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Chair

Mr. Bob Zimmer

Standing Committee on Access to Information, Privacy and Ethics

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● (1530)

[*English*]

The Chair (Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC)): Good afternoon, everybody. I call this meeting to order.

This is the Standing Committee on Access to Information, Privacy and Ethics, meeting number 72. We're dealing with Bill C-58, An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts.

I'd like to welcome via teleconference, from the Canadian Civil Liberties Association, Cara Zwibel; from Democracy Watch, Duff Conacher; and from the Canadian Journalists for Free Expression, Gordon McIntosh.

We'll start with the Canadian Civil Liberties Association.

Go ahead.

Ms. Cara Zwibel (Acting General Counsel, Fundamental Freedoms Program, Canadian Civil Liberties Association): Thank you.

Good afternoon, members of the committee.

My name is Cara Zwibel. I'm the acting general counsel at the Canadian Civil Liberties Association.

I'd like to thank the committee on behalf of the CCLA for the opportunity to appear before you in relation to your study of Bill C-58. While time will not permit me to comment on all aspects of the bill, I hope to highlight a few of the most significant concerns that the CCLA has about the proposed changes to the Access to Information Act.

In brief, I'm going to speak about new barriers to making requests for information, the absence of a public interest override, the order-making power that's been given to the Information Commissioner, and the new proactive publication requirements.

Before I get into the bill's substance, I want to emphasize how important a strong access regime is to a vibrant democracy. Without information about how our government functions, we simply cannot participate meaningfully in our democracy on a daily basis nor can we make informed choices at the ballot box. The transparency that can be facilitated by way of a strong access regime is also a vital means of ensuring that those in government remain accountable.

The Supreme Court of Canada has recognized that access to information is a right that derives from the charter's protection of freedom of expression, and arises where it's “a necessary precondition of meaningful expression on the functioning of government”. CCLA submissions on this bill are grounded in those principles.

I think we're all aware that the Access to Information Act has been in need of a major overhaul for many years. I would remiss if I failed to tell the committee that CCLA is deeply disappointed with Bill C-58. It is not the comprehensive reform that's needed, and frankly, it's no answer to say more is coming down the road. We have been studying the need for a new regime for many years and have benefited from this committee's own study and comprehensive recommendations as well as those of the Information Commissioner. Now is the time for action.

The proposed amendments in Bill C-58 do not address a number of the long-standing concerns related to the act. In particular, the long list of exceptions and exemptions have not been narrowed or addressed in any way. There is no right of access in relation to ministers' offices, even though this was one of the promises made by the government prior to the election, and the bill does not create a duty on government offices to appropriately document decisions, a tool that would help to ensure that the kind of information Canadians may want and are entitled to will exist.

Although the act includes a new articulation of purpose and even a new long title that suggests greater openness, in our view the changes in the act may impose new barriers to individuals seeking information about their government. There are a few ways in which it would be harder for individuals seeking access if the changes proposed in Bill C-58 are adopted.

First, while the government initially promised to get rid of all fees except for the initial $5 filing fee, the bill does not do this. Instead, it eliminates some of the existing limitations on fees that are articulated in the act and moves the fee-setting function to be done via regulations. Fees are barriers to access. While we believe they should be eliminated, if they are going to be retained, they should at least be clearly limited in the act itself. For example, the act could specify what categories of items would be subject to fees or which categories an institution could not charge fees for. While we can appreciate the reluctance to specify dollar amounts in legislation itself, deferring the entire question of fees to be dealt with by regulation is of serious concern and a strange way to proceed in a bill about openness and transparency.

Another way in which Bill C-58 can make access harder for individuals seeking information is set out in proposed section 6, which delineates the items that must be included in a request for access, and proposed section 6.1, which grants heads of government institutions the right to refuse requests that are non-compliant.

● (1535)

Very often, requesters know the kind of information that they want, but not necessarily the types of records or where that information will be found. They may not know the dates that they should be searching for or what form the records may take, and since the bill also eliminates the need, the obligation on institutions to publish Info Source, to publish the types of records that they create, even less information will be available to help a requester figure out how to appropriately frame more requests.

If you have ever made an access to information request, you know that if you're dealing with a professional access person in a government institution, very often they will work with the requester to figure out how to frame the request. The amendments in the bill suggest that a request that is not framed properly can simply be refused. I know the committee will be hearing in the next session from the National Claims Research Directors about how these requirements may frustrate the resolution of historic claims of many first nations communities. CCLA shares these concerns.

There appears to be no clear benefit to be gained from these amendments, but very real risks to the right of access. We urge the committee to remove those new requirements.

In addition to the right to refuse access to records if the criteria in section 6 are not met, there are other new grounds for refusing a request articulated in proposed subsection 6.1(1), including where the request is too large or complex, such that it will unreasonably interfere with the operations of the government institution, or where the institution's head finds the request to be frivolous, vexatious, or made in bad faith.

It isn't clear from the bill what would guide a government head in applying these criteria or how clearly the reasons for refusal will be communicated to the requester. There may be very valid and important requests that could be turned away based on their complexity or size, such as requests relating to how our prisons function or to operations at our borders. The fact that these requests may require a lot of work does not mean that there is no right of access.

The overall tenor of these amendments is that providing information to the public about a government institution is a chore or an afterthought and reinforces the notion that the information belongs to the government rather than the public. Providing access to the public should be seen as a core function of government institutions. The new rights of refusal send the wrong message to requesters and to access officers.

In addition to the new barriers that the bill creates for requesters, I also want to discuss the exemptions and exclusions under the act, and here I want to focus on the absence of a public interest override.

In our view, a public interest override is an important safeguard that should be included in the act.

The application of exemptions and exclusions, which is largely untouched by this bill, is complex and will be rendered more so by some of the changes proposed in the bill. However, beyond the technical and legal interpretation of all of the provisions in the act, the fundamental question at issue in an access request is whether the public has a right to know. A public interest override is a mechanism to ensure that this question gets answered and that it gets answered correctly. There are some provinces that have such an override in their legislation. We encourage the committee to look at those models and to consider an amendment to the bill to insert a public interest override.

Next, I want to address the order-making power that has been given to the Information Commissioner. That the commissioner be given the power to make orders is something that CCLA and many other organizations were in favour of and have been requesting for a long time. We believe strongly that the commissioner needs this power, but the scheme in the bill grants it and at the same time undercuts it. In particular, where judicial review of the commissioner's order is sought, proposed section 44.1 of the bill specifies that the review will be *de novo*, that no deference will be given to the commissioner's decision, and that the government department can rely on new reasons for refusing the access.

Frankly, I simply can't understand the rationale for framing the order-making power in this way. This approach places a greater burden on our courts, it ignores the significant expertise that resides in the Information Commissioner's office, and it doesn't provide government departments with any incentive to put their best arguments or information forward initially, either to the requester or to the Information Commissioner.

● (1540)

It will allow for a more drawn-out process, and thus may frustrate a requester's intent by ultimately producing stale information, if information is ever produced.

The commissioner needs robust order-making powers, and review should be of the commissioner's order. We recommend amending this aspect of the bill.

Finally, I want to comment on the new proactive publication provisions that apply to—

The Chair: Can you close up your testimony? You're at 10 minutes, so could you just finish off?

Ms. Cara Zwibel: Yes. This is the last point.

On the proactive disclosure piece, this is not a substitute for a strong access regime. The proactive publication regime established by the act lets the government decide what Canadians can see and applies primarily to financial information. Canadians have many other concerns that are not covered by this proactive publication. The Information Commissioner plays no role in overseeing the proactive publication regime. There appear to be no consequences for an entity that simply ignores the requirements. These appear, actually, to be proactive publication suggestions.

This is not the open and transparent government that Canadians want and deserve, and it's not the overhaul of the access act that is clearly needed.

Thank you.

The Chair: Thank you.

We go next to Duff Conacher for 10 minutes.

Mr. Duff Conacher (Co-Founder, Democracy Watch): Thank you very much for this opportunity.

[*Translation*]

Thank you for giving me the opportunity to make a presentation to the committee.

My presentation will be entirely in English, because there are many technical terms in this political issue. I should practise my French a lot more so that I could use those terms.

[*English*]

I will not go into some of the details that Cara Zwibel has already provided on behalf of the Canadian Civil Liberties Association, because Democracy Watch is in full agreement with the points made during her presentation. I'll focus instead on a few other areas of concern.

First of all, with regard to the bill overall, the bill breaks the promise that the Liberals made in the open government section of their 2015 election platform, and it also takes steps backwards—big steps backwards—in access rights. The Liberals have also failed to keep their international open government partnership commitments, as weak as those commitments were.

Tens of thousands of voters have sent messages through Democracy Watch's open government campaign page calling on federal parties to make key changes to the act. The public has been consulted numerous times. I have here the report of the task force from 2002, and also my submissions made in 2009, which resulted in a unanimous committee report, and that can only lead me to question what has happened to the Liberals since 2009, because in 2009 they agreed to several of the changes that are not included in Bill C-58.

In 2011 and 2013, twice through the international open government partnership process, the public was consulted and interest groups were consulted. The Information Commissioner consulted and issued a report in late March of 2015, recommending many key changes. The Liberals consulted on their 2016-2018 open government partnership plan.

The result of every single consultation has been a broad, strong call from the public and citizens' groups to make several key changes that are not included in Bill C-58.

