HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 014 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, May 12, 2016

Chair

Mr. Blaine Calkins

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● (0850)

[*English*]

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

Pursuant to Standing Order 108(3)(h)(i), we're continuing with the study of our Access to Information Act. This is the 14th meeting of this committee.

Today we are pleased to have witnesses with us: from the B.C. Freedom of Information and Privacy Association, Mr. Vincent Gogolek; from Democracy Watch, Duff Conacher; and, as an individual, Ezra Levant.

Gentlemen, I'll ask each of you to give us 10-minute opening remarks, and then we'll proceed to rounds of questioning. We'll hear from you in the order in which I announced you.

Mr. Gogolek, please, for up to 10 minutes.

Mr. Vincent Gogolek (Executive Director, B.C. Freedom of Information and Privacy Association): Thank you, Mr. Chairman.

It's a pleasure to be here. It's not the first time. Actually, when we appeared in 2009, in a previous demand for changes to the act, we mentioned that the act had been around since the Chrysler minivan was a new thing. I know the Treasury Board president was talking about the K-car earlier, so we have some things we agree with and a number of things we don't. Hopefully this committee will look at the recommendations as something that will be as long-lived as the minivan rather than as short-lived as the K-car.

There has been a crisis in terms of access to information for some time. The act has not been changed, as everybody knows, since 1983, not in any substantive way. You heard from a number of witnesses, including the commissioner, that a number of amendments need to be made.

The Treasury Board president talked about bringing forward a limited number of amendments this fall. He used the term “quick wins”, which in British Columbia has a rather unfortunate connotation. Be that as it may, we understand that what the government is looking at doing is a small number of amendments now, and then the comprehensive review in 2018.

Given the seriousness of the problems, we think this is very unfortunate. We would have preferred to see the major review happen sooner—at this time—to deal with the many, many required amendments. We have proposed a number. We've set them out in our written submission to you and in earlier submissions, which are referenced in that report. I'll just touch on some of the main points and try to reinforce some things that need to be dealt with.

We draw some comfort from the fact that the government proposals, which were released earlier, go beyond a simple restatement of what the Liberal Party promised during the election campaign. Hopefully the government will be as quick to adopt a number of vital changes that have already been proposed by a number of witnesses before this committee, particularly the elimination of the cabinet exclusion and the creation of a legislative duty to document.

We are much less pleased to see that a number of the additional changes set out in the proposals could have the effect of reducing or negating promised improvements. These include a possible ministerial override of the Information Commissioner's order-making power and handing government departments the power to ignore requests, or bar requesters, on the grounds that they are frivolous or vexatious.

I'll just quickly run through some of these things. I've organized them, just for simplicity, in accordance with what the government has proposed, but I would again draw your attention to the fact that there is a very long list of proposed amendments. We are not backing away from those. We are just dealing with these, if the government is proposing to bring in matters of priority, as some things that absolutely must be done.

First of all, we applaud the government for carrying through on its commitment to eliminate fees. We do find it a little puzzling, though, that a government that is having financial problems is insisting on maintaining the $5 fee for applicants to exercise their right to information. As the government's own materials point out, the cost for processing each and every one of those $5 cheques or $5 in cash is between $50 and $55. This is a net loss, a very large net loss, to the Treasury of Canada. We don't know why the government just doesn't bite the bullet, get rid of the $5 fee, and save the money. Even with electronic processing, where the cost is considerably reduced, if even 10% of requests come in with cash or cheques, the government is losing money. We urge you to save the taxpayers money and get rid of the $5 fee.

It also has the happy consequence of improving access.

We also look forward to appearing regularly on a five-year review. This is a very good idea, long overdue, and the B.C. Legislative Committee just reported yesterday after their review so I urge that to you.

We have been calling for order-making power for some time, and we look forward to seeing the commissioner being given full order-making powers. We are not in favour of half measures. The government's own studies have supported this for many years. It has been recommended for decades now, and we urge this on you.

We have a commissioner with order-making power in British Columbia as do a number of other provinces. The system has worked well. It provides more immediate relief and direct access for requesters, and we feel that is a much better way.

An item we are concerned about in the government's proposals is the inclusion of the possibility that the government may bring in a system similar to what they have in the U.K. with ministerial override of orders of the commissioner. We think this is a bad idea. In fact, the U.K. Supreme Court thinks it's a bad idea.

