HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 007 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, April 12, 2016

Chair

Mr. Blaine Calkins

Standing Committee on Access to Information, Privacy and Ethics

Tuesday, April 12, 2016

● (0845)

[*English*]

The Chair (Mr. Blaine Calkins (Red Deer—Lacombe, CPC)): Good morning, everyone.

Welcome back from a fairly lengthy constituency break. I hope my colleagues at the table all found some time to connect with their constituents, and maybe even found some time to relax. We're in for the long haul now until the end of June. We have nine weeks of Parliament, with only a couple of weeks' break in-between. We have a lot of work ahead of us.

I want to thank Mr. Lightbound, who I think was the chair in my absence, when I was gone the week before.

We have with us Mr. Drapeau, who is no stranger to coming before Parliament. We welcome you this morning, sir, from the University of Ottawa. We also have the ambassador from Sweden, Mr. Per Ola Sjogren. We welcome you, sir. And we have Toby Mendel by video conference from the Centre for Law and Democracy.

Gentlemen, we appreciate your being here with us this morning. We are going to start with your opening remarks.

We are studying the access to information legislation. We'll hear you for up to 10 minutes each, with your opening remarks, and then we'll proceed to our questions. I'll go in the order you appear on the list.

We'll start with Mr. Drapeau, please.

Colonel (Retired) Michel Drapeau (Professor, University of Ottawa, Faculty of Common Law, As an Individual): Mr. Chair, thank you for this introduction. Thank you also, members of this committee, for giving me the honour to appear before you this morning.

[*Translation*]

Let me begin by saying that I have been interested in the administration of the Access to Information Act since 1992, as a requester for my clients, as someone who has written about the act, and as a professor who teaches access to information law.

[*English*]

Over the past two decades I have watched the access to information regime slip more and more into irrelevance. I hold the strong belief that this state of affairs is not because the access law is so much defective or outdated in recording radical changes. In my opinion, the slip into irrelevance is due instead to two interconnecting factors.

First is the interplay between a systemic lack of motivation on the part of federal institutions to observe both the spirit and the letter of the access law, and the absence of oversight on the part of anyone holding to account a recalcitrant or delinquent department. Consequently, there is no penalty or reprimand for inuring Canadians from having their quasi-constitutional right of access violated, with the result that flaunting the access law is now an accepted practice in many parts of the federal bureaucracy. Year in, year out, thousands of users of the access system see their requests for information treated with more or less total disregard for the rights to have their access requests responded to fully and within the statutory delays.

Second, only a small number of disenfranchised users of the access system actually file a complaint, as they are entitled to do under the access law. However, more often than not, those who do file a complaint must wait, if not a year then two or more, for obtaining any results. Obviously, they soon learn that the longer they wait, the more pointless their complaints become. Also, they will likely be less inclined in the future to rely on the right to complain to obtain disclosure, and it becomes a process of a vicious circle, disempowering the access requesters.

As an aside, during the last fiscal year there were 78,000 access requests submitted to various federal institutions. Of those, 1,600 complaints were made to the Information Commissioner. This means that a meagre 2% of the original requests gave rise to a complaint to the Information Commissioner.

As noted in my brief, I have concerns with the ongoing debate about reforming the access legislation. First, I disagree with giving the commissioner order power to deal with some of the complaints. Second, I take issue with the unproven assumption that giving order power to the commissioner might ameliorate the access regime.

Let me elaborate.

[*Translation*]

First of all, I truly believe that giving the commissioner order-making powers would repudiate the doctrine and fundamental principles of the access regime. This would dramatically alter the role of the commissioner, making her a judicial officer who would not have the slightest influence on the outcome for the vast majority of access requesters.

[*English*]

Secondly, I hold the strong belief that the fathers of the access regime got it right in the 1977 white paper by adopting the parliamentary option. Under this option, the commissioner has a right of access to Parliament and he's held directly accountable to this committee for its performance.

Under such a scenario, Parliament remains a dominant player in the management and control of the access regime. However, as stated earlier, giving the commissioner order power will necessarily change that relationship. The commissioner will then become a judicial officer, and as such will be required to act judicially towards Parliament, federal institutions, and the access users. This will also require the commissioner to further augment their already large staff complement.

Hence, I am anything but certain that the grant of order power to the commissioner will impact positively on the current malaise affecting the access regime. I'm suggesting instead that the basic function of the commissioner not be substantially changed. What I am considering and recommending is the conduct of a wall-to-wall, systematic review of the construction, the configuration, and the staffing at that office by the Auditor General to ensure the existence of the most economical and effective organizational structure possible. In my opinion, that is not presently the case.

In the same vein, I am also recommending a common administrative service, something similar to that we now have in the courts administration service, to be re-established between the Office of the Information Commissioner and the Office of the Privacy Commissioner. I also recommend that the management, administration, and legal positions found to be redundant by the Auditor General be reassigned to augment the current complement of investigators, if for no other reason than to reduce the very large backlog of complaints. At the moment, it's two years.

● (0850)

[*Translation*]

In my brief, I set out 12 reform proposals. For instance, I proposed that the access to information coordinators, who are spread out in some 200 federal institutions, now be appointed by Governor in Council. These coordinators are, after all, on the front lines, as they are the first, and often only, actors within the access regime. They also have the heavy burden of responding to access requesters, while bearing in mind the access directives and decisions made by officials higher up the chain in each department.

If they were appointed by Governor in Council, these coordinators in the various departments would also have the requisite authority and independence to uphold requesters' access rights.

[*English*]

Before closing, one of the recommendations contained in my brief is that the House of Commons and the Senate should also be brought under the ambit of the access legislation. As you probably know, this is currently the case in the U.K., which provides the residents of the British Isles with a meaningful and welcome right of access to some of the records under the control of parliamentarians. Canadians should expect no less.

In conclusion, Canada deserves an open, honest, and accountable government. This can be achieved at least in part by having a working access to information regime. Yet at present, the access to information system is in a state of crisis. The current focus of giving the commissioner the power to order the release of records should not be seen as a panacea capable of redressing the access law, which has been rendered more or less nugatory. The Province of Quebec has learned that particular lesson. Quebec appears to be balking at continuing with this use of order power mechanism as the modus operandi for their information commissioner.

However, even if such order power were to be granted, one should keep in mind that this would only address a very small proportion of the tip of the iceberg. Respectfully, therefore, I urge this committee to focus instead on the 90% of the other requesters, or the rest of the iceberg, which is currently being managed exclusively by the ATIP coordinator within each one of the institutions. I am of the view that the commissioner plays an important role in the access to information regime by receiving, investigating, and reporting a complaint by users of access and keeping Parliament abreast. The Access to Information Act provides the commissioner with quite an arsenal of extraordinary powers to investigate complaints, and these need to be used to the fullest. They are currently not. The commissioner also enjoys a potent right of access to Parliament to alert the Canadian democracy when government and the civil institutions fail to live up to their obligations. This, gentlemen, should continue.

That concludes my presentation.

● (0855)

The Chair: Thank you very much, Mr. Drapeau. That was very insightful, with some new ideas that we haven't heard before. I'm sure you're going to get a lot of questions, and if you don't, then I'll ask you some when everybody else is done.

Your Excellency, Per Ola Sjogren, Ambassador of the Kingdom of Sweden, for 10 minutes please.

His Excellency Per Ola Sjogren (Ambassador of The Kingdom of Sweden to Canada, Embassy of Sweden): Thank you, Mr. Chairman.

Thank you to the committee members for inviting me to give an overview of the Swedish legislation when it comes to freedom of expression and access to information.

Allow me first to say that one of the core values in Sweden is openness. One of the cornerstones in an open society is freedom of opinion, speech, and also respect for the principles of free access to public documents, so the issue that is before the committee is one of concern to us.

Allow me to say a few introductory words about the Swedish constitution. The constitution regulates the manner in which parliament and the government are appointed and the way in which these organs of the state shall work. Freedom of opinion and expression, as well as other rights and freedoms, enjoy special protection under the constitution. Out of the four basic laws which form the Swedish constitution, three of those laws regulates the rights and freedom of opinion and expression, so it has a firm basis in our constitution.

If I may refer to the documents that I have forwarded to committee members, the first document is a brief overview of the three basic laws that refer to the freedom of speech and expression and opinion. The first is the instruments of government and in chapter two it refers to the protection of personal freedom of expression "whether orally, pictorially, in writing, or in any other way".

The second basic law is the Freedom of the Press Act, which protects the freedom of printed press as well as the principle of free access to public records, the case before the committee today, and the right to communicate information to the press anonymously.

The third basic law is the Fundamental Law on Freedom of Expression, which extends the protection which is an extension for the Freedom of the Press Act for printed media, also to other media, including television, radio, and websites on the internet. It's the most recent Swedish basic law.

The fourth law, which is not a basic law but it is of relevance to this issue, is the Public Access to Information and Secrecy Act, which was adopted by the parliament in 2009. It contains provisions that supplement the constitution, especially the Freedom of the Press Act, on the right to obtain official documents. Openness is the basic rule and secrecy has to be clearly defined, which is laid out in that act.

The Freedom of the Press Act was introduced in Sweden in 1776 and became the fundamental law in its entirety already then 250 years ago. Sweden then became the first country in the world to permit freedom of the press.

Under both the Freedom of the Press Act and the Fundamental Law and Freedom of Expression, constitution protection implies that the public administration is prohibited from intervening against any breaches of the freedom of expression other than in the cases and in the manner prescribed under these two fundamental laws. A ban on censorship is also a central feature of the Law of Freedom of Expression and was already laid down in the 1766 version.

● (0900)

It's also important to recognize that the Freedom of the Press Act is directed against administrative and other public bodies.

