right that if the rules change, rejected applications for access could simply be resubmitted. So she advised that it be made expressly clear that all under-review matters be adjudicated under the new rules to prevent resubmissions.

Mr. Chair, I am pleased with the totality of the evidence presented to this committee and the divergent opinions on what is and what is not appropriate access to information held by government. These are important matters and I did not expect the witnesses to be unanimous. However, debate and discussion is necessary as Canada attempts to modernize its clearly outdated access to information legislation.

I trust that upon reflection, members of this committee will reject proposed amendments that remove Bill C-461's attempts to achieve greater transparency, but will adopt and approve amendments that clarify and strengthen Canadians' rights of access to information held by their government.

Thank you, Mr. Chair. I look forward to the questions by committee members.

[*Translation*]

The Chair: Once again, thank you for being with us.

Mr. Angus, you have seven minutes, as we begin our first round of questioning.

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Speaker.

Thank you, Mr. Rathgeber, for coming back. We're very interested in discussing the issue with you. Your bill is on two tracks and sometimes there have been two perceptions of it. One is our concern about interference in CBC's ability to do its journalism and interference with its independence. I think we all certainly agree that we don't want to have that a bill, and we talked a bit about that before.

We haven't had a chance to really talk, though, about the larger issue of transparency and accountability and its importance to taxpayers. In the New Democratic Party we believe that the ability of citizens to hold their government to account is dependent on knowing what is happening within government and having information on basic issues like the salaries of people who play key roles.

Right now, we're been talking about salary disclosure for civil servants. Do you believe the same principle would apply to political staffers?

Mr. Brent Rathgeber: I do. However in fairness I must point out, Mr. Angus, that nothing in this bill extends the applicability of the Access to Information Act to the houses of Parliament. So if you work for a government department or agency or crown corporation, my bill would cover you. But the Access to Information Act generally does not apply to either houses of Parliament or to the Prime Minister's Office.

Mr. Charlie Angus: I guess that's one of our concerns. The Privacy Commissioner has referred to ministerial departments as black holes of information, where all manner of things can be done and there's absolutely no accountability. I know that's not within the parameters of your bill, but do you believe in principle that there has to be better disclosure so we ensure that things are done properly?

• (1540)

Mr. Brent Rathgeber: Absolutely. As I said when I was here a couple of weeks ago, Canada is currently ranked 55th out of 93 countries internationally, and the Centre for Law and Democracy has said that the federal government is falling behind the provinces in terms of access to information.

So I agree with the Information Commissioner that a complete overhaul of access to information legislation to move it into the 21st century is long overdue. However, it appears unlikely that the government will table such legislation, so I am mindful of the commissioner's concerns about a piecemeal approach to bringing Canada's access laws up to date—and certainly this bill would be considered a piecemeal approach.

But I think the wider expansion of access to information to include Parliament, the Senate, and the PMO requires a much broader discussion than we could have with a private member's bill.

Mr. Charlie Angus: Thank you for that.

The salary level you've suggested is an MP's salary. I personally would put it at a senator's salary, but either one seems fair to me.

Regarding the idea that we would raise the level to \$329,000, did you say...?

Mr. Brent Rathgeber: I understand that the government intends to introduce an amendment to raise the bar, from the lowest level of DM-1 in my bill to the highest level of DM-4, which is \$329,000.

Mr. Charlie Angus: That would keep a whole whack of people under the political covers. I'm surprised.

Do you think that raising it to such a high level of \$329,000 would basically result in the complete inability of citizens even finding out what people are paid in the civil service?

Are you concerned about that?

Mr. Brent Rathgeber: I absolutely am.

As I said, Mr. Angus, I invite you to table an amendment lowering it to \$160,000. I think \$100,000, as advocated by the Taxpayers Federation, is too low. I think the Ontario list captures too many people, some 79,000 by my count.

By raising it to the upper level of DM-4, \$329,000, it would capture virtually nobody. There would be some CEOs of some corporations, perhaps a few judicial appointments, and some chairs of some boards and commissions. But all deputy ministers would not be subject to it, by definition, because the proposal is that it be raised above the DM-4 level.