You may or may not be familiar with the Prince Charles's black spider letters where *The Guardian* fought a very long battle to get copies of Prince Charles's letters to a number of cabinet ministers. The government overrode this, and *The Guardian* took it all the way to the top court in the U.K., which said that the idea of a ministerial override of a quasi-judicial tribunal is contrary to a number of principles of the rule of law, and they struck it down.

Rather than heading down that road, we would urge you to follow what has been tried and true in a number of Canadian jurisdictions and give the commissioner full order-making powers.

We also congratulate the government in bringing ministers' offices and the PMO under the scope of the act. This is a good idea. It's something that has been called for for a while, and it's necessary in light of the 2011 case involving the Information Commissioner and National Defence.

However, we are concerned about a qualification that was not in the Liberal Party platform. The proposals say that the Access to Information Act applies appropriately to the Prime Minister's and ministers' offices. We don't know what the word “appropriately” adds or subtracts, but we don't get a good feeling about this. It should apply, and the commissioner with her order-making power or the courts will decide what is or is not appropriate. We don't see any need for this qualification.

B.C. ministers' offices have been covered since the beginning of the act in British Columbia back in the 1990s, and we have had no problems with this. There are existing models in Canada for this, and we look forward to seeing this coming about.

A very large problem, and a problem that overrides probably everything else if it's not dealt with, is the exclusion of cabinet documents. Every witness before you has recommended this be changed, or if they haven't, they certainly have not recommended that the cabinet exclusion be maintained.

We would like to see all the exclusions removed, as does the commissioner, as do a number of other witnesses. However, the exclusion means it ousts any possibility that the commissioner or even the Federal Court can look at records and review them if the government says they are confidences of cabinet, which means there is no third-party review.

● (0855)

This is not just a theoretical possibility. In her latest annual report Commissioner Legault found that, “Institutions invoked section 69 more than 3,100 times in 2013-2014. This is a 49-percent increase from 2012-2013, which followed a 15-percent jump the previous year.”

Clearly, this is being used more and more. There is no way to tell whether or not in good faith that this exclusion is being properly invoked. In B.C. and other jurisdictions our commissioners have been examining cabinet documents for decades. There has been no problem. We have not seen the collapse of responsible government or anything close to it. I would urge you that if any of the other reforms that are being proposed are to have any real effect, this loophole must be closed.

You've also heard from a number of witnesses, including the commissioner, calling for a legislative duty to document. This was not part of the government's proposal. It has been a matter of some controversy in British Columbia and in Ontario where documents have disappeared or documents have not been created. Our commissioner in British Columbia brought a report in October 2015, which I would urge upon you, outlining the circumstances of how documents are either not created or, in some cases, are destroyed even in response to an access request.

The British Columbia committee—your equivalent, the special legislative committee reviewing the B.C. act—made a number of recommendations in a report they released yesterday. One of them was the creation of a legislative duty to document. All of the commissioners in this country have called for this and we urge this upon you.

Something else that was not included in the Liberal Party program, which was part of this, is frivolous and vexatious requests. This problem is actually very rare. In British Columbia between 2010 and 2014 we've had 20,000 requests and we've had 20 applications—that's applications—not granted, not imposed, but 20 requests.

This is a very rare problem. We're not opposed to having this brought in but we do think that this must be done by the commissioner. This should not be done by the public bodies.

I believe my time is up. I thank you and I look forward to your questions.

● (0900)

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

I'm sure any other items that you have to discuss will be brought up through questioning.

We now move to Mr. Conacher, please, for up to 10 minutes.

Mr. Duff Conacher (Coordinator, Chairperson of Open Government Coalition, Democracy Watch): Thank you, Mr. Calkins.

Thank you to the committee for this opportunity to testify—I'm tempted to say "yet again"—on the Access to Information Act. I was here in 2000, in 2006 with the Federal Accountability Act review, in 2009 with the committee review, again in 2011, and twice in 2013. Just over a year ago we saw the release of the Information Commissioner's report, and then finally we saw a statement in December 2014 by the Treasury Board President, Conservative Minister Clement at the time, acknowledging that the act needs to be changed.

So we've had all these consultations now going back 15 years and then back before that to July 11, 1994, when then Justice Minister for the Liberal government, Allan Rock, said the act was out of date and needed an overhaul.