To be credible, the Liberals on this committee must agree to the key open government changes to Bill C-58 that many groups and past committees and reports have called for over the past 15 years. The act and the open government system have been reviewed several times, and there is a consensus on key changes that must be made. There is simply no justifiable reason for any further delay in making the changes. If these changes are finally made, the current federal law, which really should be called “The Guide to Keeping Secrets Act”, will finally become a real access to information act.

I will talk about just a few of the changes that Democracy Watch believes are key and about the Open Government Coalition as well.

First of all, any type of record created by any entity that receives significant funding from or is connected to the government or was created by the government and fulfills a public interest function should be automatically covered by the law, as in the United Kingdom.

As well, all exemptions under the law must be discretionary and limited by a proof-of-harm test and a public interest override, as in B.C. and Alberta.

Also, every entity covered should be required to create detailed records for all decisions and actions, to routinely disclose records that are required to be disclosed, to assign responsibility to individuals for the creation and maintenance of each record, and to maintain each record so that it remains easily accessible, as in the United Kingdom, the U.S., Australia, and New Zealand.

Fourth, the access to information law and system should allow anyone who does factual or policy research for the government to speak to the media publicly about any topic they are researching and the findings and conclusions of their research without being required to first seek approval from anyone.

Then, to go to the overall system and enforcement, severe penalties should be created for not creating records, for not maintaining records properly, and for unjustifiable delays in responses to requests.

● (1545)

The order-making power of the Information Commissioner is rather meaningless without any consequence or penalty for violating the law. Like any law, the Access to Information Act is just nice words on paper. Enforcement is key, and penalties are key in terms of effective enforcement. It always seems that when politicians write rules that apply to themselves, they leave out penalties, while imposing huge penalties on others for similar activities.

The Information Commissioner should be given explicit powers to order the release of a record—as in the United Kingdom, Ontario, B. C., and Quebec—and to penalize violators of the law with high fines, jail terms, loss of any severance payments, and partial clawback of any pension payments if the person resigns to try to escape a penalty.

As well, the Information Commissioner should be given the power to require systemic changes in government departments to improve compliance, as the commissioner in the United Kingdom has.

The funding should be increased to solve backlog problems instead of increasing administrative barriers such as set out in proposed sections 6 and 6.1—and Ms. Zwibel summarized very well the problems with those sections—and/or limiting requests in any other way, including fees.

Parliament must be required to review the act, as set out in this bill —one of the few key measures made—every five years.

Another key, and I'll end on this, is that the commissioner's appointment process must be changed before the new commissioner is appointed. The rules have not set up a merit-based, open, transparent, independent appointment system for cabinet appointees. The ministers still control the appointment process entirely.

I am disclosing today that I've applied to be Information Commissioner, I have 30 years' experience working with provincial and federal laws, and I have not even been contacted in response to my application. I am sure there are many others the government does not want to be commissioner—because they will be a watchdog—who are also well qualified and have not been contacted.

Ministers control this entire process still. That's not an independent or merit-based system. It's political and it's partisan. It has to stop. This government is going to select an Ethics Commissioner, Commissioner of Lobbying, Information Commissioner, RCMP commissioner, Chief Electoral Officer, and Commissioner of Official Languages through a process that's political and partisan. You don't end up with watchdogs with that kind of process, as we saw with the fiasco over the attempt to appoint a former Ontario Liberal cabinet minister as official languages commissioner in the spring.

The process must change to be actually independent and merit-based, and that means having a commission made up of people who are non-governmental, who will do a merit-based search publicly and come up with a short list. The cabinet should then be required to choose from among that short list.

There have just been recommendations made by such a committee for Supreme Court judge positions that are coming open. If it's good for Supreme Court judges, it's good for the judges of ethics, transparency, whistle-blower protection, official languages, the RCMP, and elections law in Canada. The same process should be used as for Supreme Court judges, and if the Liberals try to appoint these lapdogs that they want to these key democratic, good governance, watchdog positions, you better believe that Democracy Watch and many people in the public will resist every step of the way. Change the system before the new commissioner is appointed and give it over to an independent commission that will recommend a short list, as you're doing with Supreme Court justices. That was a good move. Do it with all judges of whether the government is following the law, please.

I welcome your questions. Thank you.

● (1550)

The Chair: Thank you, Mr. Conacher.

Next up is Canadian Journalists for Free Expression, with representative Gordon McIntosh.

Mr. Gordon McIntosh (Director, Canadian Committee for World Press Freedom, Canadian Journalists for Free Expression): Hi. I'm a director of the Canadian Committee for World Press Freedom. I was asked by the Canadian Journalists for Free Expression to fill in for them this afternoon. We frequently partner with them. The CCWPF is a UNESCO-sponsored organization.

We were gratified that the legislation gives the commissioner the authority to order release of the information instead of having to go to court every time there is a disagreement. That is a step forward.

However, beyond that, we're concerned about a section of the act dealing with nuisance and vexatious requests, and we hope that is amended—if it is necessary at all—so that at least it's up to the commissioner, not a particular department, to release the information.

Overall we regard Bill C-58, as it stands, as a lost opportunity. We agree with the Centre for Law and Democracy that the bill is far more conspicuous for what it fails to do. In fact, we agree with the commissioner that much of this amending legislation is regressive. That was their exact word.

As you know, the government had promised to make itself open by default. Indeed, a promise was made that the ATI law would be amended to include the Prime Minister's Office and ministers' offices. In Bill C-58, the Prime Minister's Office and the offices of ministers and others remain off limits to information requests made under the act. In what the BC Civil Liberties Association calls a “bizarre sleight of hand”, the PMO and ministers' offices will be required to release such things as travel expenses or contracts and other documents designated for proactive disclosure, but it's strictly at their discretion.

Some might claim this fulfills a promise. We find that curious. It's a situation in which Canadians would be entitled to certain types of information, but they just couldn't ask for the information. That may make sense to somebody, but I don't think it makes common sense. It's logic worthy of a script from *Yes, Minister* and Sir Humphrey Appleby, or more worthy of Mackenzie King: transparency if necessary, but not necessarily transparency.

We are, however, glad to see that the ministerial mandate letters are under the proactive disclosure section in the legislation. That's a step forward for Canadian transparency in government. We're glad it's being codified for the sake of permanence.

Let me conclude by saying that updating federal legislation to the information law in Canada remains very much a work in progress. We urge this committee to make improvements. Bill C-58 is a big step toward finishing the job. We realize this is going to be a long haul.

Thank you.

● (1555)

The Chair: Thank you, Mr. McIntosh.

Our first round of questions will be seven minutes, starting with MP Erskine-Smith.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks very much, all.

Mr. McIntosh, you raised concerns about the vexatious and nuisance aspects and you said it should be up to the commissioner. I think when Minister Brison was before us, he indicated that the idea was that the department would make the original determination that could then be referred to the commissioner, and the commissioner would then make an order as to whether that was an appropriate determination. It would be subject to the commissioner's order-making power in the end. Would that satisfy your concern?

Mr. Gordon McIntosh: It sounds as if it would. I'd have to see the language, but yes, probably.

Mr. Nathaniel Erskine-Smith: Okay. That sounds good.

Mr. Gordon McIntosh: Then again, that's if that section is really necessary. I'm not sure it is.

Mr. Nathaniel Erskine-Smith: Mr. Conacher, you mentioned our report. We made a number of recommendations in studying the Access to Information Act, and that had been a recommendation based on the evidence we heard. You indicated that you agree with many of the commissioner's recommendations, and that too was a recommendation of the commissioner in her report.

Cara, it's good to see you again. In this special report the commissioner indicates that she'd like some power to certify the order more easily. We've done some research and found that this does exist in other pieces of legislation. I know it exists in B.C. It might exist in others. Do you think this would solve the problem you have identified with order-making?

We had the department officials before us last week. They indicated that mandamus is sufficient and that the commissioner doesn't need this additional power. I wonder what you have to say to that.

Ms. Cara Zwibel: I'm not sure how it would work if the provision regarding judicial review to the court maintains that same language around *de novo* review. I don't know if having the commissioner's order certified by the court would do anything to that, if it would bring it into an ordinary appeal procedure where you'd be looking at and reviewing the commissioner's decision, rather than reviewing the whole process as a new hearing—

Mr. Nathaniel Erskine-Smith: You're saying that your main concern is that it's *de novo*.

The way I understand it is that in the Federal Court this happens quite a lot. There are certain instances with judicial review where there's a reasonableness standard, but there are also instances where *de novo* reviews happen. We had Newfoundland before us, and their commissioner has middle-ground power. The Privacy Commissioner actually recommended this middle-ground power. We ultimately didn't recommend that, but the Canadian Bar Association was before us and recommended it, and certainly said that as a first step it might make sense to adopt what Newfoundland has adopted, and then, if need be down the road, go further. There are some concerns that we haven't applied this to ministers' offices, which I understand and I accept, but the order-making power doesn't strike me as a great concern.

Do you think what the CBA and what Newfoundland recommended to us seems reasonable?

Ms. Cara Zwibel: The problem is that I think it really guts the order-making power significantly, because it provides no incentive for government institutions to put forward their best case. If the decision is to refuse access, they can put forward.... You have to remember there are journalists who are well versed in how to navigate the access system, but there are others who are not.

A government institution can refuse based on one exemption. That can be reviewed by the Information Commissioner. She or he may disagree and make an order, and then once it gets to court, the government institution can pull out a bunch of other exemptions that they think apply, a bunch of other reasons.