I'm dumbfounded that the government would do this, but it is what it is.

Mr. Charlie Angus: Your Conservative colleague, Mr. Williamson, said that this amendment would "effectively neuter" your bill.

Do you agree with that?

Mr. Brent Rathgeber: I think my comment the last time I appeared before this committee was that it would remove both the heart and the teeth of this legislation.

Mr. Charlie Angus: Last week the commissioner talked of her concern about piecemeal solutions. She certainly sees that we have major problems.

You pointed out that Canada is slipping further and further behind. There are third world countries that have better responses for citizens than we do right now.

One of the things she's looking for is the issue of order-making powers, so that she would not be sitting around fighting about this all the time but would have real power.

Would you support that as a way of beginning to overhaul the issue of people's right to information?

Mr. Brent Rathgeber: I do conceptually believe that the Information Commissioner, who is independent of government—she's an officer of Parliament—ought to have order-making authority.

In fairness, Mr. Angus, I must tell you that my bill will not achieve that.

Mr. Charlie Angus: I understand that. I'm interested in how we get there. We're looking at maybe one or two amendments from the government, one that would effectively kill the spirit of your bill and then leave the issue of CBC....

Do you believe, as parliamentarians, that we actually have to say that citizens have a fundamental right to know? It's not to know everything that happens in government, but with anybody who's making \$255,000 or \$300,000, should we not know why and who they are?

Why do you think the government would be so intent on raising the bar so high that it would basically be a useless provision?

Mr. Brent Rathgeber: Those are two questions.

I absolutely agree with you, Mr. Angus, that Canadian citizens, and for that matter, parliamentarians, have a right to know how much salary and bonuses are earned by top federal civil servants. Taxpayers have a right to know; it leads to accountability.

The other part of the bill also provides for specific job descriptions at the same benchmark, whereas below the benchmark you're only entitled to a job classification as opposed to the specific responsibilities of the individual. By allowing that information to be disclosed pursuant to access legislation, it allows taxpayers to compare the job that a department or agency is doing versus the salary paid to its top members.

Why the government is proposing to mitigate Canadian taxpayers' ability to find that out, I can only speculate. My speculation would be that they don't want to be in a position to have to defend what they pay some of their top people.

• (1545)

[Translation]

The Chair: Thank you.

Mr. Warkentin, go ahead.

[English]

Mr. Chris Warkentin (Peace River, CPC): Thank you, Mr. Chair.

Thank you, Mr. Rathgeber. It's good to have you back.

As you know, CBC has reluctant enthusiasm for your bill. Today, or maybe yesterday, we received a letter that added some additional concerns with regard to the provisions in the bill. Have you seen that letter?

Mr. Brent Rathgeber: I have not.

Mr. Chris Warkentin: I'm going to make sure you get a copy, because I think it's important that you see the letter I'm going to reference.

It's a new concern with regard to the information that CBC shares with the CRTC. Apparently, CBC is saying that they already turn over significant amounts of information to the CRTC. They are concerned that because of the way the legislation you've brought forward is drafted, the CRTC will be forced to disclose this information that ordinarily would not be permitted to leave CBC through an access to information request, but could be allowed to leave the CRTC this way, thereby circumventing the provisions in the bill.

I'm wondering if you've heard of that concern or if you understand what they're saying or the rationale behind their concern. Do you believe there may be additional amendments to resolve this, or do you feel there's no need for additional amendments to address this concern?

Mr. Brent Rathgeber: I think I understand. The question or proposed problem is that if an individual did not get access to a document through the CBC, they could reapply to the CRTC and have a second shot at getting the document.

Is that the concern?

Mr. Chris Warkentin: It seems as though the CBC says that it provides detailed information about its spending, program strategies, and operations to the broadcast regulator, which is the CRTC. Currently, some of that information is made public by the commission, but journalistic programming and creative material is excluded. They go on to say that BillC-461 limits the ability of the head of CBC/Radio-Canada to withhold information. They are concerned that the CRTC would no longer be able to withhold confidential information provided by CBC.