Through all these reviews, thankfully, I have not been holding my breath. Otherwise, I would not only be greyer than I was back when the reviews started, but also dead. I'm hoping there's going to be action this time. I am greyer. I am also getting a bit tired of coming before the committee and having the committee recommend if not unanimously then almost unanimously significant changes and the government promising those changes as the Conservatives did in 2006, and yet nothing happens, over and over again.

What we have currently, if it were accurately titled, is a "guide to keeping secrets" act. We do not have an "access to information" act, and we haven't since 1983. Some argue that it was actually better before 1983 because there wasn't a guide that was so clear about rubber-stamping what was unethical and secretive as legal. I don't agree with that entirely but definitely the exemptions in the act are so broad that we have essentially what amounts to a guide to keeping secrets act, not an access to information act, and definitely not an open government act.

I echo very much what my colleague Vince has set out. Those recommendations and a couple of others that I'll highlight are endorsed not only by Democracy Watch, the group that I coordinate, but also by the Open Government Coalition, which is made up of groups with a total membership of more than two and a half million Canadians.

Let me just go through a few of these recommendations. They are all recognizable because they are essentially the same recommendations and promises that the Conservatives made in the 2006 election campaign, in terms of strengthening the act and the overall access to information system. Unfortunately, only one of the promises was partially kept and that was the extension of the act to dozens more institutions that were not covered before 2007 when the Federal Accountability Act came into force.

The Access to Information Act should cover all federal public and public function and publicly funded institutions automatically. They should not have to be added to a schedule by anyone. If an institution wanted to be exempt after it had been created, it would apply and the commissioner would decide whether that definition applied or not with an appeal to the courts. Having to add more and more institutions means creating new institutions that are not going to be subject to the act for years and years.

The Information Commissioner must be given the power to order the disclosure of any record and with that power, of course, comes the right to see any record. No exemptions should override the Information Commissioner's power to review a record and decide whether the act applies and the record has to be released.

The duty to document, as was mentioned, is very important. There should be a record of every decision and action and if the Liberal government is going to actually follow through on its promise to be open by default, that would mean that those records would be proactively uploaded onto a searchable Internet website system and therefore almost everything would just be available online and no request would have to be filed. That kind of an information management system would solve a lot of problems that are caused by the current guide to keeping secrets act.

● (0905)

Proactive disclosure beyond that, of course, would also have to mean closing a lot of the loopholes and exemptions, which are very excessive, that exist in the act. As the Conservatives promised in 2006, there should be a public interest override that covers all exemptions and even overrides all secrecy acts, the only exception being that disclosure could be refused under a "proof of harm" test.

The big, difficult areas, which almost everyone acknowledges are difficult, are the areas of disclosures that could harm relations with other countries, international relations overall, the defence of Canada, law enforcement, including national security, and also someone's personal safety or sensitive personal information. In those areas, yes, there will need to be exemptions, but give the commissioner the right to make the decision as to whether an exemption applies in every single case, with an appeal to the courts. That's the way the system would work most effectively and would ensure openness by default.

As well, in particular, as has been highlighted by my colleague, the act must cover the information and the options provided to cabinet ministers' offices and Parliament and also be extended to the Ethics Commissioner and the Senate ethics officer, who are currently exempt.

Finally, concerning information management systems, all information should be disclosed in a usable format for free, without unjustifiable delay. The public already pays for the creation of this information and its maintenance; they shouldn't have to pay to also get disclosure of it.

The Information Commissioner should be given the power to impose fines for violations and increase the fines for convictions. Convictions under the act should be faced with a more severe penalty than just things such as delay.

In terms of the Information Commissioner's being an independent watchdog, currently the commissioner is selected solely by the ruling party; yes, in consultation with the opposition party leaders, but the opposition party leaders don't actually have a say. It should be at least either all the opposition leaders, or a majority of them, approving the appointment—of all officers of Parliament, not just the Information Commissioner but anyone who is watching over, mainly, the ruling party in government.

The commissioner herself recommended that two-thirds of MPs approve the appointment. I don't like that method myself, because one party could hold two-thirds of the seats in the House, so then it's still the ruling party approving it only.

Beyond the act and the information management system, and changing it from a “how to keep secrets” act to an actual open government act, I urge the committee to continue, as it does, examining the overall open government system at the federal level.

There are still outstanding, serious issues with muzzling government scientists—the policy has not been changed concerning their being able to speak freely to the public and the media about their research—and with the Lobbying Act, or as it accurately should be called, the “only some lobbying” act, as it has massive loopholes that allow for secret and therefore unethical lobbying; and the Public Servants Disclosure Protection Act, which if it were accurately titled would be called the “public sector lack of disclosure protection” act and which also has enormous problems. Also, there are MPs' expenses.