● (1600)

Mr. Nathaniel Erskine-Smith: But there's an important step in between there, which is that the government has to take the commissioner to court. I think that's an important consideration to keep in mind. I doubt that many departments are going to want to expend the resources or take on the public scrutiny to do so. Perhaps it remains to be seen. We could sit here five years from now, or whenever we're forced to review this again by the new legislation, and find that you may well be right.

You hit upon something when you said that maybe reporters are knowledgeable about it but that maybe others aren't so knowledgeable. On proposed section 6 you identified some concerns. I just want to drill down. Proposed section 6 indicates that one would have to identify the specific subject matter of the request, the type of record being requested, and the period for which the record is being requested or the date of the record.

I'd open this to Mr. Conacher, and also you, Cara. What specifically do you have concerns about in relation to that language?

Mr. Duff Conacher: Well, they are similar to what you were just talking about in terms of the government giving reasons and then being able to change the reason. Access delayed is access denied, and this is simply going to cause another back-and-forth between a government and a requester that is going to delay access. So does the order-making power, in allowing this kind of review back and forth and for the court to be able to consider it *de novo*. It just means that another step could be taken in the whole process, and that means more delay, and access delayed is access denied.

Mr. Nathaniel Erskine-Smith: But it's not unique to the Federal Court. Focusing on the *de novo*, I think, is a misguided focus. This is not a unique review mechanism for the Federal Court to undertake.

With respect to proposed section 6—the specific subject matter of the request, the type of record being requested, and the period for which the record is being requested or the date of the record—what specifically is problematic about those three items?

Mr. Duff Conacher: It's the specific information being requested.

Mr. Nathaniel Erskine-Smith: Then "all of it", I guess, is the answer.

Mr. Duff Conacher: It's especially the specific information being requested, because a member of the public may not know exactly how to be specific, so then the person in the government says, "Not specific enough".

Mr. Nathaniel Erskine-Smith: Well, it says the specific subject matter.

Mr. Duff Conacher: Not specific enough.

Mr. Nathaniel Erskine-Smith: But it's the subject matter.

Mr. Duff Conacher: I'm just saying you're adding a barrier. It doesn't need to be there.

Mr. Nathaniel Erskine-Smith: Fair enough.

When it comes to proposed proposed subsection 6.1.... How much time do I have left?

The Chair: You have 20 seconds.

Mr. Nathaniel Erskine-Smith: Okay, I'll leave it at that.

The Chair: Thank you, Mr. Erskine-Smith.

We'll go to MP Gourde for seven minutes.

[*Translation*]

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Mr. Chair.

I want to thank the witnesses here with us today for their statements and their expertise.

In all my time as an MP, I have rarely seen a bill so roundly criticized by everyone. Our committee has to conduct its examination, but everyone who has spoken on the bill is practically asking us to reformulate it.

In your opinion, what are the main changes we should make, in order to ensure that we aren't taking a step backwards with this bill? Rather than taking a step forward to improve access to information for all Canadians, we all get the sense that we are moving backwards. We want to go forward, and we don't want the status quo, but there will have to be some good recommendations.

You can all answer in turn.

[*English*]

Ms. Cara Zwibel: I think the most significant thing would be to bring the ministers' offices and the Prime Minister's office into the access regime itself. The proactive disclosure and the proactive publication provisions don't accomplish what the access regime can accomplish. That would be a key recommendation.

I mentioned the order-making power. I do think it's significant that this *de novo* review does undermine the ability of the commissioner to make orders. We know that sometimes when access requests are made, time is of the essence. If you're reporting on something, getting the record in three years—which is not at all uncommon under our current access regime—simply does nothing for you.

I think those barriers that I spoke of and the *de novo* review are other things that certainly need to be addressed.

● (1605)

[*Translation*]

Mr. Jacques Gourde: I am listening, Mr. McIntosh.

[*English*]

Mr. Gordon McIntosh: To tell you the truth, beyond the ministers' offices and the PMO being brought in under the act where they belong, I would like to see some sort of performance review on waiting times.

I filed my first information request way back in 1983. I can remember that back then, 30 days was reasonable, and sometimes you got your request back before 30 days. Over the years, 60 days has become the norm.

I just received a notice on a request I made about 40 days ago. I got an acknowledgement on day 38 that they had received my request, and then two days later they told me they needed a 120-day extension.

The excessive waiting has become normalized in the system. I think we need to look at benchmarks and I think we need to improve it the same way we have to improve wait times at hospitals. It has become something that is systemic. That's a change I would like to see.

[*Translation*]

Mr. Jacques Gourde: Mr. Conacher, you have the floor.

[*English*]

Mr. Duff Conacher: I'll just go through my key recommendations very briefly.

All government institutions should be covered, and all public interest and publicly funded institutions should be covered. All should be required to record every decision and action. All the exemptions should be discretionary, with a public interest override and a proof-of-harm test. The commissioner should be given the power to not only order the release of records but also to order a cleanup of the information management system and penalize people for violations of the law and violations of those orders.

Finally, in terms of not just increasing funding but also making the Information Commissioner more independent, the appointment process has to change, and not just for this watchdog. Currently all these people are lapdogs, in that the cabinet gives them their jobs. Their jobs are also renewable. That creates bad incentives in both ways. If someone gives you a job and it's renewable, you owe that person, and it's easy for them to select a lapdog and then renew that lapdog.

That's where I think this is headed. We have these very few steps forward—the order-making power—so then the Liberals put in place a lapdog who never makes any orders, and then the complainants take them to court, and five years later maybe we can get some documents out. That's where this is headed, given that the promise to have an independent and merit-based appointment process has been broken.

[*Translation*]

Mr. Jacques Gourde: In the new bill, will the framework applying to the Information Commissioner restrict the scope of her actions, as compared to what she could do before? It does not seem to improve things very much.

My question is addressed to those who want to answer it.

[*English*]

Mr. Duff Conacher: I wouldn't say it limits the scope of her work, but we have an example in Ontario. I don't mean in terms of exemptions being closed, but I worked at the provincial office when it was starting up in the late 1980s with order-making power. It has existed for 30 years, so that whole process is well established in Ontario, and it has operated with most requests being solved by mediators. The order-making power does not have to be used most of the time.

Again, there are problems with exemptions and loopholes in the act, the fact that there are no penalties, and some of these other problems, but I don't think the act will reduce the scope of what the commissioner can do, other than these key measures in proposed sections 6 and 6.1 that will give the government even more reasons that would be justifiable under the law for rejecting requests. That's why those two sections are very dangerous. They expand the justifiable reasons for rejecting requests. Those loopholes will be abused, as others have been right back to 1983.

● (1610)

The Chair: *Merci.*

Next up, for seven minutes, is MP Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Chair.

Thank you to our witnesses.

I'm looking back through some quotes: “After all, a country's access to information system is at the heart of open government”, said the now Prime Minister when debating his own Bill C-613. I think one of his favourite quotes became “Sunlight is the best disinfectant.” He said, “transparent government is good government” during the election campaign.

We had the two relevant ministers in front of us just recently. We seem to have a great divergence of views from the Information Commissioner. I'm not sure I've seen a watchdog condemn a piece of legislation quite so vociferously before.

I'm quoting from her report:

> The government promised the bill would ensure the Act applies to the Prime Minister's and Ministers' Offices appropriately. It does not. The government promised the bill would apply appropriately to administrative institutions that support Parliament and the courts. It does not. The government promised the bill would empower the Information Commissioner to order the release of government information. It does not.

Let's just drill into something specific. What's the concern you have about trying to make proactive disclosure equivalent to access to information? We hear the government saying, “Isn't it wonderful? We have proactive disclosure. Why are you people complaining? We're just going to tell you about things. You won't even have to ask. We're going to tell you.”

Mr. McIntosh, from the media, from the point of view of the press holding government to account, what's the problem with government getting proactive in its disclosure?

Mr. Gordon McIntosh: It means that the requester—the citizen, the journalist, or whoever—is at the mercy of the largesse of whoever is in power at a particular time. I believe the list of proactive disclosures is not subject to any investigation by the commissioner. It's up to the government.

If I can have it, then all right, I should be able to ask for it.

Mr. Nathan Cullen: Yes, what's the difference, if they're going to give it to me anyway?

I have a question for you, Ms. Zwibel, around the notion of a lost opportunity. I think it was Mr. McIntosh who said that.

Can you expand a little bit? We got into the weeds, and I think you were trying to get in a last point. I think it was around proposed sections 6 and 6.1 as to the public interest, or was it the ordering ability of the commissioner? Where was your concern?

The minister said that government was not going to take people to court, that they are not going to go through the exercise of court. It's almost placed out as some sort of a fail-safe measure, because that would be such a hassle and expense.

What's your reaction to that argument?

Ms. Cara Zwibel: I think the reality is that if there's an order made by the Information Commissioner and the institution doesn't want to comply with it, that's exactly what they will do. They will seek review. It can be a very lengthy process, so while that review is pending, no information is getting out. We've seen cases go to court about the reasonableness of requesting an extra 1,200 days for complying with a request.

Mr. Nathan Cullen: Sorry, did you say an extra 1,200 days? They took that to court?

Ms. Cara Zwibel: Yes, there's a case that deals with that—

Mr. Nathan Cullen: That's ironic.

Ms. Cara Zwibel: —question of delay.