They're saying that the provisions of withholding are vested with CBC's personnel and don't extend to the CRTC, so it's basically a way of circumventing the process. I say this because according to your amendment, the head of CBC would be responsible for withholding this information.

Mr. Brent Rathgeber: I understand the problem, because the CRTC wouldn't be subject to the same prejudice test that the CBC is.

Mr. Chris Warkentin: Right.

Mr. Brent Rathgeber: But governments exchange documentation and information with each other all the time. So if a person is applying under the Access to Information Act to receive government information, they must apply to the government institution that holds that information, not one that has it under escrow, or one that has borrowed it for the purpose of an application and will send it back thereafter.

So if an individual wants to apply for access to a document held by CBC, he will have to apply to CBC. If the CRTC has temporary control of a document that CBC provided them, they will have to turn those documents back to CBC and have CBC determine whether or not they can be released pursuant to the rules specific to CBC, which is the prejudice test I've created.

Mr. Chris Warkentin: But the vice-president of legal services for the corporation seems to disagree with your interpretation of your legislation and your amendment.

Mr. Brent Rathgeber: She's entitled to her opinion.

Mr. Chris Warkentin: So you don't see it that way. You believe that if the information is in the CRTC's hands, they will not be obliged to hand over that information, as they currently are?

Mr. Brent Rathgeber: You'd have to ask that specific question of the Information Commissioner, but it's my understanding that if a document is under the custody of one agency and it's being shared with a second agency, the agency that has primary care and control of that document is the one to which the access application must be made.

● (1550)

Mr. Chris Warkentin: They're saying at the CBC that they turn over these documents as part of their licensing conditions, so they're very concerned about this information being passed on.

My constituents obviously want transparency, but they also want assurances about free press. I think you and I would share that perspective.

Mr. Brent Rathgeber: As the Information Commissioner said quite unequivocally last week with respect to journalistic source privilege, the concerns are completely unfounded. The name of a confidential source is personal information under the Privacy Act and can't be disclosed now, and couldn't be disclosed if my bill passed unamended.

If that's what the concern is, I believe it to be completely unfounded. If the concern is with respect to competitive or programming activity, I think it's a little unfair for me to respond to the three-page letter after just having received it.

Mr. Chris Warkentin: I appreciate that.

Mr. Brent Rathgeber: But I maintain the position that access applications ought to be made to the agency or department that has primary custody of the documents.

Mr. Chris Warkentin: I appreciate the fact that you've just seen this letter, just as I have. It is a concern of mine, and something that my attention was drawn to.

Clearly you've outlined the amendment that you want brought forward, in addition to the other amendments. Obviously there have been a number of amendments proposed, including from the Taxpayers Federation, who believe that an amendment is a necessity to ensure that we protect journalistic integrity.

I guess we'll have to proceed with the information that we have before us.

Mr. Brent Rathgeber: Well, Mr. Chair, by the same logic, a private broadcaster also has to submit these types of documents to the CRTC as part of its regulatory process. To take this argument to its natural conclusion, an individual could get confidential documents from a private broadcaster simply by applying to the CRTC to get them.

I've never heard of that being a problem. The private broadcasters would be subject to the same controls, or lack of controls, with respect to their regulatory obligations.

I'm not sure that I understand the concern. I think I understand the question, but I don't believe that it's a real problem.

[Translation]

The Chair: Thank you.

Mr. Warkentin's time is up.

It is now over to Mr. Andrews for seven minutes.

[English]

Mr. Scott Andrews (Avalon, Lib.): Thank you very much, Mr. Chair.

Welcome back, Brent.

My first question is regarding the injury-based test. I guess you heard the commissioner's testimony on that. It's something that is frequently used, a common practice for determining release or non-release of information.

What's are your thoughts on the injury-based test?

Mr. Brent Rathgeber: Actually, I do not recall the commissioner saying that it's a commonly used test or benchmark for disclosure of documents. Generally under access to information legislation, applicants have the right to see the documents whether they're injurious to the government department or not.