The Freedom of the Press Act and fundamental law of freedom of expression provide protection for providers of news and information in two different rulings dealing with the public nature of official documents and the protection of sources respectively.

The constitution rules on the public nature of official documents are contained in chapter 2, article 1, and it's the third paper that I distributed today. The wording is the following:

> Every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information.

The documents kept by public authorities are official documents per se, regardless of whether they were received or drawn up by the authority and regardless of their content.

An official document may thus be public or confidential. Chapter 3 in the Freedom of the Press Act also contains other definitions and eliminations. For example, electronic data registers and other mechanical and electronic records are treated as documents.

In the case of documents drawn up by a public authority, the general rule is that they become public when they receive a final form. Drafts and proposals also become public documents if they are filed and registered after a matter has been settled.

An official document is public in principle. It must be kept available, normally in the original, to anyone who wishes to pursue it, and the private subject is entitled to receive a transcript or a copy of the document, and may also reproduce or copy it using equipment of his or her own.

Exceptions from the principle of the public nature of official documents, that is, cases in which an official document must remain secret, need to be provided for in a special law, by which is meant the Public Access to Information and Secrecy Act, which I just referred to, and in exceptional cases, other laws making reference to this law.

In the next paper distributed, I refer to the Freedom of the Press Act, chapter 2(2), which lists the interests governing secrecy. There may be no secrecy other than in accordance with this principle and in subsequent and subordinate laws.

I will not read out these seven principles, but, for example, for my ministry, the first principle, the relation with another state or international organization, is naturally the most frequently referred ground to consider a document to be secret.

If a public authority other than the Parliament in Sweden or the government refuse an application to see a public document, an appeal may be lodged with the administrative court in the first instance. If the appeal is rejected by the appellate court, the appellant can be pursue the matter further to the Supreme Administrative Court. The appeal is regulated in chapter 2(15). An appeal against the minister is lodged with the government.

All questions concerning access to official documents must be dealt with expeditiously. The more exact wording in the Freedom of the Press Act, 2(13), the last paragraph, is that application for transcripts or copies of official documents shall be dealt with promptly. In practice, that means immediately. When we receive a request for handing out the document, we have to act immediately on that request.

I will briefly mention two other principles that are relevant to the principle of free access to public documents.

● (0905)

It's the freedom of sources from legal responsibility, which is laid down in opening provisions of both the Freedom of the Press Act and the Fundamental Law of Freedom of Expression. Protection from legal responsibility applies not only in relation to legal proceedings. On account of an item alleged to be in breach of the law, a source cannot be held legally responsible under special procedures in the event his or her communication of information constitutes an offence per se. In practical terms, the most important case is one in which a civil servant or local government official passes on to a competent recipient, for the purpose of publication, information that is covered by the Official Secrets Act. The main rule is that he or she cannot be convicted for being in breach of this obligation to maintain secrecy.

The second principle, which is also relevant to the issue before the committee, is the right to remain anonymous, which is covered in chapter 3 of the Freedom of the Press Act. It is a punishable offence for anyone engaged in the production of printed matter, or an item protected under the constitution, to disclose the names of sources or authors who wish to be anonymous. The obligation to maintain secrecy is waived only in very special cases, which is mentioned in the Freedom of the Press Act, 3(3).

This is what I wanted to say as an introduction when it comes to the general legislation and how the freedom of access to information of public documents is regulated in the constitution and its subsequent laws. I will be happy to participate in the panel and to do my best to answer questions. I would also say that if the committee wants to bring a constitutional expert from Sweden before the committee, we are very positive to work toward that end. If the committee would also like to visit Stockholm to take a further step in an in-depth study of Swedish rules on these issues, you are most welcome.

Thank you.

The Chair: Thank you very much, your excellency. Both of those options seem quite appealing. We want to thank you for that. Congratulations to your country, and through you, I think the 250th anniversary of the access to information laws, or the right to have information, is coming up for both your country and Finland. I believe this is how that's working, and it's quite a commemorative thing. We wish you well in those commemorations.

We're going to move on now to Mr. Mendel, for up to 10 minutes, please, sir.

Mr. Toby Mendel (Executive Director, Centre for Law and Democracy): Thank you very much.

It's a pleasure to be with you at a distance. I hope Ottawa has recovered from its recent snowfall. In Halifax we're used to snowfalls and slush like that, so we have some sympathy for you.

I'll give you a couple of introductory comments about my organization, the Centre for Law and Democracy, or CLD. We are based in Halifax. We are an international human rights organization. We promote foundational rights for democracy, including what we call the right to information, or access to information in Canadian parlance, because it has been recognized internationally as a human right under international law.

We work globally on this issue. I think it's fair to say that we work with all of the leading intergovernmental organizations that focus on this right—the UN special rapporteur on freedom of expression, other UN bodies, the Council of Europe, the Organization for Security and Co-operation in Europe, and so on and so forth.

The position of CLD, which I don't think differs from the broad position of civil society in Canada, is that the federal access to information system is broken. Although we're a civil society organization, we measure our words fairly carefully. We don't throw around terms like “broken” very easily, but I think at this point that is a well-charted position on the act, supported by numerous studies over a very long period of time. We feel it's an appropriate term to use.

I agree with most of the criticisms that Mr. Drapeau put forward, but I have to differ from his position specifically in respect of the act. My organization has worked with another organization, Access Info Europe, to develop the right to information, or RTI, rating. It is an internationally recognized methodology for assessing the strengths or weaknesses of legal frameworks for the right to information. I would say that this methodology is globally recognized. It is, for example, frequently relied upon by such actors as the World Bank and UNESCO in their work in different countries on access to information frameworks. I was contacted just yesterday, for example, by UNESCO. They are looking into the possibility of applying the RTI rating to a draft access to information law that's being prepared in Palestine. We have frequently worked with the both the World Bank and UNESCO on using the rating for that kind of purpose.

On the rating, Canada, the Canadian federal framework, scores 79 points out of a possible total of 150 points. I think that's quite a dramatic score. The top-scoring country, surprisingly Serbia, scores 135 points, showing that the rating is not an unrealistically stringent set of measurements. It's a set of measurements that many countries go over 100 on.

Perhaps even more significant is that Canada is now in 59th place out of 102 countries whose laws we have rated, and each year Canada falls further and further down the rating as other countries reform their legislation to improve it or as new countries adopt legislation that is stronger than the Canadian legislation. I think the RTI ratings show pretty clearly that there are very serious problems with the Canadian legal framework.

The first point we would like to make is that we very much welcome the quick gains that the Honourable Scott Brison announced on March 31. We had called for all of those changes to the legislation. We feel that all of them are crucially important. At the same time, and I think as the RTI rating clearly demonstrates, that is not nearly enough. We feel that a much more profound reform of the act is absolutely necessary to bring it into line with anywhere near what most Canadians would consider a respectable position for Canada in respect of an international human right like the right to information.

We do not support the idea that a full review of the act should be put off until 2018. We feel that Canadians, across all political stripes and from all different sectors, have been calling for reform of this act for many, many years now. We feel that putting it off for another two years would be an unnecessary and essentially unacceptable delay.

We also note with concern that the quick-gain reforms that the Honourable Scott Brison announced are identical to the commitments in his mandate letter.

● (0910)

We would be concerned that putting the reform off until 2018 would perhaps lead to further delays and further extensions of that, so we would not see this reform happen within the life of this Parliament. We feel that would be very unfortunate.

In January 2013 we prepared a submission as part of the Office of the Information Commissioner's review of the act, and we have four main areas where we have proposed reforms.

The first is the scope or coverage of the act. This is where the proposed quick gains have the greatest impact and therefore the greatest amount of improvement. At the same time we notice that there are several areas where the scope would remain too narrow even after those quick gains. We note the blanket exclusion of the cabinet in the scope of the act; the limited nature of the schedule 1 list of public bodies that is not regularly updated as the nature of those public bodies change; and we also note that the act is restricted to citizens and residents rather than individuals, unlike the Swedish act that we heard about, and many other acts.

The second area where we identified a need for change is in respect of the exceptions in the act. The quick gains do not make any proposals for change there. We note that schedule 2 includes nearly 60 secrecy [*Technical difficulty—Editor*] for secrecy. We just heard from the Swedish ambassador that in that country they have one law that sets out the principles for exceptions, and that other laws are not allowed to go beyond that. We strongly support that approach. Unfortunately the schedule 2 exceptions go way beyond the principles that are established in the access to information law or are better recognized under international law.

We note as well that several exceptions are overbroad or by nature are illegitimate. Many exceptions do not include a harm test. The disclosure would be expected to be injurious to a specific interest—that kind of language. Under international law the principle is that all exceptions should be conditioned by harm. Only where release of the information would harm a protected interest should the information be withheld.

Finally, we note in terms of exceptions again that the law includes only a very limited public interest override. In 2010 the Supreme Court of Canada substantially extended that public interest test to all non-mandatory exceptions, so that public bodies are now required to consider the public interest for any non-mandatory exception, but all of the mandatory exceptions still fall outside of that and don't have a public interest test.

In terms of procedures, I'm sure that other people who have appeared before you have mentioned these. There are two key problems with the act as it presently stands, and one is the time limits. Mr. Drapeau also referred to those, whereby public bodies are given very broad discretion to extend the time limit in which they respond to access to information requests. The result is that requests are often only processed after very long delays, unlike in any other countries where there are strict and fixed timelines. We have very concrete proposals for improving that system. We feel that's one of the most important things that need to be addressed.

The other issue with respect to procedures that needs to be addressed is the issue of fees. Under the law, fees can be charged. A schedule of fees has been prepared. It is not in line with realistic cost estimates. Even the charge for photocopying is far in excess of what any Canadian would expect to pay for fees at any commercial enterprise.

Those are two areas in respect of procedures.