There is no reason to believe that the provisions won't be litigated —

● (1615)

Mr. Nathan Cullen: Yes. There has been a pattern of litigation in the past. If I'm a government agency and I don't want to tell the public what a war is going to cost, what a fighter jet is going to cost, or what happened in a scandal. When the sponsorship scandal was going on, I remember how hard it was to get information about what was happening with these government contracts.

If I simply deny the request, if I'm in a government agency and there is information that is going to be politically damaging to my boss, we're taken to court. It takes two, three, five years. The war has already been exercised. It might be over. Whatever scandal was going on has long since passed. The information is no longer damaging, and I've essentially shielded the public from knowing by not providing the transparency that the Prime Minister talked about.

Ms. Cara Zwibel: Yes, and in doing that, shielded any possibility of accountability for the individuals involved.

Mr. Nathan Cullen: Can we talk about the order-making powers for a second, and maybe open this up to all? That power was presented by both ministers as being a great thing. We have this order-making power. The idea was that we're giving teeth to the commissioner to drag this information from reluctant officials if they so choose. Why should we not feel reassured about this new aspect?

I'll start with you, Ms. Zwibel, and I'll go around the table.

Ms. Cara Zwibel: As I said, this *de novo* review does really undercut that order-making power. It basically means that none of what the commissioner decides, none of what the commissioner looks at, is relevant to a court looking at it. The courts can look at brand new bases for refusal. They can look at brand new information that the government department brings forward. It's really sort of dangling something for the Information Commissioner to have this power, and then it just adds a step, really. The order-making power is important, and if it were subject to an appeal or a review at the commissioner's order itself, that would make it much more powerful.

Mr. Nathan Cullen: I'll turn to the table. Just as a parenthetical note around the language commissioner, we did suggest a slightly higher bar to the government, suggesting that it should be an all-party committee making recommendations on these watchdogs to the government. It would then have selection power, rather than having all the power sitting with the Prime Minister to appoint watchdogs over himself, in this case. That suggestion was refused by the government, by the way, much to my shock.

I'll come back to this order-making power. You're presenting it as a toothless power, or is it inefficient? What's the problem with it?

Mr. Duff Conacher: It's not toothless. It is a step forward. It's just not enough of a step to increase transparency, because the appeal process will continue the delay and be on grounds that it shouldn't be on. The commissioner is an administrative tribunal, and it should be a review based on reasonableness of the commissioner's order, as with other administrative tribunals, as opposed to, as Ms. Zwibel has highlighted, a *de novo* review of the entire request. There's just no reason for that.

The Chair: Thank you, Mr. Cullen.

Mr. Baylis is next, for seven minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): I'd like to touch a bit on the concept of balance. You're all good advocates for having more open transparency. In theory, that's always a good thing, but in the real world, we need to have balance, because we can be overrun.

Ms. Zwibel, you had a concern about limitations on frivolous or vexatious requests. What would you suggest should be done?

Ms. Cara Zwibel: I don't object in principle to that being a basis for refusal, but there needs to be criteria spelled out in the act as to how an institutional head decides what constitutes a frivolous, vexatious, or bad-faith request. We need to make sure there is a provision that says the basis for the refusal has to be communicated to the requester. I don't know how detailed that basis will be.

If I make a request and I'm told that it's refused because it was considered frivolous, vexatious, or in bad faith, which I imagine would be the extent of what I would —

Mr. Frank Baylis: Let's assume you are doing exactly that. Let's assume you are someone who is not using this act in the way it's intended, and you are making a frivolous or vexatious request. Then you're told it's frivolous or vexatious, and you're going to say you want more.

How do we deal with that person? What would we tell them?

Ms. Cara Zwibel: What I want to know is how you came to the determination that my request is frivolous, vexatious, or in bad faith. Bad faith, in particular, suggests that you know something about me that makes me put in a request when my genuine intent is not to get the information that I'm asking for. So—

Mr. Frank Baylis: If there were a guidance document that specified what a frivolous or vexatious request was, and then it was determined to be that way, what more would the government do?

Ms. Cara Zwibel: I would say those kinds of criteria should be in the legislation, not just in a guidance document.

Mr. Frank Baylis: Then you do accept that there is a need for a limitation on requests with regard to their being frivolous or vexatious, but you just don't like the way it's not specified. Is that correct?

Ms. Cara Zwibel: I haven't seen evidence that there's a need for a limitation, but I know that you've heard evidence that there's a need. Assuming that there is a need, I don't have a problem with it being in the legislation, but I think there need to be some criteria.

● (1620)

Mr. Frank Baylis: Yes, we've heard the evidence that there is a need. You'd just like to see the criteria, but you do accept the need. Okay.

Mr. Conacher, you made the statement that every single decision and every single action should be documented and made available.

In business, for example, we have software that tracks salesmen and we have software that tracks the development and the manufacturing of the device. There is always a trade-off, because the more time you take putting in that data, the more granular you can get, but also the more inefficient everything else is. Nothing's for free. If I have to document every single decision, every single action, that's wonderful, and I have phenomenal granularity, but I might have to double the manpower in every single department just to do that.

Where do you see the balance? It doesn't seem to be reasonable to say it has to be every department, every person, every time, every action, every decision. There has to be a balance.

Mr. Duff Conacher: You say you might have to double the number of people working—

Mr. Frank Baylis: I was talking about in private industry. I was in private industry. I'd imagine in government, we'd have to triple it, but we'll go....

Mr. Duff Conacher: No, you wouldn't have to. Someone goes to a meeting. Someone at the meeting notes who's at the meeting and what was discussed and then takes a picture of the note and uploads it. They have administrative assistants.

Mr. Frank Baylis: Well, Mr. Conacher, I could tell you that prior to this meeting, I was in meetings. When I leave it, I'll be in another meeting, and if I had an extra four hours a day, I could document every decision and every action I take, but I can't. There will need to be a balance, and a blanket statement saying we want everything done all the time is not reasonable.

Mr. Duff Conacher: Yes, it is. That's what the Internet's for. Documenting your decisions and actions doesn't mean that you're documenting every step of your day.

Mr. Frank Baylis: Well, you said every single decision and every action, so If I decide after—

Mr. Duff Conacher: Action by government doesn't mean—

Mr. Frank Baylis: —this to go to the bathroom, do I need to document that?

Mr. Duff Conacher: That's not what I'm talking about.

Mr. Frank Baylis: If I have to document that if I go to the bathroom, I will miss some testimony, then I have to document why I missed certain testimony.

Mr. Duff Conacher: I'm talking about government actions. That's not a government action.

Mr. Frank Baylis: You said every decision and every action.

Mr. Duff Conacher: I believe the government and political parties know more about individuals through using big data and mining into their lives than individuals know about the government. That's a perverse situation.

There is a balance, and it's imbalanced now. When I say actions and decisions, I'm talking about government actions and decisions.

Mr. Frank Baylis: Mr. McIntosh, you had a very good example about wait times in hospitals. There are wait times in hospitals because of a lack of resources for surgery or to see a physician. We could always have more doctors. We could always have more surgical suites. We could always have more that would reduce our wait times.

The reality is there is only so much money in the world and there is only so much time in the world, and there is only so much a surgeon can operate. We haven't been able to address that just because.... It's not that I doubt whether an NDP government or a Conservative government or a Liberal government in power wants to address it. I think everybody would like to address it. We again come to finding a balance.

Therefore, if we were to do what Mr. Conacher says, would be you happy that we moved resources from, say, hospitals or health transfers to get more into information access work?

Mr. Gordon McIntosh: The point I made about hospitals, as far as I'm concerned, is something I know about, because some of my clients are medical organizations. Hospital wait times are not just about money. A lot of it is about just pure inefficiency, because there is not enough long-term care in this country and not enough home care. There are a lot of elderly patients in hospitals—about 15% of the beds—who no longer require acute treatment but who have no place to go. In the system, they're known as bed blockers, and that's what's messing up health care.

Mr. Frank Baylis: I was in the medical business for 30 years, so I'm well aware of those issues—

Mr. Gordon McIntosh: Yes.

Mr. Frank Baylis: —but it would take resources to build those long-term care facilities. It's still a question fundamentally of resources, and there is a balance. I doubt that any provincial government doesn't want to do it. I think everybody wants to do it; we just always have to make the call on resources.

Mr. Gordon McIntosh: Well, I would suggest that what has happened to the access to information system over the years has been simple neglect. Resources have been diverted over the years, chipping away at it. I have talked to people at the commissioner's office, and they have a backlog of complaints. I've talked to everybody.

● (1625)

The Chair: That's the time. We're well past the time, Mr. Baylis.

The last question, for five minutes, goes to MP Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Chair, and thank you all.

When the President of the Treasury Board visited with us last week, he responded to the criticisms of the commissioner with regard to the regressiveness and to the recommendations of this committee a year ago and to pretty well all of the witnesses who've appeared before us by saying there will be a one-year review once Bill C-58 is passed.

Is one year a meaningful time? Is the government taking this seriously in terms of detecting what an awful lot of people believe is wrong—the shortcomings of Bill C-58? Can you measure those in a year?

Mr. Duff Conacher: I think you will be able to, but first of all, it's a review by the minister—

Hon. Peter Kent: Yes.

Mr. Duff Conacher: The minister will review whether he himself has done the job well over the past year. There's a conflict of interest in doing that. Then maybe there will be a second bill. I predict that if there is, it will be in June of 2019, and there will be no time to pass it before the election—"but if you vote for us again, we'll pass that bill for sure". That's where I believe it's heading. This is what the past 15 years have been showing.