By putting this test with respect to documents under the current control of the Canadian Broadcasting Corporation, as she suggested before this committee during your detailed study of section 68.1 of the Access to Information Act, it's providing an extra level of protection to the Canadian Broadcasting Corporation that isn't enjoyed by most departments or agencies of the Government of Canada. It is a deliberate attempt to be mindful of the fact that although the Canadian Broadcasting Corporation is a crown corporation and receives funds from the Treasury Board, it is a journalistic operation and there has to be a healthy degree of separation and independence from the government that funds it.

The prejudice test is built in specifically to protect it from having to disclose documents that would be injurious to their independence in regard to their journalistic programming. As I said in my opening comments, if the members were to have a greater comfort level, they may want to add something to independence, such as freedom of expression.

But the prejudice test is an extra level of protection that I think should be enjoyed by a public broadcaster and that isn't commonly enjoyed by government departments.

• (1555)

Mr. Scott Andrews: But I think the departments you referred to with regard to the injury-based test were CSIS and National Defence.

Mr. Brent Rathgeber: There are some, but it's not common.

Mr. Scott Andrews: So would your injury-based test be based on the same principles as those in CSIS and National Defence?

Mr. Brent Rathgeber: Well, yes and no. The test is to demonstrate harm, and the onus is on the group stating that the documents shouldn't be released. With respect to national security agencies, the test is one of national security and whether that would be prejudiced.

This test will be fine-tuned for the needs of a public broadcaster, and will specifically be about whether their independence will be compromised with respect to their journalistic, competitive, or programming activities. It will be specific to what they do; they're not involved in national security like CSIS is.

Mr. Scott Andrews: The commissioner also said, when asked about the protection of journalistic sources, that she doesn't believe that any amendment to your bill is necessary, or that your bill would not protect journalistic sources. What are your thoughts on her comments?

Mr. Brent Rathgeber: Well, I absolutely agree with them. She has many arguments as to why an exclusion for journalistic source documents shouldn't be entertained by this committee.

First of all, it's her position—and I agree with it—that all decisions of information officers should be reviewed independently of government. She is independent of government. She's an officer of Parliament. She has maintained that journalistic source privilege is not absolute. The courts have said so. Somebody has to apply their mind to Professor Wigmore's four-pronged test to determine whether or not journalistic source privilege applies.

I think what resolves the issue clearly is the fact that the name of an individual is private information under the Privacy Act. If a document were released that contained the name of confidential journalistic sources, it would have to be redacted, because the name of an individual is private and protected by the Privacy Act. I believe all of this concern about journalistic source privilege is really a bit of a non-starter.

Plus, she's done 1,200 cases with the CBC, and not a single one of them has dealt with journalistic source privilege. That's not to say that one might not arise, but we seem to be using an inordinate amount of time dealing with this one problem that the Information Commissioner of Canada doesn't even think is an issue.

Mr. Scott Andrews: With regard to disclosure of salaries, your bill covers the Privy Council Office?

Mr. Brent Rathgeber: My bill doesn't cover the Privy Council Office, but the Access to Information Act covers the Privy Council Office, so yes.

Mr. Scott Andrews: Okay.

What about the Prime Minister's Office? Your bill doesn't cover the Prime Minister's Office, but it covers the Access to Information Act. But the Prime Minister's Office is exempt from the Access to Information Act.

Mr. Brent Rathgeber: Yes, that's correct. My bill makes amendments to the Privacy Act and it makes amendments to the Access to Information Act, but the Prime Minister's Office and Parliament are not subject to the Access to Information Act, so these changes, *prima facie*, would not apply to the Prime Minister's Office.

Mr. Scott Andrews: When we talked about bonuses of employees, I believe that when you were giving some testimony last time you were here, you talked about a base salary for somebody above DM-1 and said that their salary comprises not only their salary but also their bonuses. Is it ironclad in your bill that those two numbers would be disclosed as one number?

• (1600)

Mr. Brent Rathgeber: No. As I said in my opening comments, Mr. Chair, it's certainly the intent of the bill that bonuses, which can be as high as 39%, should be disclosed. The specific "salary" is the word that Bill C-461 uses. Members of the committee might want to think about an amendment to make it clear that the word "salary" includes bonuses, or they might want to just say "salary and bonus".