Finally, coming to the issue of appeals, again I would have to differ with Mr. Drapeau on the question of order-making powers for the Information Commissioner. This is an issue that my organization has studied very carefully. In many other countries and in different Canadian jurisdictions there is, as you know, a mix of practices across jurisdictions. We feel that the overwhelming evidence, from both international jurisdictions and from within Canada, is that an order-making power is a far more important and a far more effective power. We note that order-making powers would be likely to have a strong positive impact not only on the decision-making processes undertaken by the commissioner, but also on the mediation processes.

● (0915)

There is good evidence showing that having the order-making stick, if I can put it that way, in the background when there are mediation procedures, which are the lifeblood of dispute resolution under access to information laws, renders them much more effective. So we strongly support order-making powers for the commissioner. We agree that it's not a panacea under the act. There need to be a lot of changes, and we also agree that there needs to be a groundswell of cultural change with respect to the way the act is applied. But we feel that these important changes need to be made to the act.

I will end by saying that across Canada there has been a bit of paralysis in reform of access to information laws, often with different Canadian jurisdictions looking at other Canadian jurisdictions and saying that their own law is not much different from the other Canadian jurisdictions' and that it's working well enough. We note that Newfoundland has broken the mould in that respect. It has engaged in bold reforms of its law, fundamentally changed its law, shot far ahead of any other Canadian jurisdiction on the RTI rating. We would strongly encourage the federal government to engage in a similar process of reform with respect to the Access to Information Act.

Thank you.

● (0920)

The Chair: Thank you very much, Mr. Mendel.

We are going to have a very good discussion at the table this morning, I think. Those were three excellent presentations, giving us lots to think about.

We're going to proceed to the first round of questions, allowing folks to have seven minutes to have their questions delivered and answered. I would encourage members and respondents to keep their questions and answers concise.

We're going to start with Mr. Lightbound.

Mr. Joël Lightbound (Louis-Hébert, Lib.): Mr. Drapeau, thank you for your presentation. It was very interesting.

I was particularly intrigued by your last recommendation to the committee, that ATI coordinators within departments and federal institutions should be appointed by the Governor in Council. I was wondering if you could elaborate on the shortcomings of the current system and what benefits it would bring for someone like me, who is new to Ottawa. I'd like to have your take on that.

Col (Retired) Michel Drapeau: In a former life I was executive secretary of National Defence headquarters. The coordinator of access to information worked for me, and I worked for the deputy ministers and the Chief of the Defence Staff and related on a daily basis with the chief of staff to the minister. Basically I was responsible for the access to information coordinator's staffing, her performance evaluation, and for giving her direction and receiving advice from her. But fundamentally she was down the totem pole quite a bit, and any of her work was sometimes supervised not only by a bureaucrat but also by someone from the minister's office itself. She has very little authority or independence to do what she knows to be the intent of the requester, the type of information the requester is after. She is an agent of that particular department. In some cases in some of those departments, her capacity to apply the law and to exempt or to exclude information is rather limited. She is being directed as to what to release and what not to release.

My point is that hers is absolutely a key position. Of 78,000 requests, only 1,600 are subject to a complaint. The only person a requester sees, contacts, and gets responses from is the coordinator. If that coordinator is not given the instrument to do her job—the authority to seek access to and release information—the system will never get off the ground. That's exactly the point.

In the Gomery inquiry—and there was another inquiry, but I forget which one—some of these coordinators came to the fore, particularly at the Gomery inquiry, and said how unstrung they were and how disciplined they were if they dared to provide the information a user was entitled to under the act. Hence, my point is to make these individuals, about 160 of them, Governor in Council appointments. They should be reporting to the minister. The minister ultimately should have political authority and political responsibility before Parliament and before this committee for his performance under the act. It's a quasi-constitutional right. One of the ways to do this is to give him the means to do it. Then the minister has no way to escape this, or say that he didn't know, wasn't aware, or didn't know what the ministry or the department did. He is responsible, and the person he charges and delegates to do the job for him is a Governor in Council appointment with the protection, independence, and the authority that comes with it.

Mr. Joël Lightbound: Thank you.

My second question would be regarding your second recommendation, merging the role of Privacy Commissioner and Information Commissioner. Could you just elaborate on the advantages that would bring?

Col (Retired) Michel Drapeau: Once upon a time they were together and had a common administrative service, from 1983 until about 2001—if my memory serves me correctly, though I could be off by a year or two. There was one director for corporate services, one director for human resources, and we were looking at a relatively small organization. If you look at the organization now, they've been separated since then, with each having a director of corporate administration. That's expensive, particularly having somebody at the EX-03 level to look at an organization made up of 100 people. I once was a director general of corporate services at the EX-01 level at the Department of National Defence, having a staff of 800 people. Somehow there's a disconnect there. There are also personnel savings. Between the two organizations, you've got 25 lawyers. Should they not be in a central office where there is a call for more services, more advice, more whatever as a common share? It's being done at the moment with the court administration service, with one shared common administrative service for the Federal Court of Appeal, the Tax Court, and the Court Martial Appeal Court.

I'm not looking at reducing the complement of people. I'm looking at somehow making savings, and with any savings out of this, to transform them into investigators. Why? The current backlog is two years. I have complaints that have been with the Information Commissioner for the past six to seven years. The Privacy Commissioner is exactly the same. The sole task of both offices is to investigate complaints. That's it—and then to do the job. I question why each one of those two offices has less than 50% of their staff interested and employed in the investigation of complaints. It should be 75% or 80%. When I complain—and it's only 1,600 of those, of the 78,000—if I don't get an answer to my complaint, then even if the complaint was ruled against, I cannot go to court. I cannot exercise my right to go to court until I receive a report from the commissioner. I begged, on behalf of my clients, give me a report, tell me my complaint is not founded so I could go to court.

We have in fact a system that is not only broken but is stale and doesn't move. One of the ways to do it...unless you look at the organization of that commission and you make certain the only thing they're responsible for is not to propose reform to the act, but to investigate complaints, and to give them the task of doing that and the staff to do it.

● (0925)

Mr. Joël Lightbound: How much time do I have?

The Chair: You have 35 seconds left.

Mr. Joël Lightbound: I have just one quick question then. You mentioned the fees, and it was part of the Liberal Party's platform to remove all fees besides the $5 fee. Based on your analysis of what's being done elsewhere, would keeping the $5 fee be a hindrance, or is it not just a way to avoid vexatious or frivolous demands?

Col (Retired) Michel Drapeau: I don't think so. With 78,000, the public is not abusing it on a daily basis. The fees in fact are cumbersome. The U.S. and the U.K., among others, don't have those. Fees prevent one from submitting a request electronically because you have to send a cheque. Most people today, the young people I speak to, don't have a chequebook, but a debit card or credit cards. So they have to go to a post office, whatever it's called, to pay the fees. It's a pain. If we look at the money that we spend, I think it's something like $35 million a year to administer the program and we only get fragments of that through fees. The Harris government in Ontario—I know you're not proposing that—increased the fees to $25. It has had a diminishing, inhibiting effect on the system. My point is to get rid of the fees so that people in fact do exercise the right. I apply under the U.S. and U.K. system via my Internet in the office and I get a response back within 48 hours, because I don't have to submit the fees and the whole thing is done electronically.

The Chair: Thank you very much.

We now move to Mr. Kelly, for seven minutes please.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you, Mr. Chair, and thank you to all of the witnesses today. We've heard excellent, and some really interesting, insights into this issue.

My first question is for Mr. Drapeau. When the budget came out, some of us perhaps might have been surprised—since we were in the process as a committee of examining these matters—to read on page 208 that "the Government will move forward on our commitments to revitalize access to information, including empowering the Information Commissioner to order government information to be released".

Could you comment on this? We as a committee are here to examine different models and to hear from witnesses what they think of different options available to us. Yet when I read the budget, I wonder whether this has already been decided. Could you comment on the budget?

Col (Retired) Michel Drapeau: If I can be blunt for a moment, and I think it's my task to be so, your predecessors in office, going back a long time, under the Joe Clark government in 1979, listened and had a green paper on access, and they looked at various options including order-giving. On the other end of the scale, they looked at the ombudsman version, which they called the parliamentary option. Why? They wanted to hold a minister responsible to the House, to the public, and to the taxpayer for the effective use of access, and to be accountable before this committee. Under the act, the commissioner is in fact a commissioner, a mediator, an ombudsman.

We use the Swedish model and it has served us well. I have spoken with Mr. Clark and Francis Fox, the then minister of communications in 1980, responsible for the introduction of the original act, for bringing it through the House, and for eventually having it enacted into law in 1983. That's the way our system has been. It's kind of mediation, and the Information Commissioner only investigates complaints reported to this department annually and to this committee as often as is required in order to keep public pressure upon the decision-makers, the decision-makers being the ministers.

This committee has played a huge role throughout the years, a huge role in the creation of access to information back in 1983. I've spoken to each one of the commissioners from the past to the present. To change that would change the mechanism, would change the relationship. The commissioner would no longer come here and report to you. You would no longer play the role that you are, by definition in the act, supposed to play. When she becomes a judicial officer, as is the case in Quebec, she will no longer conduct the investigations that are being done now. It will be a judicial process with each party submitting in writing or verbally. In Quebec you come before the committee after you submit your complaint. You travel to Montreal, you go before the committee, you hire yourself a lawyer, and you make representation; then the commission issues a statement and issues a decision on it. If you're not happy, you go to court. Few people do, because the process is so long. I've represented corporations in the Quebec regime, and they decided to abandon their complaint halfway. Why? Because a year and a half afterward, they still hadn't been called before the committee. Is that what we want?