Hon. Peter Kent: Ms. Zwibel, please comment.

Ms. Cara Zwibel: We've reviewed the Access to Information Act. We've studied it. We've looked at it. I don't think we need another year to see how these changes go.

To address the point that was raised earlier about efficiency, I think some of the changes here introduce new inefficiencies into the act and will cause greater delays and require more resources.

Hon. Peter Kent: Mr. McIntosh, would you comment?

Mr. Gordon McIntosh: I would think a better course would be to get the bill right now and then have the five-year legislative review handle any changes.

Hon. Peter Kent: We were talking earlier about the capacity of departments to respond to questions. Within the ambit of "frivolous and vexatious", I've heard interpretations that say those terms sometimes refer to the volume of questions from an individual requester.

Should government be looking at question quotas, or should government be investing in capacity to answer many more questions than when you and Mr. McIntosh posed your first question and had a 30-day response time?

Again this is a question for all three of you.

Mr. Gordon McIntosh: Well, if the legislation says 30 days, then that should be the benchmark. If 30 days is not possible, then someone should make a case for 60 days or something. Personally, I think 30 days is reasonable.

Hon. Peter Kent: What about quotas?

Mr. Gordon McIntosh: Quotas might get into the area of being a nuisance or vexatious. I don't know; I don't really think that's a problem.

Mr. Duff Conacher: The government—not this current government, for it started with the past government—has had no problem throwing literally hundreds of millions of dollars at an email system and hundreds of millions of dollars at fixing a payment system. When you're talking about allocation of resources, then, which was at issue in a previous question, put it towards making the information management system more efficient, use the Internet more for proactive disclosure of everything. Then you will not have a problem with requests, because you'll be able to say "Here's the link, here's the link, here's the link—it has already been disclosed, because we do it proactively all the time."

That's the way to deal with this problem. Throwing up barriers of any kind is not the way to deal with it. It's punishing the public, who are the victims of the bad system that has been set up, and denying the public's right to know, which is a constitutional right.

Ms. Cara Zwibel: I agree. I think what we need is a proactive disclosure regime that's meaningful. This is a lot about travel and hospitality, which some people care about, but a lot of people care about what's happening in our closed institutions, such as our prisons, or what's happening at the border. These are things that people want to know. If information and records were disclosed proactively, you would have to worry about those frivolous and vexatious requesters much less. That would be my response.

● (1630)

Hon. Peter Kent: Thank you.

The Chair: I'd like to thank all the witnesses for appearing today. We're going to briefly suspend to allow our current witnesses to exit and our new witnesses to take their seats.

Thank you again for appearing.

We'll briefly suspend.

● (1630)

(Pause)

● (1630)

The Chair: I'd like to bring the meeting back to order.

If you have a conversation you would like to continue, please do so outside the room. You can do so at your leisure, but for now we need to get going.

I want to announce to the committee that we are going to handle some committee business at the end of our meeting. At about 15 minutes before the end, at about 5:15 p.m., we will move into committee business, so just be prepared for that.

Right now I'd like to welcome Peter Di Gangi from the National Claims Research Directors and Heather Scoffield from The Canadian Press.

We'll start with Mr. Di Gangi for 10 minutes.

Mr. Peter Di Gangi (Director, Policy and Research, Algonquin Nation Secretariat, National Claims Research Directors): Thank you, Mr. Chair and committee members.

I'd like to start out by quoting a Federal Court decision from 2006 that related to a judicial review of an access request that had gone to Statistics Canada.

What the court said was this:

> It would be absurd and wrong if the Crown had the evidence the Aboriginal people required to prove their land claim, but the Government was entitled to suppress it. This would be inconsistent with section 35 of the Constitution Act, 1982.

With that, I'd like to introduce our presentation.

I represent a group of organizations, first nations, and tribal councils that carry out research for first nations largely to document claims, grievances, and disputes between them and the crown. This can be for the purpose of specific claims, which is a federal government policy related to lawful obligations of the crown, but also for aboriginal title issues, treaty disputes, and litigation generally. Together we submit hundreds of ATIP requests formally and informally every year. We know from experience what will facilitate or hinder access to information.

Our interests are twofold. First, the majority of evidence related to claims, disputes, and grievances of first nations is held by the crown. It's the defendant in these cases, but it's also the one that holds the evidence. There's an inherent conflict of interest there. That's part of the reason paragraph 8(2)(k) of the Privacy Act was inserted when they did the original legislation in 1982. It mentions that if you're a bona fide researcher for a first nation, you get access to information that would otherwise be deemed as covered by the privacy sections of the act, so there are exemptions for the purpose of documenting first nations research into claims. It's gone to the Federal Court, and the Federal Court has confirmed that it's a legal duty beyond what many Canadians have a right to. It triggers the fiduciary duty of the crown—the honour of the crown, as they call it—and the Federal Court has indicated that it sits within section 35. There are some significant issues there in terms of the right to access when it comes to first nations documenting their claims.

Another reason we need access to federal records is for public policy issues, to obtain information directly affecting a political, social, economic, or cultural interest. For example, between February 2015 and June 2016, we submitted over 37 ATIP requests and nine complaints to the Office of the Information Commissioner because government was stonewalling. If you were the defendant, you wouldn't want to give up the evidence the other side needed to prove its case, and that's the case with the federal bureaucracy.

In terms of our concerns about Bill C-58, we're opposed to the bill. It's a bad bill. It will introduce significant new barriers to first nations and organizations that are trying to access information to document their claims, disputes, and grievances. It will interfere with their right of access. It will also hinder efforts by Canada to meet the standards of redress for historical wrongs that are articulated in the United Nations Declaration on the Rights of Indigenous Peoples. Also, the Minister of Justice—in the summer, I believe—introduced 10 principles respecting the Government of Canada's relationship with indigenous peoples. It breaches those.

I guess our concern is that this government in particular set a very high bar in terms of its relations with indigenous peoples, and it seems to have broken the bar with this bill. There's been no consultation. There's been no consideration of first nations rights or interests. There's been no consideration of any of the briefs or evidence that we've presented to Treasury Board or to this committee. We're really concerned that it seems to be a matter of “say one thing and do something entirely different”.

I'd like to also talk a bit about the process we have to go through. After the original access to information legislation was introduced in the early eighties, the government agreed that for the first stage you would make an informal request to the government agency. Quite often that's what's known as INAC now, Indigenous and Northern Affairs Canada.

● (1635)

They had the capacity to respond to those requests, and you'd receive the information, and only if there were problems with it would you need to go to the formal ATIP process.

That worked pretty well for a while, but it has fallen into disrepair, and over the years we've seen a gradual rolling back of our access through arbitrary measures and gratuitous use of exemptions by the people at federal departments in responding to our requests. That has meant an increase in formal requests and complaints to the Office of the Information Commissioner.

In June 2016, we only found out very late about the initial consultations on modernizing the act, so we did submit a brief, but it was late coming in. I think your hearings had ended by then, but I believe it is in the record. If not, maybe we can have a chat afterwards to make sure it is.

At that time we presented a range of concerns to the committee. We expressed hope. The mandate letters that had gone out to the ministers seemed good, and focused on transparency and improving indigenous relations. Treasury Board had announced interim directives on access to information in May 2016, but we said at that time that there was a need to consult with first nations and these organizations to make sure that the rights to access were considered, first of all, and acknowledged in the legislation, and that adequate resources were required to respond to requests.

Also, with regard to training, we found that over the past 10 or 15 years, training of staff just didn't happen. You'd make a request, and staff would not understand why you needed the information. First nations claims are a world unto their own sometimes, and you need staff who understand the nature of your request.

Also, we recommended decentralization and encouraged human contact. We were finding over the last few years that we'd make requests and instead of dealing with a human being, we'd get form letters coming back that didn't provide any opportunity to engage.

We also recommended that there shouldn't be a ministerial veto for powers of the Information Commissioner, and at that time we also supported the other recommendations that the Information Commissioner had made in connection with the announcement to modernize the act.

We weren't contacted about our submission. We gave copies to INAC and to Treasury Board. Nobody followed up. We never got any traction on any of that.

Fast forward to this year. We submitted a document to you folks, I believe it was last week, that builds on the presentation we made in the summer of 2016. We've had it endorsed by over 70 first nations and tribal councils, as well as the Indigenous Bar Association and the Assembly of First Nations. They're all very concerned about this bill. The more they hear about it, the more they ask what is going on, and why does it contradict all these explicit promises that the federal government has been so glad to trumpet? It just seems a strange contrast.

We have concerns about Bill C-58. I think you've already heard testimony to this effect, but I'll make a few comments.

It was created unilaterally, without any effort to consult. There's a legal duty to consult first nations. It wasn't followed in this instance. The only time Treasury Board has been in touch with us, and they've been very cordial, has only been to tell us what they're going to do.

The crown has a duty to disclose records to first nations. Instead, this bill will provide many new opportunities for officials to delay or deny information access, not just for claims but for matters that are integral to first nations governance, such as membership records and treaty pay lists.

Clause 6 is of significant concern, and I'm sure others have explained their concerns as well. We believe this is going to provide legislative justification for the suppression of evidence that we need to document our claims against the crown. The crown is in a conflict. If you give this kind of tool to officials, they'll use it to the max, and we've seen it already under the existing regime, especially, as I mentioned, given that our first route is to make an informal request. Sometimes that comes back with huge redactions, or it might take a year to get the information back, and then we'll file a formal request if the first informal request didn't provide full disclosure. Our reading of the act is that we wouldn't be able to do that anymore. If you've already made a request and received partial disclosure, they could refuse your second request, the formal one.