I'm not sure if it's clear enough, but I can tell you that as the author of the bill it was my intent that both specific salaries and specific bonuses be subject to disclosure. Based on reflection, I'm not entirely convinced that the words "specific salary" are broad enough to encapsulate maximum performance awards or bonuses.

Mr. Scott Andrews: That would be something our clerk could look into when we have our legal person here with the Library of Parliament. I think we could get that answered at that time when we get to that stage.

[Translation]

The Chair: We will look into that.

Mr. Butt, you have seven minutes.

[English]

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you, Mr. Chair.

Thank you, Mr. Rathgeber, for coming back.

I understand the spirit of what you're proposing in your private member's bill. I know that you've done a lot of homework and a fair bit of stakeholder work on this. I want to give you a bit of my perspective, because I come from the province of Ontario and I'm very familiar with the Ontario government sunshine list.

Again, I think the spirit of the sunshine list may have made some sense, but I think it's completely unworkable now. It's way beyond the scope of what I think the original idea was, and it's actually costing the Government of Ontario a lot of money to administer. As a member of Parliament, I'm not really into creating more bureaucracy in Ottawa. I'm for transparency, but I'm not for greater levels of bureaucracy being created.

You're not proposing an actual sunshine list that will be released each year listing the thousands of people all earning \$160,000 now, similar to what members of Parliament are paid. That's not what you're talking about, right? You're not talking about this massive list every year that someone has to compile to send out thousands of names of people who work in all kinds of different government departments, such that if they have a salary of \$160,000 plus \$1 and higher, their names are going to be published each and every year. That's not what you're proposing, are you?

Mr. Brent Rathgeber: That's correct, Mr. Chair. The amendments to the access act and to the Privacy Act do not call for a publicly viewable website. Although I'm conceptually not opposed to the concept, that would require resources on the crown, and therefore would be beyond the scope of the private member's bill.

My bill amends the access act to allow individuals who pay the fee and fill out the form to receive disclosure information pursuant to their access request. But you're quite right, Mr. Butt, there's no proactive or publicly available or annually released sunshine list. This is an amendment to the Access to Information Act.

Mr. Brad Butt: Okay.

So what would be the benefit to a private citizen of filing this, of wanting to know what a middle-level bureaucrat in some department somewhere was being paid, assuming the amount was \$160,000 and greater? I mean, what would be the benefit, of the thousands and

thousands of people who work for the government and for crown corporations at that level...which I still think is a level, like the sunshine list in Ontario, where it's \$100,000 and greater?

I'm trying to wrap my head around what the real public benefit value is of average citizens filing these ATIP requests all the time, to find out what someone's salary is at a medium level within the public service. What is the ultimate overall benefit of that? Someone's hired to do a job. They're being paid within a salary range that has already been established within the public service at whatever level they've been hired to work at.

I'm just trying to get my head around the real public service benefit of this kind of disclosure on these potentially hundreds of thousands of ATIP requests or information requests coming in every year to find out what Joe Smith makes working in the Department of Public Works.

Mr. Brent Rathgeber: As I indicated in my opening comments, or perhaps when I was here last week, this type of disclosure allows taxpayers or applicants to compare the performance of an organization with the compensation that is provided to the people running that organization.

I live in Edmonton, as the members probably know, and we have an office of the Department of Fisheries and Oceans. Many of my constituents don't understand what the individuals in that office do, or why they're even there, for that matter. Not to be too harsh, but the perception of DFO on the prairies is often that they're there just to create rules and then have a reason to go out and administer them. I'm not saying that's true, but that's a perception that is often provided to my office with respect to the Department of Fisheries and Oceans in a city where there are neither oceans nor fish.

This would allow individuals to determine exactly how their tax dollars are being spent, what those individuals who are being paid by their tax dollars earn, and what those people purportedly do to earn those tax dollars. It's information that allows taxpayers to assess the value they're receiving for their tax dollars.