Have a look at the size of the Office of the Information Commissioner at the moment, the staff and the 14 lawyers they have and everything else. It's going to balloon even more. You will lose control, and you are going to read in *The Globe and Mail* about the decision being made, but you will have no sense and no control over which way the access to information ought to go.

I have one last comment. The comments being made by your leaders and in the budget are not the creation or the intellectual exercise of this committee, because you were not formed, or of the committee before. This is what many well-interested parties in the civilian society suggest, and the Information Commissioner suggests. I object to that. The Information Commissioner is there, as designed, to apply the act and apply the law as written, not to change it, not even to reform it.

I'm begging you, as elected representatives, on something as fundamental as a quasi-constitutional right. That's what the Supreme Court, the Federal Court of Appeal, and the Federal Court said. It's up to you to decide and to structure the law. You may want to restructure it. I encourage you to do that, but it should come from this committee. It should not come from people outside, let alone bureaucrats whose purpose it is to apply the law.

● (0930)

Mr. Pat Kelly: Thank you for those comments and that answer. I hope our committee will in fact have an opportunity to make a report, so that the government will then be able to form a decision, rather than announcing through the budget that we're going to have an order-making model.

I think I've only got a couple of minutes. I was perhaps surprised again, Mr. Drapeau, that in your recommendation or suggestion that the Auditor General examine the efficiency and activities of the commissioner's access to information staff, you do not believe that the resources currently available are being necessarily well utilized. Could you comment on your basis for that suggestion?

Col (Retired) Michel Drapeau: In my brief I've given you an outline, which I obtained via an access request, of the staff and its composition. When I come up with 28 investigators and 14 lawyers being in the access to information office, I consider them to be the front end, the people who actually conduct the investigation and render a decision. The rest of the staff, some 52, are administrators such as the director of personnel, director of media relations, director of human resources, and directors general of this and that. In any business, and this is a business, you want to have your front end, your operating end, in military terms your bayonets, to be more.... It's the tail versus the tooth type of ratio.

I find that either there's something I'm not understanding, or it's something that is so complex that you need this number of administrators.

I make the point that my co-author, Maître Racicot, was in fact at the information office from 2001 to 2007. When I asked him how many lawyers were there then, there were four, and the same number of complaints that there are today. Now they have 14.

We can lawyer ourselves up to the point where.... The backlog now is two years or more. I think it should be two months or more. We should measure it in months, if you're going to have the right of access and give it some meaning.

It's faster to go to the Federal Court now and get a hearing on the judicial review—it takes me nine months—than it is to complain to the Information Commissioner. So that system doesn't work.

Hence, I'm asking the Auditor General to look at it and give us some advice.

● (0935)

The Chair: Thank you very much.

That concludes your time Mr. Kelly.

We now go to the former chair of this committee, Mr. Pierre-Luc Dusseault, for up to seven minutes, please.

Welcome back.

[*Translation*]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair.

I would like to thank the witnesses who have come today to share their views.

Mr. Drapeau, I think we have covered the structure of the Office of the Information Commissioner of Canada. You dealt with that in the second part of your brief.

I would like to return to the application of the act as regards cabinet and other government bodies. I would also like to hear your views on the commissioner's recommendations in this regard.

Col (Retired) Michel Drapeau: In the earlier editions of the book I mentioned, I recommended among other things that the Governor General's chancellery, which grants medals and honours, be subject to the act. Court administrative services—not decisions or transcription of notes, but administrative support—should also be subject to the act, as should the Senate and the House of Commons. I am referring to your various expenses and not your parliamentary, legislative, or other activities. This is now the case in Europe and certainly in England. In my opinion, this has increased their authority and enhanced taxpayers' confidence in their legislative representatives. These bodies should be subject to the act. This change could be made at the stroke of a pen and would, in my opinion, benefit everyone.

I would not be opposed to court administrative services and the chancellery being subject to the act, on the contrary. Let me give you an example.

A number of years ago, a businessman hired me as a lawyer to obtain information about the awarding of contracts by the chancellery, which operates under the authority of the Governor General and makes medals for Canada, including for the Order of Military Merit. The contracts are worth several hundred thousand dollars, but we could not obtain them because they are awarded by the chancellery, which is not subject to the act.

Access should, in my view, be as broad as possible, with specific exceptions such as for cabinet, the Governor General, and the courts. I have no objection to that.

Mr. Pierre-Luc Dusseault: Thank you.

I would like to return to Mr. Mendel.

You spoke at considerable length about the many exceptions in the act and the commissioner's recommendations to limit them. Some of the exceptions are entirely justified, but we agree that the number of exceptions has become excessive.

I would like to hear your thoughts on limiting the exceptions and on defining their scope so that they apply in very specific cases to effectively protect certain things.

[*English*]

Mr. Toby Mendel: Under international standards, exceptions should conform to a three-part test. The first part of the test is that they should protect legitimate interests. We heard from the Swedish ambassador that they have a list of seven principles in their law that responds to seven categories of interests. We have a lot more exceptions in the Canadian law. A better practice around the world is to have a relatively limited number of types of interests that can be protected. Of course, the specific modalities of that protection might be elaborated in another law. For example, the access to information law recognizes privacy as an interest. Then you have the Privacy Act, which protects that in more detail.

The second metric under international law is that it should apply only where disclosure of the information will cause harm to the interest.

I see you nodding here because it's just so logical and obvious.

It's only where harm would be caused by the disclosure of the information that it could be withheld or its disclosure refused. Many of the exceptions in the Canadian act do not correspond to that value. There's no harm required. Cabinet documents are covered, period—no harm, no interest even. If a third party deems information confidential, it is confidential, even though no harm to any legitimate interest would be caused by disclosure of that information. It's kind of a third-party veto. There's a whole list of exceptions in the Canadian act.

Finally, under international standards and better practice, there is a public interest override. Where the overall public interest would be served by disclosure—keeping in mind that the right of access is in most case recognized in Canada as a human right, as part of the right to freedom of expression—the public interest should override the secrecy interest. I may have a minor privacy interest, but information discloses evidence of corruption. The information should still be disclosed.

In many other pieces of legislation—the Swedish act, the Indian Act, the South African act, the Mexican act—their exceptions correspond to those three tests. Ours do not. I think that if were to apply those three principles, we would come up with a very different set of exceptions under our law. I think this would be more logical and easier for civil servants to apply, and less abusive grounds to refuse to provide information for no good reason. I think there's a lot to be done in the area of exceptions.

● (0940)

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Mendel.

You stated today that you are in favour of order powers being granted to the commissioner. Those are significant powers that are not granted to other commissioners. If I understand correctly, you are referring to the commissioner being given the legal power to order the publication of information that she considers should be made public.

I would ask you to confirm that that is indeed your current position and tell us whether the power exists in other jurisdictions and under other acts.

[*English*]

Mr. Toby Mendel: First of all, yes, that is exactly my position. Second, I would note that although there are a few places that don't have order-making power, particularly where some of the older laws were adopted in Europe and Canada, in most of the more modern jurisdictions, access to information has moved to an order-making model, including Britain, Australia, India, Mexico, and Indonesia. Most countries have order-making powers.

This has nothing to do with lines of reporting of this body. There is absolutely no reason that an Information Commissioner with order-making powers would not continue to report to this committee precisely in the same way as happens now. That is what happens in India, in England, and in Australia. The bodies are still accountable to Parliament in precisely the same way.

As to the concern that binding powers would elongate the decision-making process, we believe this to be unfounded. We believe, as Mr. Drapeau has pointed out, that the process has already become far too lengthy and bureaucratic, even though there are no order-making powers in the system. We also believe that it's perfectly possible to apply much stricter, much more concise time limits. It's partly a question of resources, but it's far more a question of how the appeals are processed and how the rules on processing appeals are applied. In a non-binding model, the Information Commissioner has very little control over these matters. But with a binding model, the Information Commissioner would actually have a lot more power to speed up the processing of appeals by reducing unnecessary procedural elements. It is not a judicial appeal. That is not the model that operates in Britain, Australia, or India, or those other countries. The whole idea is that it should be prompt and rapid. It is not serving that role. But a binding order-power could be done in a way that would reduce the timeline significantly. We see examples of that in different countries.

● (0945)

The Chair: Thank you very much. We went significantly over time there, but that's okay. I think we have time, and it was a very worthwhile answer.

We now move to Mr. Saini for the last of the seven-minute rounds. Then we'll move to the five-minute rounds.

Mr. Raj Saini (Kitchener Centre, Lib.): Good morning, gentlemen.

Your Excellency, I want to thank you very much for coming here today. I have some questions about your country's approach to this issue.

One, how many requests do you get per year for access to information? Do you by any chance have that number?

Mr. Per Ola Sjogren: No, I don't have the exact number. First, if it's not the government's issue or it's in the Parliament, it is dealt with by the courts. You can appeal to the court. There are not so many cases per year, but I can come back with the exact number to the committee.

Mr. Raj Saini: How many do you think are appealed? Do you have an idea percentage-wise?

Mr. Per Ola Sjogren: I don't have that, actually. I will have to come back on these issues about how many.

We have an open system, and the principle is that we should release documents immediately—the same day, in principle. That has been stated in many examples from our ombudsman, who on a regular basis scrutinizes the public administration when it comes to the release of public documents.

Mr. Raj Saini: I have a question on the appeal process. You say that if you are going to make a request to the minister and that is denied for whatever reason, you can make an appeal to the government.

Mr. Per Ola Sjogren: Yes.

Mr. Raj Saini: If you have a request to another authority, you can make an appeal to a court of law. Can you take me through the steps of how that appeal works?

Mr. Per Ola Sjogren: When it comes to the government, which then would be a decision by a minister or ministers, the issue is referred to a government decision on appeal on that. That would be the procedure.