● (1640)

Again, the act does nothing to address the conflict of interest whereby federal officials are in a position to deny access to the evidence needed to prove claims against the federal crown. There is nothing in the act that deals with that.

The Chair: Mr. Di Gangi, that is time. Do you have any closing words that you can finish with?

Mr. Peter Di Gangi: We recommend that the bill be tabled and go back to the drawing board. We support the Information Commissioner's recommendations and we think this government needs to take another run at it and give proper consideration to first nations' rights to access and reflect those in any bill that goes forward.

Thank you.

The Chair: Thank you.

Next, with The Canadian Press, we have Heather Scoffield.

Ms. Heather Scoffield (Ottawa Bureau Chief, The Canadian Press): Thank you very much for asking us of The Canadian Press to appear before your committee.

Here is a little about who we are. We're celebrating our 100th anniversary this year. We provide news and reporting from across Canada on all platforms to almost every daily newspaper and broadcaster, as well as to numerous corporations and government departments. In Ottawa, we are a team of about 20 French and English reporters, editors, and photographers.

Access to information is a crucial tool for us, and we are very anxious about the government's attempts to improve transparency and accountability. We spend about $7,500 a year, give or take, on requests, until the price was dropped recently. Even now we're on track to spend about that much this year. It's one area in which we have not cut back in terms of expenses.

Just to give you an idea about how important it is to us, it is very central to what we do every day. Familiarity with the Access to Information Act is a basic requirement for anyone who wants to work in our bureau.

We've had a lot of successes over the years in using the act for our common goal, which I think is to provoke national debate on public policy. The use of tasers by the RCMP, initial indications that the number of missing and murdered aboriginal women was more than just a coincidence, crucial information about Afghan detainees, and the sponsorship scandal are all stories that we not only broke but enhanced through our use of access to information. They are important, weighty stories that have changed Canadians' perception of how their country works.

We also used the act to expose the fact that the former international development minister, Bev Oda, spent $16 on a glass of orange juice, and that the former foreign affairs minister, John Baird, ordered unilingual gold-plated business cards.

You could argue that those are examples of frivolous requests, or you could argue that they gave Canadians important indications of the culture within cabinet and how cabinet ministers are treating taxpayers' dollars. Bev Oda had to resign over that story, so what is considered frivolous and vexatious is very much in the eye of the beholder and a very nebulous and subjective concept.

We are increasingly forced to rely on the Access to Information Act for basic facts that support or explain government policy, but there was a time when we could ask a bureaucrat or a politician for an explanation about just why we were heading in a certain direction. I'll give you an example from last year, when the government was moving to expand the Canada pension plan. It was only through the act that we were able to fully document why the government thought such a move was necessary—just basic facts. After the expansion was announced it was only through ATIP a year later that we were able to say exactly how much extra money the CPP Investment Board would have to invest. These are basic facts that should be readily available, but aren't.

Despite our successes in using the act, it's also a constant source of frustration for our reporters. Sometimes we wait years for the government to get back to us with documents. Frequently the documents we do get back have so much blacked out that they make almost no sense. That leads to a problem in and of itself. Especially when a reporter spends so much time digging into an issue and gets back a pile of documents that are all blacked out, there is a temptation to write something, a temptation to connect dots that perhaps shouldn't be connected. We try very hard not to do that, but it is a risk. Similarly, exemptions for cabinet confidence or advice to ministers are so pervasive that we suspect they're used cavalierly.

Consistency is another issue. For example, we ask routinely for lists of briefings. Sometimes we receive full lists with some information blacked out. Other times we receive only a partial list, but when MPs ask for the same thing through Order Paper questions, for example, they will get different responses altogether. They are usually more extensive and come much faster. We double up and do both, but it is baffling that they're different.

We're a bit alarmed when we look at the proposals on the table here and we see more ways for the government to turn us down and deny us information.

The requirement to meet three criteria for every request is detrimental to the goal of understanding government and reporting on policy. By requiring users of the act to know exactly what type of record they're looking for, on what subject matter, and during a specific time frame, the legislation would effectively eliminate many of our more general queries and attempts to find out what is actually going on within government. Only in rare cases do we know with that kind of detail what we are looking for, and even in those cases we would depend on a leak from within government, telling us to look for a certain specific document.

● (1645)

We're also concerned about the move toward proactive disclosure. As a matter of principle, we are always in favour of the government disclosing more information. However, in this case, there is often either no fixed timeline or the timelines are longer than the ones we face under the existing legislation. Also, with proactive disclosure it's the government that decides what will be disclosed, shutting out the ability of citizens to assert their own demands to know and understand what the government is up to. If proactive disclosure were backed up by the act, and ministers and departments were to understand that if they did not follow the disclosure rules there would be consequences through the Information Commissioner, then proactive disclosures would be far more meaningful.

Finally, we're concerned that the bill does not apply to ministers, MPs, senators, and the courts, as initially proposed. The government has promised repeatedly to be open by default, yet the bill does not allow for any further citizen-driven insights into these very important and influential offices.

We're intrigued with the measures that are proposed for the order-making powers, but as we read the bill, we suspect the Information Commissioner's new powers would be curtailed by the courts, and we take to heart her own testimony on this subject.

Your committee is doing very important work that will have a large influence on the quality of our own reporting in the future.

I was only asked to appear here on Friday, so I have a lot of information back in the office that I can share with you later. If you want some things in more detail, I'd be pleased to provide that. Besides that, I'd be pleased to take your questions.

● (1650)

The Chair: Thank you, Ms. Scoffield.

We'll open it up for questions.

First of all will be Mr. Erskine-Smith, for seven minutes.

Mr. Nathaniel Erskine-Smith: Thanks very much.

I was trying to get at this with the previous panel, but you perhaps have identified the issues with clause 6 in terms of adding additional barriers.

Mr. Di Gangi, when you say this bill should be withdrawn and that it is going to add new barriers, you are specifically talking about clause 6. Is that fair?

Mr. Peter Di Gangi: In our brief we mentioned that we've only really had a chance to look at the bill recently. We haven't had the time we need to really give it a thorough review. Clause 6 is the one that jumps out most. Already, when we make requests for specific subject matter and state the type of record being requested and the period for which the record is being requested, we're getting stuff back from INAC saying, “We need 220 days.” They're saying it's an interference in government operations already.

Mr. Nathaniel Erskine-Smith: Yes, we studied the issue many months ago. There is a phrase that repeatedly came back to us, “culture of delay”, and certainly we don't want to add things to the act that would increase and exacerbate that culture of delay.

When it comes to clause 6, you also highlighted concerns about proposed section 6.1. One thing you highlighted in your written brief was this notion that if information has already been provided, that could cause an additional barrier. Would there be any magic if we added the word “identical” in front of “information”, so that it would only preclude a response when something exactly the same had been provided? Would that be of assistance? If not—

Mr. Peter Di Gangi: Theoretically it's possible, sir, but again I'm just wondering why this stuff needs to be in there.

Our biggest issue right now is behavioural. It's the behaviour of officials in the way they deal with requests. I don't see anything in the bill that really speaks to the issue of changing behaviour. If you give people more tools, they will use them for what they know how to do, which is to stonewall.

Mr. Nathaniel Erskine-Smith: They just deny, yes.

You said in the brief as well:

> We agree with the Information Commissioner that these requirements will act as deterrents and are inappropriate in instances where First Nations researchers must investigate broadly, and in the absence of departmental finding aids, or access to file organizational structures.

On the latter part to that phrase, we've had some testimony about Info Source. Have you found it to be helpful? I note that it's in section 5 of the current act, which is fairly front and centre. Do you think we ought to be removing Info Source, or merely updating it for a digital environment?

Mr. Peter Di Gangi: It is probably appropriate to update it for a digital environment, but what we're talking about in that section of our presentation is a bit different. If you go to Library and Archives Canada, which is the repository of records that have been transferred from federal departments for historical purposes, they have finding aids. You can consult those finding aids. You can see what the file structures are. You can dig down and identify the material you want before you order it. You don't get access to that in a federal department.

INAC has the second-largest holdings of historical material next to the archives, yet you don't get access to their file system. You don't get to be able to do searches on their database. You are entirely reliant on their staff, and that's what we were getting at. When you start off with a claim, you don't really know the nature and scope of it until you do the research, so your initial requests have to be general.

Mr. Nathaniel Erskine-Smith: It's hard to know what's there if it's not itemized in a clear way.

Mr. Peter Di Gangi: They don't tell you.

Those are all issues that need to be worked out.

Mr. Nathaniel Erskine-Smith: Okay.

Ms. Scoffield, I'll go through some of your concerns.

In terms of “frivolous or vexatious”, I put it to the previous panel but I'll put it to you as well: if the Information Commissioner has authority to deem that the department has improperly called something vexatious or frivolous and to order that it be disclosed, would that satisfy your concern?

● (1655)

Ms. Heather Scoffield: Not really. If we're required to jump through those hoops initially and explain why we want something and have to name it, then even if the Information Commissioner can go back at them—

Mr. Nathaniel Erskine-Smith: No, I don't mean those requirements.

We heard a lot of testimony when we were first studying the act that there were instances of certain individuals—not reporters, to our knowledge—putting many requests in and bogging the system down in some ways. If we were able to take those requests out of the system and ensure that there's a safeguard there with the Information Commissioner, it was certainly one of our recommendations. There has been some blowback on it. I don't fully understand it, as long as there is a safeguard there through the Information Commissioner and ultimately the courts. It's separate from the section 6 concerns.