• (1605)

Mr. Brad Butt: Did you do any financial analysis of what the costs might be to administer a program like this?

Mr. Brent Rathgeber: No, because I don't know how many there will be. We're not creating a website, and there's really no way to know in advance whether there will be hundreds or thousands, or tens of thousands, or zero, applications pursuant to specific salary disclosures.

I can't predict that, so no, I haven't done a cost-benefit analysis. I don't think that one is practical.

Mr. Brad Butt: Do we know how many individuals there are at the \$160,000-a-year or higher level? That's across all government departments, all crown corporations, the Privy Council Office, and, as Mr. Andrews said, any of these other departments. Do we have any idea of how many actual employees could potentially be subject to an ATIP request?

Mr. Brent Rathgeber: We can't know, Mr. Butt, because currently the government will only disclose ranges of salaries.

Mr. Brad Butt: But even if you used the ranges—

Mr. Brent Rathgeber: I don't know how many people make \$160,000 or above, and I don't know how many people make \$188,000 or above, because all I'm entitled to under access to information are these broad ranges. For some of these ranges, the increment is \$64,000. It's absolutely impossible to determine how many people will be covered at whatever level the committee decides to set the benchmark.

Mr. Brad Butt: Do I have more time, Mr. Chair?

[Translation]

The Chair: Forty-five seconds left.

[English]

Mr. Brad Butt: Thank you.

So we're not talking about setting up a registry. We're just talking about whether individuals themselves, or organizations, or whoever wants to file information requests out of their own free will, and we're not 100% sure how many we're talking about in the course of a year. Your request now of the committee is to lower the amount to \$160,000 a year from \$188,000.

Is that what you're asking the committee today?

Mr. Brent Rathgeber: My first request was that you pass the bill unamended.

I understand that the government is going to table an amendment raising the bar from the lowest level of DM-1 to the highest level of DM-4. However, if the committee is seriously entertaining amendments, if you're going to open up the benchmark, you should be mindful that you haven't heard any evidence to support that proposition. The only evidence you have heard is that the proposed bar set in this bill is too high. The Canadian Taxpayers Federation and the National Citizens Coalition advocated that it should be lowered to \$100,000.

I think \$100,000 is too low. I think it might have been the right number in 1995 or 1996, whenever Ontario established its sunshine list, but they haven't indexed it for inflation, which incidentally is why this legislation doesn't have a number. It doesn't say \$188,000; it says the lowest level of DM-1. If you were inclined to go to \$160,000, I would suggest that the words you insert are "the sessional allowance payable to a member of Parliament". The reason the legislation has a category benchmark, as opposed to a number benchmark, is that it automatically indexes it for inflation. As the specific salary goes up, pursuant to that job classification, the disclosure bar automatically rises along with it.

[Translation]

The Chair: Thank you.

It is now Mr. Nantel's turn for seven minutes.

Mr. Pierre Nantel (Longueuil—Pierre-Boucher, NDP): Thank you very much.

Thank you, Mr. Rathgeber, for appearing before the committee again to speak to us about your bill.

Obviously, with friends like yours, things must be tough. I have no doubt that you are a very honourable member for your constituents. You represent people who think like you. If I were in your place, however, I would be unhappy, indeed, because it is quite

obvious that your two-headed bill will likely get run over. One of its heads will be whitewashed by a government amendment. As far as the other head goes, you must be despairing somewhat after hearing so many independent journalists say that it jeopardized healthy journalistic work.

In that perspective of justice, I would like to ask you how you react to learning that people like Tony Accurso won't end up in the hands of the authorities after an inquiry like the Charbonneau commission. How do you respond when all those people say to you, objectively, that it will not be possible to do work similar to that done for a program like Alain Gravel's, which led to these people potentially being arrested?

• (1610)

[English]

Mr. Brent Rathgeber: With respect to journalistic sources, it's my view and the view of the Information Commissioner that nothing in Bill C-461 compromises the CBC's ability to offer assurances to confidential sources that their identities will be protected.

We've gone through them, but I'll start with the one I finished with. Anybody's name is private; it's personal information under the Privacy Act. If a document were to be released, the name of the individual would have to be redacted because it's personal information.