When it comes to the constitutional committee in our Parliament that scrutinizes and reviews on a regular basis all the different ministers that work in relation to openness when it comes to public documents, they have an annual administrative scrutiny of each minister. Within that review, they can also report on delays and malpractices in relation to the release of documents.

It can also be done on demand from a parliamentarian. A parliamentarian can ask the constitutional committee to look into a ministry's habit or practice when it comes to release of documents. For example, in my ministry, the Ministry of Foreign Affairs, there are, on an annual basis, a number of issues for which the minister has to report to the constitutional committee on these matters. It can concern both secrecy and the time delay, the timing.

Then we have our ombudsman, who follows the whole public administration. The ombudsman works on a complaint basis and makes recommendations to the administration on how it should relate to a request for the release of a document or documents. In a number of cases, the ombudsman has said that a release should be done "immediately"—that's the word I referred to—which means the same day. If an official, a public servant in the Swedish ministry, gets a request, it's mainly for that person to act immediately. If it's a more complicated matter, it can be referred to the head of the department and finally to the minister, but it is for each public servant to act immediately when they get a request for the release of a public document.

I would say that we have a culture of openness, which leads to relatively few formal complaints to courts and government, but I will come back with the exact numbers.

● (0950)

Mr. Raj Saini: If a matter is referred to the court, and let's say the Supreme Court, is there a cost associated with that? Does the individual or the entity have to pay out of their own pocket to plead that case at the Supreme Court level?

Mr. Per Ola Sjogren: I don't believe so, but I will also have to come back on that and confirm it.

Mr. Raj Saini: Do you get a lot of requests from foreign governments or foreign individuals for access to information? Do you deal with them separately or...?

Mr. Per Ola Sjogren: No, I wouldn't say so. I don't have exact figures, but it's rare, I must say.

Mr. Raj Saini: But are those requests dealt with the same way as a domestic request would be dealt with?

Mr. Per Ola Sjogren: If we get the request from a foreign government?

Mr. Raj Saini: Yes, let's say a foreign individual, a foreign government, asked your government or an entity within Sweden for information, would that information be dealt with in the same manner that someone—

Mr. Per Ola Sjogren: It would certainly be dealt with at the ministerial level. It would not be dealt by an individual, so it will be raised at that level. I'm quite certain about that, yes.

Mr. Raj Saini: Do I have any more time?

The Chair: You have a minute and a bit.

Mr. Raj Saini: Mr. Mendel, I have a quick follow-up question for you.

You had mentioned the Newfoundland and Labrador model. Could you give us a brief outline of some of the weaknesses and strengths of that model?

Mr. Toby Mendel: My main point about Newfoundland and Labrador was that they undertook a comprehensive process of reform, where they really looked root and branch at the legislation, at what to change and so on, and ended up with legislation that is very substantially stronger than their legislation had been. In other words, they really went through a process of reform that was genuine and very substantially improved the legislation.

For example, on our RTI rating it jumped by 20 points, and we are now, I think, 15th in the world. Only countries are rated, so we're not really 15th, but if we were a country we would be 15th.

I was encouraging the federal government to do the same thing, rather than engage in some piecemeal reforms at this point and put off real reform until later.

The Newfoundland and Labrador model is kind of a hybrid model. We are still to see how well it works. It's very unique. They have given a lot of powers to the commissioner in terms of, for example, approving further delays in responding to requests and in extending the overall period for the presumption of secrecy of 20 years. I can't remember exactly what it is under the law. They have very significantly tightened up their regime of exceptions, so it looks very different from the Canadian federal or many of the other Canadian jurisdictions. They have improved the procedures so that the way and manner of making requests, fees, online extensions, as mentioned, have to be approved by the commission.

Many of the issues that I raised in my presentation have been addressed in the Newfoundland model. Of course, it's not perfect. It's really being tested, so it's a bit difficult to say whether this hybrid model is going to turn out to be the success they hope it will, but my main point really was that they did not engage in a smaller or piecemeal reform. They really engaged in a proper process of reform.

The Chair: Thank you very much, Mr. Saini. We're already at eight minutes. The time goes by really fast. It's now Mr. Jeneroux's time.

We're starting the five-minute rounds, so let's keep the questions and answers concise and we'll get through this.

Mr. Jeneroux.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Wonderful, and thank you first to both you two gentlemen for coming here today. It helps us immensely to have you here, and Mr. Mendel, thank you for calling in today and coordinating with us.

If you don't mind, Mr. Chair, before I begin my questioning I want to express some of the disappointment in seeing this in the budget. It was something that we had undertaken and was something as a committee we were prepared to put a lot of time into. We had a lot of witnesses lined up, and unfortunately it appears that the government is moving ahead with making a model, without hearing the fulsome discussion of the committee.

That being said, I'd like to hear your thoughts, hopefully from all three of you depending on time, but maybe we'll start with you, Ambassador.

One of the Information Commissioner's recommendations is to open this up to people who aren't citizens, people who aren't Canadians but make requests here. I am hoping to get the thoughts of all three of you on what you think that means for the volume of requests, and Ambassador Sjogren, in your country's example of how much resource and financial commitment that may potentially bog down the office.

If you don't mind, all three of you, could you elaborate a bit more on that.

● (0955)

Mr. Per Ola Sjogren: I'll just briefly say that I would imagine it could lead to an increase in workload for that administration.

I'll refer to our experience of openness as a basis for handling cases when it comes to public documents. If we have a strong culture of openness and act promptly when we get requests, it diminishes the workload when it comes to appeals and other cumbersome administrative procedures.

Therefore, in our system we have the legislation, the basic laws and the subordinate laws, when it comes to openness. I will say that is a cultural issue within our administration, to try to be as open as possible in relation to requests for public documents. That would probably lead to diminishing issues of administrative character such as appeals, etc. We have relatively few appeals, and I will come back with more exact numbers.

Openness, I think, is a good way to deal with this.

Col (Retired) Michel Drapeau: I will take a more philosophical aspect to it. In conceptual terms, I have no problem making it universal. It is certainly done in the U.S. and in the U.K. However, as a Canadian I certainly would like to have my share first, and, second, have my requests or my complaints handled within a reasonable amount of time, before we open it up to China, Mexico, and every other place; otherwise I will never see the last of it.

If we have open data as a concept, and most of the information is readily available on the Internet—for instance, government information, whether a contract or whatever, which is the aim—access to information requests for formal access should be the exception. Most of the other information should be readily available. Then, in the fullness of time—and we are years away from this—why not make it open to any citizen of the world?

There is a cost to be paid, because there will be increased traffic. We have to have our system working right before we do that, and we are a number of years away from that.

The Chair: Mr. Mendel, do you have some comments for us?

Mr. Toby Mendel: The first point is that the experience in other countries, as we already heard from Sweden, is that the number of formal requests is very low. Unfortunately, people are not as interested in us as we might wish they were, and I think we can see that the burden from that side could be expected to be very limited.

I have another point about it, which is diametrically opposed to this. I think we can massively increase efficiencies and reduce costs if we eliminated that pre-question and the fees pre-question, and if we moved to a system almost exclusively of electronic requests. That would be a huge efficiency.

By eliminating that requirement, we would be removing a barrier that is imposed on officials processing requests—they have to ascertain whether the person is a citizen or a resident. With that, they would no longer have to do that. If they didn't have to take the fees, they could do everything electronically, and it would be much more efficient. I think it would result in a huge increase in the rapidity of processing requests, rather than the opposite.

The Chair: Just like that, that's how five minutes get totally used up.

Mr. Erskine-Smith, go ahead, please.

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

I'd like to start with a question about the extension of coverage.

Mr. Drapeau, you mentioned extending it to Parliament, ministers' offices, and courts' administration, but in fact the Information Commissioner recommends extending it to publicly funded institutions and institutions that perform a public function. Upon request, the Information Commissioner provided some clarification. Let's first deal with publicly funded institutions. She suggested that one model might be where an entity receives $5 million or more from the federal government, or where more than 50% of its funding is from the government, or some combination of the two.

I wonder, Mr. Drapeau, if you have thoughts about extending coverage to publicly funded institutions and whether the specificity that the Information Commissioner proposed makes sense.

● (1000)

Col (Retired) Michel Drapeau: In conceptual terms, yes, but I have a major problem. We have to fix it first, because it doesn't work now. Limited as it is, it doesn't work.

Second, we want to be restrictive, as much as I am for access. Otherwise, if I have a large contract where the contractors provide some type of services for the military, be it air transport or food services, is that organization, as a third party, subject to the access to information? First of all, there are legal implications, and second of all, there are administrative processes and costs associated with the management thereof.

My advice would be to move very cautiously before opening up.

One of the things that are open now, that are publicly funded, is foundations. Not all of them, but most of them are now part of it.

Mr. Nathaniel Erskine-Smith: Thanks very much.

Mr. Mendel, I would put the same question to you with respect to publicly funded institutions, and institutions that perform a public function, and extending coverage of the act to these organizations.

Mr. Toby Mendel: We've been moving excessively cautiously for 30 years with this act. I think now we have to not do that.

A lot of countries cover publicly funded bodies and bodies that perform a public function. Yes, it is a change. I think the implication would be that if you want to do business with government and you want to receive funding from government, then you have understand and accept that. In those countries where that model applies, and once it is understood, I don't think it's any problem for those businesses. Of course, we hope this will only apply in respect of the functions that were performed under that public funding. That would be an important limitation. Otherwise, yes, I support that. It's a strong model internationally.

Mr. Nathaniel Erskine-Smith: Would it be possible for both Mr. Mendel and Mr. Drapeau to review the Information Commissioner's specific recommendations on extending this to where entities receive $5 million or more—where more than 50% of its funding is from government—and then also looking at how she and her office define public function, and provide written submission to this committee as to whether you agree or whether you differ, and if you differ, how you might specifically define—

Col Michel Drapeau: Yes.