Ms. Heather Scoffield: Right. If she were able to come in and say, “Yes, this is wrong—”

Mr. Nathaniel Erskine-Smith: Yes. Exactly.

Ms. Heather Scoffield: I would caution, though, that there has to be a definition of what would be unacceptable, because as I was saying, “vexatious” is a very subjective concept.

Mr. Nathaniel Erskine-Smith: Well, it can be. In my previous world of civil procedure, we don't define it. It's the courts that define it. Thus, one recommendation of the Information Commissioner that I think makes a lot of sense is this notion of published decisions. If she were able to publish decisions in relation to her findings of vexatious and whether the department has appropriately found something vexatious or frivolous, that might address your concerns as well. That definition could evolve over time, and we would be able to see examples of it in her decisions.

Ms. Heather Scoffield: Yes, that could be.

Mr. Nathaniel Erskine-Smith: You also indicate authority over proactive disclosure. I wonder how that might work in practice.

There are certain items that have to be proactively disclosed. Is it the concern that departments are not disclosing them or that they would be redacting information, or is it both?

Ms. Heather Scoffield: Do you mean as it stands, in the bill?

Mr. Nathaniel Erskine-Smith: Yes. You had indicated that the Information Commissioner should have authority over the proactive disclosure regime, which I think proposed section 91 explicitly precludes.

Ms. Heather Scoffield: Right.

First, off the top, I wonder why proactive disclosure is even in there. Do you need legislation to be proactive? Can't you just do it?

Mr. Nathaniel Erskine-Smith: Well, governments can do it.

Ms. Heather Scoffield: They are doing it in some instances.

Mr. Nathaniel Erskine-Smith: Yes, but I think the idea is to handcuff all future governments to ensure that certain information is proactively disclosed.

The other idea, and I'm not sure we've gone as far as perhaps we could, is to reduce the number of requests in the request-based system, which is broken, as we've heard multiple times over the course of our own study, and to ensure that if there is certain information that is constantly requested, that it is being proactively disclosed and we're able to soften the burden on the individuals in each department.

Ms. Heather Scoffield: That would make sense if there were strict rules that would actually force the government to do it as quickly as we can get it.

Mr. Nathaniel Erskine-Smith: You're saying that timelines are the concern there.

Ms. Heather Scoffield: It's not just timelines; it has to be accompanied by the ability of users of the act to say what they want. It's not enough for the government to just say, “We're going to give you this information”; it has to come from the other side too. We have to be able to interact with the system to say what we would like to see.

The Chair: That's time. Thank you.

Next up is MP Kent, for seven minutes.

Hon. Peter Kent: Thank you, Chair, and thanks to you both for being here.

My first questions are to Mr. Di Gangi.

With regard to honour of the crown and section 35, is the deep historic data that is essential to the work that you do and ATI all digitized, or is much of it in original documents in various forms stored in different parts of Canada with INAC?

Mr. Peter Di Gangi: Sir, it's a bit of both. Library and Archives Canada has been working on a digitization program, but they have a lot of records to go through. You're talking about miles of shelves of documents. At INAC, it's the same thing; they're talking about digitizing. One of the concerns about INAC digitizing is the destruction of documents as they digitize.

For historical context, when you're doing a court case or a claim, you need to look at the entire file to get a sense of it, so there is a bit of concern if the process of digitization is used as an opportunity to remove some materials from the record.

By and large, most of what we're dealing with are physical hard copies of records.

Hon. Peter Kent: Would you recommend, because of the unique relationship that you have in terms of access to information and a single department, that there be a differentiation between unrestricted access to certain historic records and information related to the performance of the government of the day or to decisions or policy-making plans of the government of the day that might or might not embarrass the government?

● (1700)

Mr. Peter Di Gangi: I think there is a distinction to be made there. It could be made, perhaps, but who gets to define that? If it's done through consultation, there may be a way to address that idea. Part of the problem is that a lot of these claims relate to government policy and decision-making of previous governments.

Hon. Peter Kent: With regard to the current government and the recommendations that we will make again to the Liberal government, what are your impressions with regard to your specific ATI situation and with regard to the splitting of the department?

Mr. Peter Di Gangi: That's an interesting question. We're still thinking about it. I think it took everybody by surprise. I must say that over the past 10 to 15 years of access to information, the indigenous affairs department has gotten worse and worse. It hasn't gotten better under this government; it's gotten worse. We've had some positive and cordial discussions with INAC officials, but nothing productive yet in terms of changing that situation. To be fair, I think the officials are scrambling to figure out how they're going to manage this division. What are they going to do with the files? They have to deal with staff. They have to deal with files. Who gets what? Where does it go?

We've seen before historically that when departments are divided up, not everything goes where it should, and a hundred years later, you might be looking for something that got sent to the wrong....

Hon. Peter Kent: Okay. Thank you.

Ms. Scoffield, you spoke of the budgetary considerations before there was the prospect of much lower prices per request. I'm just wondering, with regard to management of CP's budget, are all of the requests that your individual reporters may want to make channelled through you or through an individual who decides which have the priority to minimize the burden that may be imposed by your bureau alone on a department?

Ms. Heather Scoffield: No, actually, this is one area in which we leave it wide open to reporters to ask as much as they like. We have tried to streamline, but because different people ask different questions in different ways and come up with different results, I think it's better to leave it wide open. It's open season.

Hon. Peter Kent: You heard some of the questions to the previous witnesses about the capacity of departments sometimes to manage the volume of questions. I suspect I know the answer to this question, but do you believe that there should be a question quota for individual organizations?

Ms. Heather Scoffield: Absolutely not. There is an almost infinite amount of information within the government, and it's only by asking persistent questions that we can begin to have a decent understanding.

Just to go back to the previous round of questions, if the government is concerned about the volume of work it has to do in answering all their questions, then just start releasing that information proactively beforehand so we don't have to jump through these hoops.

Hon. Peter Kent: Right.

I don't have the legal expertise that my friend Mr. Erskine-Smith has, but with regard to that characterization of questions as vexatious, I suspect and I believe from past experience that sometimes the volume of questions from an individual requester might be seen as vexatious because they're shotgun requests, as you said, made by someone who does not know exactly what information might be divulged but who is asking as part of a fairly broad hunt. Do you think it's unfair to describe shotgun requests, high-volume requests by a single requester, as vexatious in themselves?

Ms. Heather Scoffield: Yes, I do find that a bit unfair. There's no doubt that frequently we don't know exactly what we're looking for, so we have to ask a broad question, but it's also in our own best interest just to manage the amount of information we get coming into the bureau and keeping it under control. We have developed techniques over the years to make sure we're not swamped with information. We do it for ourselves.

We'll ask for a list of reports because we don't have the names of the reports, and then we'll choose the ones that we want from the list when we get it back, rather than just asking for whatever. We certainly don't aim to just go on a wild fishing expedition.

● (1705)

Hon. Peter Kent: I have one last brief question. We heard of meeting easily" the 30-day request period some years ago, decades ago. What today do you believe should be considered a reasonable request responding period?

Ms. Heather Scoffield: I believe the 30 days is appropriate. So much of the information is digitized now. Why can't you just do a search and find it for us?

Hon. Peter Kent: Thank you.

The Chair: Thank you, MP Kent.

Next up is MP Cullen, for seven minutes.

Mr. Nathan Cullen: Mr. Di Gangi, we are getting your brief translated and under the wire. We're working with the clerks, so rest at ease that we'll all be able to read what you gave us.

I'll read you something from just a little while ago. It says:

> No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.
>
> We have also committed to set a higher bar for openness and transparency in government. It is time to shine more light on government to ensure it remains focused on the people it serves. Government and its information should be open by default.

That was from the Prime Minister's mandate letter to his minister of indigenous services.

Of all the testimony we've gone through, and some of it's historical, I would suggest, Mr. Di Gangi, yours is in a sense the most condemning of this bill. If in reconciliation—whatever that means today—and fulfilling that commitment in order to reconcile, in order to settle things, in order to come to agreement in that nation-to-nation vision the Prime Minister has talked about, the information that you seek, you say hundreds of times a year, on average...?

Mr. Peter Di Gangi: Yes, if you look at all of the work we do across the country.

Mr. Nathan Cullen: Yes, collectively. You might be one of those vexatious people.

In terms of having that information available to those different nations across Canada, is it possible to get to any point of nation-to-nation, of reconciliation, of settling of things, if government holds information back and makes it harder and harder, as Bill C-58 seems to do, to get information out to first nations people?

Mr. Peter Di Gangi: I think that certainly in terms of land claims, treaty claims, and those kinds of grievances and disputes, it's difficult to resolve them unless you have the evidence.

Mr. Nathan Cullen: You've described a conflict of interest: a government that maybe doesn't want to solve, or solve on certain terms, can simply hold back information, redact, delay, try to get out through the courts, cost the nation.... In my part of the world, we have certain land claims that are upwards of $30 million on the first nation side of things. I don't even know what it is on the government side, over 30 years or more.

Mr. Peter Di Gangi: I think sometimes it may be the design of government. Other times it may simply be officials who have a big stack of things on their desks. They don't have training. They don't have inclination. They don't care. They say, “Oh, I have a way I can get out of this and clear my desk. I'll invoke section 6.1.”