The parliamentary budget officer lacks independence and powers that really echo what I'm saying about the Information Commissioner, and all the officers involved in disclosure should be given these powers to penalize and to oversee anything they want to with again an appeal to the courts, if the government feels they're acting unjustifiably.

I'll leave it at that. I look forward to coming back to the committee to talk about the “only some lobbying” act and the “public sector lack of disclosure protection” act, and hopefully on the “how to keep secrets” act.

Hopefully we'll get change sooner than that, so that I won't have to come back, because once again, I'm getting tired. But I welcome again this opportunity, and I'm not too tired to answer a few more of your questions.

● (0910)

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

Now we move to our last witness for today, Mr. Levant, for up to ten minutes, please.

Mr. Ezra Levant (President, TheRebel.media, As an Individual): Thank you very much for the invitation to be here. I'm grateful to be asked for my point of view on access to information. Unlike Vincent and Duff, I am not a subject matter expert, and my history on the file is not long.

For the past 15 months, I've run a small alternative news web site, TheRebel.media, and by nature we are contrarian, so access to information is important to us. First of all, we don't have a large enough staff to cover all the news events we would like in real time, especially in Ottawa, so access to information is important to us. I think it's going to be more important to other media whose staffs are shrinking.

But more importantly, even if we had a large staff, the news—at least critical, skeptical news—is not always found at official public events chosen and scripted by the powers that be. Even question period, although it can sometimes uncover some facts, is not called answer period for a reason. Again, there are some issues that even opposition parties don't want to talk about.

That's my motivation and my background.

In the past 15 months, our little news outlet has filed hundreds of access to information requests at all levels of government and institutions. But the most troubling case comes from Ottawa, and that's why I accepted the invitation to come here. I don't have the background of my friends, but I have a story I'd like to share with you. The documents I'm referring to are posted on a website called stonewalling.ca, if you want to examine them at your leisure.

Let me give you an example of a contrarian story that doesn't fit into photo-op journalism and frankly doesn't fit into the kind of journalism that risk-averse opposition parties might ask about. It's the kind of thing that only a cranky, independent news outlet might do. I refer to, for example—my one example today—the great immigration project of bringing 25,000 or 50,000 Syrian migrants to Canada in short order.

There were crafted photo-op opportunities even in Amman, Jordan watching migrants fill out questions on a questionnaire, being processed. There was the official news that was available to everyone. We asked one simple question in an access to information request. We said, “We saw the images of the questions being asked. Can we please have a copy of the questionnaire?”

That was a little bit contrarian; it wasn't photo-op journalism. Frankly, I don't think it's an issue that even the opposition parties want to talk about, because they want there to be a little more “sunny ways”.

We got a response on January 5 from the Immigration Department, from Audrey White, who said no such questionnaire existed. But I saw with my own eyes Minister Sajjan and Minister McCallum watching in a room as would-be migrants to Canada were asked questions.

So we wrote back and we said maybe there's a word game going on here. So we asked for “the list of questions, list of topics, checklist, form, screening criteria, or however it is being referred to internally”. Could we just see the questions? It's a real journalistic ask.

We were replied to again on January 27 and told that no such documents exist. That can't be, so we wrote back a third time quoting and citing a link to a news story in which the minister himself talks about the questionnaire. Finally, we got a letter back on March 9, and you can see all of these documents at stonewalling.ca. On March 9, finally they discovered that they did in fact have a questionnaire, which we knew because we saw the questions being asked, admitting that they had them but saying that they couldn't give those questions to us for various reasons, including national security reasons.

I guess anyone who walks in from Syria could get those questions; they could hear them themselves. They're not a security risk, but I'm a security risk for asking them. That doesn't make sense.

Let me give you another example from the same department. You can see this document on stonewalling.ca also. We asked a simple question, because we understood from press reports that the Turkish government was helping to provide the list of names that were being brought over. We asked if there were any issues or concerns regarding the Turkish government being delegated that list-building activity.

● (0915)

Hélène Bertrand wrote back and demanded a 300-day extension—300 days. I've never heard of that before. I guess it was too much to ask for more than 365.