Mr. Nathaniel Erskine-Smith: And Mr. Mendel?

Mr. Toby Mendel: Yes, certainly.

Mr. Nathaniel Erskine-Smith: Thanks very much.

With respect to order-making powers, Mr. Drapeau, as it stands, the OIC does go to court and request disclosure where they claim it has been improperly denied. With respect to order-making powers, doesn't empowering the OIC with order-making powers simply reverse the onus for the government then to go to court?

Col (Retired) Michel Drapeau: At the moment, the Information Commissioner in fact investigates and provides findings and recommendation to the institution. If the institution decides not to go with the findings or recommendations and decides not release the records, then the requester has the choice to go to court, or the Information Commissioner has the choice to go to court with the consent of the requester first. Also, the Information Commissioner, particularly in a case where an institution is not responding to requests on a widespread basis, has the choice to file her own complaint, investigate it, and then take it to court. At the moment, she has a very powerful tool as an officer of Parliament to come here, to write an annual report, and to make a special report, which she has done in the past. On occasion, when she wants to or needs to, she can go to go to the Federal Court. It's quite broad.

Mr. Nathaniel Erskine-Smith: If I could jump in, I would also like to ask Mr. Drapeau and Mr. Mendel about the following.

I think the 85 recommendations of the OIC are a good starting point for this committee's job.

Mr. Drapeau, you've identified the order-making powers as a source of disagreement.

Would it again be possible for you and your organization, Mr. Mendel, to provide us with written submissions as to other sources of disagreement, or if in fact which of the 85 recommendations you agree with, and if you have other proposals that you would add to those 85?

Mr. Toby Mendel: Yes, we would provide key points on that.

The Chair: I like self-timing MPs. This is fantastic.

We'll go back to Mr. Jeneroux.

Mr. Matt Jeneroux: On queue, start my timer.

I find it rather redundant for the Liberal members to ask for your opinions on something that's already essentially been decided in the budget. I guess I will humour the process for the time being and continue with my questions.

Going back to my question that I asked on opening this up outside of Canada, I want to highlight a witness we had here recently. Citizenship and Immigration Canada was before us and indicated that it would double their requests, in their mind, if we were to open it up outside of Canada. I wanted to put that on the record as well, so you guys are clear about that. Obviously you weren't present at that time, so I want to make sure that's there.

Mr. Drapeau, you spoke about a priority-based model. Have you done some work on that, which we could maybe explore a bit more? In particular, you mentioned Canadian citizens getting priority over others from outside of Canada Is there something, maybe not necessarily from you, but some work out there?

● (1005)

Col (Retired) Michel Drapeau: It hasn't been looked at, and I agree that Citizenship and Immigration is one of the departments that has received the most requests and one that is the most complained against. It's one of the 10 most complained-against departments. No doubt if we were to open it up to the public—and we are, in fact, a country that receives immigrants—perhaps there will be an appetite for information in certain sectors if and when we open it up to a universal right of access.

That's what I am saying. I have no data to suggest how many requests we would be receiving—20,000, 50,000, or 90,000. I think somebody else ought to look at this and quantify the workload associated with that.

However, before we do any of that, we have to get our own system right. If it is a quasi-constitutional right that we give to Canadians, those Canadians have a right to anticipate receiving an answer in an appropriate amount of time. At the moment it's not taking place. Before throwing the doors open to the world, let's just make sure we clean up our own act, and this I suggest would take a couple of years before we get there, with the direction and advice of this particular committee.

Mr. Matt Jeneroux: Thank you for that, Mr. Drapeau.

I guess if there's nothing in place now, I'm with you in thinking that it's going to take some time to get that done. However, budget 2016 allocated $12.9 million over five years, according to the number I have here, to implement a new access to information portal where Canadians could request information. This was the wording.

It also includes a 30-day deadline for requests of personal information. We had before us the immigration and defence departments. Both of those departments indicated the challenges that they were experiencing in keeping up with such requests.

Mr. Drapeau, you also indicated there was a large delay. In your personal experience, I believe you said the delay at the defence department is between six and seven years?

I guess we have about a minute. Would you all comment on this suggestion of having an information portal and the dollar amount of $12.9 million—again with the caveat that we don't really know how many more requests would come in if we opened up the system to outside Canadians as well. I'll stop there, and now you have about 30 seconds.

Col (Retired) Michel Drapeau: In terms of the demands, if we look at the 70,000 existing requests now in the system, let alone any new ones, with many of the requests my own office makes, we daily receive letters back from departments authorizing themselves delays of 180 days or 200 days to respond.

Then we have a choice: either we sit patiently by or we submit a complaint. If we submit a complaint, we know it's going to take us two years to get a response. So what do we do? We suck it up, and we're going to wait 180 days. Then, when we get the response, if they're not happy with it, then we may make a complaint. That's what we mean by the system is broken.

I cannot get requests or access to records through the formal process, and when I'm getting them, I cannot have access to the complaint process because it's chockablock full with the two, three, or four years' backlog.

Therefore, at the moment we beg them, “Would you please look at it.” In some cases I have a litigation file and I intend to fight them. I need these records now. Sometimes we receive it and sometimes we don't.

● (1010)

The Chair: Thank you very much, Mr. Drapeau.

We now move to Mr. Bratina, and then we will go to Mr. Dusseault, and that will end the official rounds that we have in our standing motions. But at that particular point in time, we'll have some time left over and everybody who wants to ask questions will get an opportunity.

Mr. Bratina, please, for five minutes.

Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.): First of all, to Mr. Drapeau, I was interested in your statement about the “lack of motivation”. One can see in a tyranny why they don't want you to know stuff. Why do you suppose there's a lack of motivation here? Is it the discomfort of facing the media, the public, and so on? What do you feel is the lack of motivation?

Col (Retired) Michel Drapeau: It's because they understand, they read the signals. They read the signals from the centre, the Clerk of the Privy Council, the deputy minister, the assistant deputy minister, or director general.

There's a higher penalty to be paid if you're zealous in releasing records that you know are being requested and proceeding with them sharply, and only excluding what needs to be excluded, where you have the discretion not to exempt certain parts, and having the information out there, than in saying no, and delaying or invoking exceptions and letting the requesters go through the complaint mechanism.

I could give you, if it weren't for my *secret de privilège*, so many instances where we're going to go through the complaint mechanism when a particular institution has been asking for exaggerated fees. But I may have to wait two years before I get a decision that our complaint is well founded. Well, hallelujah, it's been two years.

There's a higher reward for not responding to an access request in the fullness of time in the fullest manner possible than there is a penalty. There's absolutely no penalty. Bureaucrats should be brought in and told, “You're being a bad boy because you haven't responded to this request.” There will be more of a smiling face if, in fact, you've been able to use your power to resist disclosure.

Mr. Bob Bratina: Mr. Sjogren, for a newspaper to be covered by that very long expression “freedom of the press”, it must be registered and have a responsible editor. Then there's the fundamental law on freedom that is similar to other media, including TV, radio, and websites.

So the issue that comes before us is a blogger who has no editor. He's just a lone wolf. How do you control that with regard to the press, which has to have a responsible editor and probably liability insurance in case there is a lawsuit, versus the lone wolf blogger?

Is there any protection at all with regard to information and single individual bloggers in Sweden?

Mr. Per Ola Sjogren: The Freedom of the Press Act refers to printed media. The printed media needs a responsible editor, and the editor will be in charge. The same goes for the author of a book, for example. It's not those who have given the information that is in the book to the author, it's the author of the book who is responsible. That follows from the freedom of protection of sources.

These fundamental rules are extended into other media through the fundamental law of freedom of expression, including Internet and websites. In that case, it would be the person who has written the hate speech or the blog, for example, who will be responsible.

Mr. Bob Bratina: He's responsible.

Finally, Mr. Mendel, I think I could win a lot of bar bets by saying that Serbia ranked number one in the ratings of right to information, and no disrespect to that country. Is this something that they changed recently in their constitution or is this historic fact?

I'm really interested in how they achieve this high rating.

● (1015)

Mr. Toby Mendel: We were also very surprised when we saw that they had taken top spot, as it were. Slovenia is in the second spot, and a lot of the former Yugoslavia countries have really high ratings because they sort of all learned together to produce group laws.

Their law—I would have to look at the rating again—is relative recent, and 2006 is bouncing around in my head. They do have a constitutional guarantee that goes back further than that. If you look at the rating, a lot of the higher performing laws are indeed the more recent laws because they learned what makes a good law. International standards have developed over that period.

That's also a very important point for this committee. Canada, when it adopted this law, was the sixth or seventh country in the world to adopt such a law. It was really a leader globally on this, but in the 30 years since then it hasn't reformed its law, and now we are far behind. We need to do something.

Mr. Bob Bratina: What's the quickest to access the universal standards that are referred to here? Where can we find those standards?

Mr. Toby Mendel: Our right-to-information rating has 61 separate indicators, which reflect international standards around timelines, around exceptions, around appeal mechanisms. It's a potted version: things are more complicated than the 61 indicators, but they will at least point you to the issues.

The Chair: Thank you very much.

Mr. Dusseault, please.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

I would like to return to Mr. Drapeau.

It seems that you may not be fundamentally opposed to the order-making model. Perhaps your primary concern is, rather, that other things should be addressed before such a model is adopted. As Mr. Erskine-Smith noted, this model would reverse the burden of proof, placing it instead on the government. If these quasi-judicial powers were granted to the commissioner, they would enable her to order the publication of certain documents. It would then be up to the government to appeal the decision and to defend confidentiality in the case of exceptions and exclusions.