I think the problem—and I said I'm open to this, as you know, because you and I have talked privately—is that if the word "independence" is inadequate to protect the CBC's journalistic competence, then that could be modified. It was suggested last week that "independence" be modified by adding "freedom of expression and independence", and that this might provide a greater comfort level. I would be open to that type of an amendment, because the purpose of this bill is not to jeopardize the Canadian Broadcasting Corporation's ability to operate as a broadcaster, or its journalistic integrity.

I believe that not disclosing documents relating simply to activities is not the proper test. We've seen anecdotes as to what happens when documents cannot be released simply because they relate to activities. The National Citizens Coalition indicated that they tried to find out how many vehicles were in the vehicle fleet, and that information wasn't disclosed.

In my view "activities" is too broad. Based on the evidence I heard, I'm going to concede that "independence" might be too narrow. If the members are comfortable with modifying that and adding the words "freedom of expression", as has been suggested, I would be comfortable with that.

However, Mr. Nantel, as you know, I don't get to propose amendments at this committee, nor do I get to vote on them.

[Translation]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you, Mr. Chair.

I am going to use the rest of my colleague's time.

You rightly pointed that, nearly seven years after the Conservative Party came to power, Canada is ranked 55th or 56th in the world when it comes to transparency. That isn't a very stellar record for a party that advocated the importance of cleaning up the management of public funds and increasing transparency. That's an admission of failure by your account.

Many departments and agencies have much more serious problems than those at CBC/Radio-Canada, to whom the Information Commissioner gave an A rating, let's not forget.

Why, then, are you going after CBC/Radio-Canada? Other departments have a considerable number of problems, not to mention the fact that your party has a pretty abysmal record when it comes to transparency. Why go after something that's working well, when you should be fixing what's actually broken?

[English]

Mr. Brent Rathgeber: Mr. Boulterice, just for clarification, as I think the Information Commissioner confirmed when she was here last week, the report card dealt only with the timeliness of responses, not with breadth of information disclosed. While the CBC did improve and got an A on their last report card with respect to how quickly they were turning over their access requests, I don't think you should read into that or conclude that the breadth of their disclosure has increased.

I agree with you that it would be preferable if there were a comprehensive re-examination of the access to information legislation in Canada. When Canada first got access to information legislation in 1982 or 1983, it was deemed to be at the cutting edge. We were world leaders, and now 30 years later we've become laggards. Our international ranking has gone to 55th out of 93 countries surveyed.

The problem is that I don't see a comprehensive overhaul of Canada's access laws coming any time soon. Maybe that's a project the committee might undertake.

So we're left with individuals who lobby for specific changes to the Access to Information Act. As you know, I tabled questions in

the House of Commons about 18 months ago with respect to the Canadian Broadcasting Corporation, comprising a compendium of issues my constituents had asked me about over the years regarding the CBC, things they were curious about but couldn't find out.

This private member's bill is very limited in scope and very specific. It corrects what I think are some problems with section 68.1, as confirmed by the Federal Court of Appeal. It attempts to bring some meaningful salary disclosure with respect to the top managers in the federal public service, but I admit that it's not a comprehensive change and is very specific and, therefore by definition, piecemeal.

• (1615)

[Translation]

The Chair: Thank you, Mr. Rathgeber.

That brings your appearance before the committee today to a close. Thank you again for coming back a second time.

We will now move on to the second item on our agenda, which we will discuss entirely in camera, in a couple of minutes.

Just before that, I would like to remind everyone that tomorrow is still the deadline to provide the clerk with amendments to Bill C-461, by 9 a.m. We will consider them on Wednesday, as part of our clause-by-clause study.

I will now suspend the meeting for a few moments, just long enough to switch to the second item on our agenda.

Did you have something to add, very quickly, Mr. Rathgeber?

[English]

Mr. Brent Rathgeber: I want to thank all the committee members for their interest in this bill, and wish you well in your clause-by-clause deliberations on Wednesday.

[Translation]

The Chair: Thank you.

[Proceedings continue in camera]

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