It could be either the big macro picture you're talking about, or it could be someone sitting at their desk. We are concerned about what's going on now, even without this bill. As I mentioned, we make a simple request for a file or a series of files. We give them the file number. We give them the outside dates. We know exactly what the subject matter is. We're being told there will be a 220-day extension, and that for them to respond to the request is an interference in government operations. We're getting letters that say this. It's outrageous.

This is happening now without this bill. Again, to me, if there is that commitment at the top to reconciliation, it needs to translate itself all the way down through the system to the behaviour of the officials.

Mr. Nathan Cullen: Heather, you pointed out a couple of things. Making this subject real for Canadians can sometimes be tricky, because the government says you have to be very specific or you should be vexatious or all of these different things in order to get information—well, they didn't quite say that.

I'm thinking of the specific case of the murdered and missing aboriginal women. What was the experience like in just getting the number, the information, out from the government?

Ms. Heather Scoffield: This dates back a few years—

Mr. Nathan Cullen: That's right.

Ms. Heather Scoffield: —I think it was when we first started looking into the relationship between the disappearance in the Pickton case and we were able to get.... I can't speak to the specifics of how hard that was in particular, but I would say that generally when we're after something—

● (1710)

Mr. Nathan Cullen: How about the Afghan detainees?

Ms. Heather Scoffield: Yes. You're never going to get the full story from access to information. You're going to get pieces of the story that you can pin and stitch together and talk to a lot of people about and fill in the other blanks. There are a lot of blanks in what we get, but it adds to the story. It took years of work by our reporters to even begin to get a fuller picture through a document on that—

Mr. Nathan Cullen: Under Bill C-58, those experiences would have been how...? If Bill C-58 had been law, and these provisions and the specificity were required, and the determination and going to court, and all the rest...?

Ms. Heather Scoffield: I don't even know if it would be possible, because of those three requirements there. We would have to know exactly what we were looking for before we found it.

Mr. Nathan Cullen: You'd have to name the prisoner and the date he was transferred illegally to the Afghans.

Ms. Heather Scoffield: That's right. The specificity is unworkable.

Mr. Nathan Cullen: A second question I have for you is about this creep across to policy. The government says they believe in an initiative—a CPP change or a small business tax policy—and the press do their job and say, “Give us the reasons why.” A typical experience would be, “Here are our points and this is what we think is good about this idea.”

The use of access to information to get basic government policy and the cost estimates and benefits of the policy seems to me to be an encroachment into some dangerous places in terms of basic accountability.

Ms. Heather Scoffield: Yes. I find it to be a strange use of the act. When we get back the answers to those questions, they're pretty extensive, because there's nothing secret about it. They're just basic facts about why the government's doing something, but I think it speaks to a bigger problem of secrecy within government. There's a culture there of not wanting to explain and to instead give talking points that don't really help Canadians understand what's going on within the government.

Mr. Nathan Cullen: Thank you.

Let me get back to you, Mr. Di Gangi, for one last question. I'm thinking of the residential school nightmare. I have constituents in my riding who are still seeking records. They know that they went to a residential school. They know they were taken, but unless they can get the document, the proof that they were taken, they are not due for compensation or recognition from the government.

How would Bill C-58 help or hinder their ability in their very particular cases to be able to come to some sort of peace in their minds as to what the government will admit to?

Mr. Peter Di Gangi: It's an interesting question. If you think of an individual in a community who might not have a lot of experience with the bureaucracy or the legislation, they're going to start off by making a very general, vague request. Again, to me, sir, that's where it gets back to the behaviour of the officials. They should help requesters. If the request is too vague, why do you need legislation to...? Why not have an official speak to the individual and ask if they can help them make their request more precise so they can respond to it? We don't need to legislate that. It's the behaviour of officials that needs to change.

For the individual who is a survivor, say, who's looking to find that information, it would be very difficult if they didn't have legal counsel, an association of some sort, or someone who had experience to assist them.

Mr. Nathan Cullen: Thank you.

The Chair: Thank you, MP Cullen.

The last question goes to MP Picard for seven minutes. We're going to go past the 5:15 p.m. deadline I'd already set, but that should allow us enough time.

[*Translation*]

Mr. Michel Picard (Montarville, Lib.): Thank you, Mr. Chair.

I thank our two witnesses for their statements.

With all due respect to the files that have been discussed and are unfortunate in some respects, I would like to obtain a more objective picture of the situation. I would like you to tell me what the bill could contribute. Also, what amendments would you recommend we make to the bill in the hope of improving things?

Ms. Scoffield, you raised a specific point as to the way in which documents are redacted. Let's set aside ill intent, which is not acceptable to begin with. Where will we find a balance? On the one hand, the person who has the information must decide if the information he is being asked to transmit could have a serious impact on national security—that is the cliche—or if its disclosure could have negative consequences on an individual or a person in the organization. Let's set aside bad intentions, because there is no excuse for that. On the other hand, the person asking for the information always seeks to obtain all of it, and he or she wants to judge what could reasonably be disclosed, and decide himself what seems dangerous or what could have a negative impact.

So one person's position is pitted against the other. What solution do you recommend to balance this, so that an objective person could, in light of the information obtained, determine what should be disclosed? Do the new powers of the commissioner seem like the solution to you?

● (1715)

[*English*]

Ms. Heather Scoffield: There's already a balancing act that's going on there, and there's always an understanding from the person who puts in the request that there are going to be times when the answer is going to be no. We understand perfectly well that if it's national security, of course we're not going to know that. For a government official to say that is completely expected.

The problem is that those exemptions have grown to be very bloated, and at this point we spend a lot of time fighting back on them, because we just see big things that are blacked out, and a little comment on the side that we can't have this for whatever reason, such as cabinet confidence. It's very hard to question it when it's applied with such a blanket.

The new legislation would not address that. There has to be an effort to curtail it and keep it under control, rather than having it serve as an excuse across the board. Giving the Information Commissioner more power over that situation is certainly a way to do it, but I can't speak to the technicality. She's done such a wonderful job of how that should be done, and I'll leave it to her to make the case.

[*Translation*]

Mr. Michel Picard: Did you want to add something, Mr. Di Gangi?

[*English*]

Mr. Peter Di Gangi: What my colleague said is true: you expect that for some things, you're not going to get what you asked for.

One of the concerns is the gratuitous use of exemptions. Advice and recommendations are so broad you could drive a truck through them, and officials do, quite often. We've had solicitor-client privilege invoked for letters that are 100 years old. We've had third-party exemption invoked for materials that are 100 years old.

To me, that's a gratuitous use of exemptions, and the Information Commissioner's office has the expertise to address those issues. We certainly don't expect to get full disclosure all the time.

[*Translation*]

Mr. Michel Picard: I would like to go back to the position you adopted as the representative of first nations interests.

Aside from certain issues, such as who is deemed to belong to a band, to take a very simple example, the Canadian population in general is not involved here in issues that affect first nations specifically.

Are there specific problems regarding your requests on behalf of first nations? Aside from the files concerning a group in particular, is the issue you raised concerning your general requests related to the Canadian population as a whole?

[*English*]

Mr. Peter Di Gangi: Yes, absolutely, and we tried to outline those in our briefs, the one in June 2016 as well as the one that we did this October.

There are some very specific issues related to the nature and scope of the right that indigenous peoples have to government data that relates to them: membership data, treaty annuity pay lists, material related to claims. Those are very precise and specific to first nations.

We've tried to identify them. I don't think there would be time for me to do it in the short period of time I have to answer, but certainly we've identified them in our briefs and we'd welcome the opportunity to answer more questions in more detail if committee members would like.

[*Translation*]

Mr. Michel Picard: Personally, I don't think I will need to make a request concerning whether someone belongs to a band or not. As far as requests pertaining to ancestral rights, or information concerning first nations specifically, my general requests to the government to access information should be similar to those undertaken by any other group.

Are the first nations so different that the process is not the same? There are general issues, and specific ones related to the nature of the information being sought.

● (1720)

[*English*]

Mr. Peter Di Gangi: Again, with indigenous people, it's very specific. There are certain rights of access they have. We've been to the Federal Court of Appeal on some of this, and it has pronounced on it. It has been very specific that there's a right of access and that the crown has a duty to disclose. INAC did go some way toward addressing that issue and setting up a system, but it's fallen into disrepair.

We don't see from this bill that it would fix the problem.

[*Translation*]

Mr. Michel Picard: Thank you, Mr. Di Gangi.

[*English*]

The Chair: Thank you.

Mr. Cullen, I think you wanted to present a motion.

Mr. Nathan Cullen: Yes, I will give the committee notice of motion. I know we have to go in camera, and I apologize to our witnesses here. Maybe Ms. Scoffield will be interested in this as well.

I move:

> That, pursuant to Standing Order 108(3)(h)(vi), the Committee undertake a study of the Conflict of Interest Act and how it relates to public office holders; that the Conflict of Interest and Ethics Commissioner be invited to discuss her 2013 recommendations provided in the context of the five-year review of the Act; that the Finance Minister be invited to explain decisions he has made in accordance with the Conflict of Interest Act; and that this study begin as soon as possible.

I'm not seeking to debate the motion today, Chair, obviously because our time is of a limited nature, but I'm sure this is of interest to committee members, given the current discussion in Parliament.

The Chair: Thank you, Mr. Cullen.

We're going to suspend and let our guests leave. We'll go in camera and into committee business.

[*Proceedings continue in camera*]