Reversing the burden of proof in this way might be a good way to reduce turnaround times. Although it would take time to evaluate all the facts on both sides before releasing documents, the fact that the commissioner could order their publication could improve matters. If the committee or the government were to recommend this course of action, additional resources should, in my opinion, also be provided.

If the order-making model were adopted, would you agree that additional resources should be provided to support it, along with a clear mandate, instead of requiring the affected institutions to cover the costs themselves, for instance, by making changes to their expenses or internal operations?

Col (Retired) Michel Drapeau: Honestly, I think the recommendation to give the commissioner order-making powers is simplistic in that it would resolve very few of the chief problems. The fact is that 93% of the outstanding requests involve institutions that do not have order-making powers. They have no powers and do not have the necessary resources either. Their resources can certainly not be compared to those available to the commissioner.

Should you decide to grant the commissioner order-making powers and provide additional resources, this would address only a very small percentage of the 1,600 requests. Should you choose that course of action, I would ask that you devote sufficient energy and funding to address the other 70,000 outstanding requests.

Mr. Pierre-Luc Dusseault: The commissioner spoke about the culture of lateness in departments that do not provide the information in a reasonable amount of time. National Defence had requested 1,110 days, something you surely know since you worked for that department.

In your opinion, would the commissioner's recommendation to limit deadline extensions be applicable and desirable? The idea is to limit the extension or the period possible for requesting one so that the duration of the extension is reasonable.

● (1020)

Col (Retired) Michel Drapeau: The entire request system is bogged down by excessively long turnaround times. As I stated earlier, if I submit a request to a department and it stipulates a turnaround time of 180, 200 or 300 days, I have to decide whether or not to file a complaint. If the turnaround time was less than 200 days, I would not lodge a complaint because I know it would take two years.

The institutions are judged harshly but so, too, should be the commissioner's office, which currently has a wait time of two years or more as regards the processing of requests and complaints. Some of these requests pertain to fees, exemptions, and so forth. The entire culture has to change. While the act stipulates 30 days, it is constantly flouted and no limit is stated as to a reasonable turnaround time for the reception and processing of complaints; as a result, it takes two or three times longer than taking the matter to Federal Court. It makes no sense. But this is how things stand right now. I think there should be equal justice for all. For all institutions processing complaints or receiving access requests, deadlines should be imposed requiring them to respond within a specific time period.

Mr. Pierre-Luc Dusseault: Thank you.

[*English*]

The Chair: Thank you very much. We're going to have the opportunity today to let every MP ask a question.

We'll go to Mr. Masse now, please.

[*Translation*]

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): Thank you, Mr. Chair.

We have talked a lot about the access to information culture, but I would also like to hear about the access to information structure. As you know, the federal government has many employees and many departments. The information is spread out in various systems, files, and file structures. I would like you to tell us about how the information is managed.

Are there best practices that could be helpful?

My question is for all three witnesses.

Col (Retired) Michel Drapeau: As a former public servant and former secretary to the Armed Forces Council, I can tell you that we had problems in two areas. As I recall, the first problems date back to 1986-87, when there were drastic cuts to the administration. We simply lost all the administrative staff that archived documents.

For files prior to 1990, the National Archives' records are usually very complete and well indexed, which facilitates research. Things have changed since then because the centralized document control services in the large departments have disappeared, roughly at the same time as email came along. I would say it has become a free-for-all. The measure of control and the ability to access certain information on request depends on the file, the department, and the branch.

I think that the government as a whole and the various departments are trying to put some order back into things, but it is time-consuming and difficult. It also requires financial resources and significant information technology. The documents we receive under access requests vary accordingly. In some cases, we receive what we expected. In others, it takes a long time, and in others still, there are gaping holes because the files have not been retained.

I think this is a 21st-century problem. It derives from the great volume of communication by email and similar tools. Sometimes unexpected finds turn up in an email exchange, which surprises everyone, and the departments probably as much as us.

There is no obvious solution. I keep current on the various procedures the government uses to try to keep things under control, something that it has an interest in doing. Its attempts are full of pitfalls, however, and it is very painstaking work.

Mr. Rémi Massé: So if I understand you correctly, you agree that there are challenges in the culture and in the management of access to information.

Col (Retired) Michel Drapeau: Yes.

Mr. Rémi Massé: Mr. Sjogren, would you like to add anything in this regard?

[*English*]

Mr. Per Ola Sjogren: The issue of culture is very important, and I believe we have a strong culture when it comes to openness and disclosure of public documents. There are several reasons for that. First, we have a long tradition of access to public documents dating from 1766, and the law has not been changed.

The way it works in practice is that we are trained on this issue in our education in schools, and when we enter into a public function we are trained in it—it's one of the key issues. The responsibility is not, in the first instance, with the head of a department or management; it's with the public official himself or herself. If I, as a public official at any level in our administration, receive a request, the general direction is to leave everything else aside and deal with that request and hand out the document the same day. The recommendation from our ombudsman, which sets the general practice rules for this, says a maximum of two or three days; it's not a complicated matter.

It could be a document of several hundred pages, etc. What we do then, sometimes, is hand out documents consecutively. If there is a document of 500 pages, we can deliver 100 pages one day and another 100 the next day, in order for them to read it to see whether there are any secrets in it. There is also prestige for the ministers in not being criticized for having a ministry that has long delays in handing out documents.

We don't have a fixed time, but we have these very strict rules, which are followed internally both individually and by the government, and eventually by courts and the ombudsman.

I understand the questions about our appeal system, but there are relatively few appeals on this issue. There are appeals, and they are complicated, but it's more a question of how we manage it on a daily basis.

● (1025)

Mr. Rémi Massé: I see. Thank you.

The Chair: Thank you very much, Mr. Massé.

We'll now move to Mr. Long, who has some time.

Mr. Wayne Long (Saint John—Rothesay, Lib.): Thank you, Mr. Chair.

And thank you to all the presenters today. It was very informative.

I was going to ask this question of Mr. Drapeau, but I think I'll direct it to Mr. Mendel. I'm from Atlantic Canada too, so I'll throw some questions to Atlantic Canada.

Again, the presentations today were very good, but the more I hear.... I'm new to politics, and certainly new as an MP here, and I've become concerned and unsettled. You hear quotes like “slip into irrelevance”, “state of paralysis”, “two-year backlog”, “the act is applied to deny disclosure”, and “interests of government trump the interests of the public”. And then, Mr. Mendel, you talk about the RTI rankings, where we're 59th out of 102 right now, and falling.

In my past life I was president of a hockey team and several businesses. I just want to drill down again on culture. You can change a culture, but culture doesn't change overnight. It takes effort; it takes reinforcement. At times it can take many years to change a culture.

Mr. Mendel, why has there been such a culture of delay, or basically a culture that's just not right, with respect to this? Can you give me your opinion on that?

Then maybe if we have time, we'll shift over to Mr. Drapeau.

Mr. Toby Mendel: I think there are a number of layers to that. For me the law and the culture interact very seamlessly.

If the law allows you to set a long time limit for responding to a request without essentially any accountability—and Mr. Drapeau has described quite well how that works, because if you want to appeal it is going to take you even longer—then you're basically telling civil servants, “If you're okay giving it out...but if you don't want to give it out, stick a long delay on it.” If the law is full of broadly worded, malleable exceptions that pretty much allow you to make an argument that anything could be secret, you're telling civil servants, “This is not that serious. We want to give you lots of grounds to protect anything you don't want to give out.” That is basically how the culture around this issue has developed in Canada.

We work internationally, and I've seen in lots of other countries, especially developing countries, which are often coming from periods of really harmful secrecy, countries like Bulgaria, like Mexico, like India, where civil servants have kind of lorded it over the public, and now they have this tool, and from the civil society side as well as from the citizens' side, they don't accept that kind of culture and their laws are not designed to allow it to build.

I think in Canada we have now fallen into an attitude of apathy on the part of the public, because it is a huge hassle to make a request, and it will take you so long and whatever, and you may not get the information, so why really bother? But definitely within the civil service there is an attitude that this is not that serious, that there's no accountability and there are no sanctions. There are sanctions in the law, but they have never been applied—never once in the whole history of this law.

So there is a cocktail of things. I think the lack of clear and binding powers on the part of the Information Commissioner is another important part of that. If the Information Commissioner could force public bodies and make statements that this is completely outside of the law, that they have to do this.... There is a whole bunch of ingredients to it. But to us, and we have studied systems around the world, we really need to start with reforming the law. It is going to take time to change the culture within public bodies, because as you said, cultures are difficult to change, and not sort of snap-change things.

It's not that quick to change the law, but it's quicker than changing culture. We feel that's needed to push the cultural change.

● (1030)

Mr. Wayne Long: Thank you for that.

Actually, I'll ask Mr. Drapeau to comment on the same question.

Col (Retired) Michel Drapeau: Finally, it boils down to one word: leadership.

When Mr. Obama got elected eight years ago, his first act upon reaching the White House was an executive order about freedom of information giving orders throughout the bureaucracy that from then on access was the key. The possible embarrassment to government was not at issue. Things changed dramatically from that time onwards.

Under the previous administration with Clinton, Attorney General Janet Reno made it a rule that heads of agencies, which are similar to our departments, would also be assessed. For promotions, bonuses, and so on and so forth, their performance would be assessed on, among other things, the ability of their agencies to respond to access to information.

If our Prime Minister and the Clerk of the Privy Council were both to come out and say that they believe it's a quasi-constitutional law, that it is the law and they want everybody in the chain to be respecting and responding to it, there would be a change tomorrow, because people would say that there is direction from the top. At the moment, it doesn't exist.

What if the Clerk of the Privy Council were to say to his deputy minister that from here on in he would assess performance based on official languages, gender, and whatever happens from the Auditor General's reports, and so on and so forth, and on their performance as leader of their organization, but that access to information, including the number of complaints, the number of requests, and so on, would also be assessed? Overnight, the access to information coordinator would be called into the deputy minister's office and asked, “Do you need more resources and do you understand what your job is?” and told “Your job is to make me look good”. Then there would be a change.

At the moment, it isn't that way; it's almost the reverse: “I don't want to have any *Globe and Mail* story or stories being released through the disclosure of access to information records”. Those are the subtle, unspoken words. As a result, access is basically mired into inefficiencies.

Mr. Wayne Long: Mr. Mendel and Mr. Drapeau, when do you feel that this culture started to change? When was there a profound change in the culture?

Mr. Toby Mendel: Within Canada, you mean?

Mr. Wayne Long: Yes.

Mr. Toby Mendel: I'm not sure. My history with this goes back, but not right back to the beginning of it in 1983. I think that for the last 15 years at least the culture has not been a positive one. We have reports going back which show that. If you take requests, you can see that. It might go back even further than that.

As I say, in 1982 when we adopted the law, we were very much in a leadership position. All of the bells and whistles that make a law tight and effective, which we now are very aware of today, we weren't so aware of back then. For example, in terms of timelines, we included this provision about delay because we weren't sure whether 30 days, 60 days, or 90 days was going to be reasonable, and we didn't want to create unreasonable burdens on public bodies. That was okay back then, but now we need to respond to our new learning globally and in Canada as well.

I think the real issue is that our law was adopted a long time ago and needs to be updated.

Col (Retired) Michel Drapeau: I can address that. As an author, I'm duty bound to look at the past. I think the system changed at the very moment of its actuation. It was basically put in place by a Liberal government at the time—Mr. Trudeau's—but the first government that came under the access regime was the Mulroney government.

Soon after that particular government, with the bells and whistles going, we now had working access to information, and requests were not flowing in but were being received. There was one request made for, if I remember correctly, records associated with the construction at Sussex Drive for a wardrobe for the shoes of Mrs. Mila Mulroney. The word went out at that time that before you would release any such record, which made the lady of the time...you would check it out with “Fred”, Fred being, if I remember correctly, the cabinet secretary to the Prime Minister.

From that time onwards, there was a sort of resistance that took place and a sort of self-survival instinct. They said that before they would release any of it, they were going to check first before they released any such records, because they might be enduring the ire of the political leaders. At that time, there was a sort of cloud of carefulness as to what you'd release in response to legitimate requests, and the thing has never gone away.

● (1035)

The Chair: Mr. Long is very clever. He got almost 10 minutes of the committee's time.

Waiting till the end—maybe we're saving the best for last—I have a couple of colleagues at the table who would like to ask a couple of supplementary questions. We have about 10 minutes left.

Colleagues, with your permission I'd like to ask a few questions. I don't want to run out of time so I'm going to ask you guys before. I don't want a mutiny. I have one or two questions and if we have time we'll go back to members. Is that all right?

My first question is going to be directed primarily at Mr. Drapeau and Mr. Mendel simply because they commented about it and there's a disagreement on the order-making power.

Mr. Drapeau. I got very excited when you started talking about empowering politicians, committees, or members of Parliament, and making Parliament more accountable. I think this is absolutely fantastic.

Mr. Drapeau, if you don't agree with the current system and the current requests that are made by the commissioner in so far as order-making powers, where should those powers lie, keeping in mind that this committee does not have any real official power? We do have some rights as a committee. We can compel witnesses to come, but we can't even force the minister to testify before our committee. I want to ask you for clarification on how you think this committee's role should change with any change to the legislation and what kinds of empowerments there should be and where they should lie, if they shouldn't land in the lap of the commissioner.

Col (Retired) Michel Drapeau: I don't think they should change. I think the green paper spells it out and has a working system, except there have been some major flaws in it. One of the major flaws is that I think we are over-concentrating on the role. It's important but it's not the only player in the access regime that is of the committee itself. If she lacks the resources to do her job properly, the complaint properly, then we should give her more resources. But let's make sure that what she has already is being used properly.

We need to give more powers at the front end where 90% of the requests are handled. Give them the resources; give them the power; give them the kind of encouragement that they require. Only then and if required should we augment these powers, certainly at the commissioner level, with order-making power, because I don't think it's going to solve anything. If it solves something, it'll be a very small fraction of the 2% of requests that are subject to a complaint. It may make us feel good. It may reduce the overall numbers of complaints taken to the federal courts, but at the end of the day that won't help the system, broken as it is at the front end, where over 90% of the requests are mired. So there you are.

The Chair: My sense of the current system from my 10 years of experience as a parliamentarian is that if someone in the bureaucracy makes a mistake, for whatever reason—the way it's structured, the way rewards are set up, the way leadership and structure are set up—it's almost impossible for them to admit that they've made the mistake and make a correction. This is a cultural issue and this is what we're talking about.

When it comes to access to information, it seems to me that the culture of the bureaucracy is that we're going to say no to every request unless we find a reason to give out the information, whereas the culture should be that we're going to automatically say yes to everything and only find reasons to keep some information from being disclosed when it comes to some very specific reasons, as the Ambassador for Sweden pointed out. I think this would fix the problem of Canada, as Mr. Mendel pointed out, ranking 59th or whatever it is, and we would move upward in the world.

That would immediately take away all the stories of secrecy. These become the stories in the headlines. It's not about the content of the information usually, but the fact that somebody tried to cover it up. That's usually what the story is all about. Sunlight becomes the great purifier in this.

I think that's where our commissioner wants to go. To anybody here at the committee, do you think the recommendations she has put forward will take us in that direction?

● (1040)

Col (Retired) Michel Drapeau: I think some of them will, yes. Others, no. I made my points in the brief and here today.

We can see access to information as a long assembly line. We think you have access to records. Records have to be in existence. They have to be able to be retracted, to be examined for exemption, exclusion, and so on. That's where the bulk of the work takes place. Then ultimately they are released and if you're not happy with what you get, then you put in a complaint. If you're not happy with the complaint and the decision being made by the commissioner, then you go to court. But it's an assembly.

I'm saying that you need to pay as much attention if not more attention at the top end of the assembly line where 90% of the requests go, and that's all they ever will see, a response from the ATIP coordinator from a specific department. Have a look at that. Are these offices properly staffed? I think not. I could give you a number of institutions where they're lacking people—institutions such as the RCMP where we expect them to be responsive and knowledgeable of the law. They constantly shown to be one of the most complained-against institutions. You've got to be asking yourself why? That's before it even goes to the Information Commissioner.

I'm just saying that the spotlight has to be shone at both locations and my stronger light would be at the starting level, that is at the departmental level. That's where the Information Commissioner and I disagree. Her universe is the 1,600 complaints she gets in a year. My universe is the 78,000 requests that are being made by Canadians.

The Chair: Thank you.

Go ahead, Mr. Mendel.

Mr. Toby Mendel: Mr. Drapeau has made a big point about the 2% of appeals. It's true that only 2% of cases go to appeal, but the impact on the 78,000 cannot be ignored. Somebody referred to the 1,110-day delay that the Department of Defence arrogated to itself. I went to a court case and finally the court decided that the Department of Defence did not have the right to impose that kind of delay. That has an impact on the 78,000, not just the 2% that go to the appeal.

I fully agree that the nature of appeals is not the only part of the system that needs attention, and I agree that resources need to be directed at the front end. I'm not sure what the problem is. Our subject is the act, and I talked about the changes we'd like to see in the act. Having a commissioner with order-making power would reverse the burden of who needs to go to court. That is a huge change in the system. Doing that will make public bodies much more careful not just to follow the decisions of the commissioner. I think that will have an amelioratory effect on the whole system, because those decisions will become binding and they would be respected by those processing the 78,000 requests.

The Chair: Thank you very much.

I have one last quick question for Mr. Drapeau because he brought it up. This committee does have some power, authority, and clout, with the 10 members of Parliament at the table. You've asked for the Auditor General to go in and take a look at efficiencies in these commissioners' offices. We, as members of Parliament, sometimes put these commissioners on a pedestal because, frankly, they have a lot of clout and sometimes we fear them. The reality is that they also report to us, and I think we can rightfully take back some of that territory that I feel has been lost.

It is interesting that when we take a look at the four commissions, the Commissioner of Lobbying and the Ethics Commissioner have their own budget lines, but the Privacy Commissioner and the Information Commissioner share a budget line item, when it comes to the estimates. Yet they have completely distinct and set bureaucracies, where we can find some efficiencies.

I'm going to ask you straight up, if there were a motion put before this committee requesting the Auditor General to do some research on both of those offices to come up some advice, would this be a good thing for the committee to do?

● (1045)

Col (Retired) Michel Drapeau: I think that would be the first thing to do. There may be functions that both offices are currently performing that have not been read in the statute. I know this. One is to reform the law. That's not in there. So this has consumed a tremendous amount of resources. There are also jobs to be made, and they may not be resourced properly. Let an independent organization such as the AG take a look at it and come back on the issue of the shared services. Maybe there is a better or more effective way that will enhance the delivery of service. I think that's what we should be doing.

The Chair: Fair enough. I'll look forward to somebody moving such a motion at a future meeting.

In the meantime, colleagues, I did use up the remaining time. Other committees need to come and use this room, I'm guessing. I apologize that I didn't leave enough time.

I want to thank our three guests for appearing here today and taking the time to enlighten this committee. I know we can call upon you again as we continue our deliberations. I want to thank you very much for making the effort to be here.

We will see you on Thursday, when we will have the minister, the Honourable Diane Lebouthillier, and Commissioner Therrien, here to talk about some information. I would encourage you to be there. It's going to be an interesting meeting.

We will get the agenda to you on next week's witnesses as soon as possible.

Thank you.

This meeting is adjourned.