There was a line in there that I want to especially bring to the attention of the governing party MPs, because I don't think this is in tune with the Prime Minister's statements on transparency. This morning I watched the Prime Minister's video, and I went through the Liberal Party website about transparency, with the default being to have openness. I watched that, and I know that especially new MPs for the government must still be enthusiastic and idealistic. I ask—especially the government MPs—if this line is appropriate, coming from a civil servant in the Trudeau administration.

Let me quote from Hélène Bertrand, explaining the 300-day exemption, which is another way of saying, “We won't tell you the answer until any news value is gone here and any chance to raise public policy concerns are gone.” This is what Hélène Bertrand wrote to us, “It is to be noted that, at this point of the process, the department is working to meet the mandate on Syrian refugees set by the Prime Minister of Canada.”

Okay, that's great, but what does that have to do with someone whose job is access to information? She's not flying to Amman, Jordan to intake refugees. She's not affecting the project. Her job is to get the emails and run the photocopier. I don't know if that was her way of deflecting blame onto the Prime Minister's Office, but she named him, in particular, and said that he said they have to be all hands on deck. What does that have to do with someone whose particular job is to furnish documents? I don't believe she left the photocopier and got on a plane to Amman to help with the work.

Ms. Bertrand said the same thing, and asked for a 300-day extension when we asked a question about media reports of migrants who were detained at Pearson airport when the Prime Minister himself went to meet them. I was concerned. Why were they detained at Pearson? Were they detained? Were press reports accurate? Hélène Bertrand said, “We can't tell you that urgent public policy answer for 300 days, because the PM says we all have to work together.” That doesn't sound in keeping with the spirit of what I watched the Prime Minister say about transparency.

We asked about how the religious needs of migrants were being met. On January 6 we were told that answer would take 275 days. I hope this is not the spirit of the new government, a government that won in part, in my observation, by promising more transparency and openness, and with the default setting to be open.

All these documents you can review with your own eyes at stonewalling.ca. Frankly if you could light a fire under the department to help us get those answers, I'd be grateful.

Let me turn the clock back a few years. Imagine if it was the old administration and former prime minister Stephen Harper was the PM. During the extreme situation of the war in Afghanistan, imagine if someone at the Department of National Defence's access to information office wrote back and said, “Well, yes, you have a simple and precise question, but the Prime Minister has said that we're in a war and that all efforts must be put towards prosecuting that, and so because the Prime Minister says that, we cannot give you answer for 300 days, because we're too busy.” The importance of the Afghan war itself means access to information is even more important.

The importance of this central project of bringing in 25,000 to 50,000 migrants means public scrutiny and accountability is all the more important. It's not an excuse for not complying. I don't know if that was a bureaucrat passing the blame to the big boss, or if she was honestly saying this was why she couldn't answer it, but a 275-day... a 300-day.... I think we even have a 330-day extension. That is the same as a stonewall. What's the point in telling me the news about a questionnaire being used in 2016, if I don't get the answers until 2017?

I have come here not as expert, as my friends are, and not as someone with a deep history here, but as someone who, over the last 15 months, has done hundreds of access to information requests at many levels of government and to some non-governmental institutions, like schools and hospitals. It is my candid report that I have not seen any response from any institution as resistant as those I've just described.

● (0920)

I've never seen anyone else ask for a one-year extension and I've never seen anyone else fudge that there's no questionnaire. I saw it with my own eyes. The minister referred to it.

I've never had anyone else say a questionnaire that the public has asked for is a national security secret to you. That's why I'm here. That's why I accepted the invitation to raise a particular issue that may be a symptom of a larger problem.

Thanks for letting me have my minute or 10 or 20.

The Chair: That's no problem.

Thank you very much to our witnesses. You made excellent presentations.

We're now going to proceed to the rounds of questioning. The first round will be four questioners for seven minutes, and we'll start with Mr. Long, please.

Mr. Wayne Long (Saint John—Rothesay, Lib.): Thank you, Mr. Chair, and welcome to our three presenters. I think you have a lot of great information and opinions that we can certainly use.

Mr. Levant, did you have the same frustrations with access to information from the previous government?

Mr. Ezra Levant: Our little shop started in February. We did an enormous number of access to information requests to the federal government under the last administration. We did not receive any responses of this order of magnitude, 300-day extensions. We did not have an example like this.

Mr. Wayne Long: We all talk about the culture of delay, but you would agree that this is long standing. You seem a little targeted toward the last 80 days, but there's been an ongoing problem here for many years.

Mr. Ezra Levant: I accept that, and I'm not here to defend another government. I'm here to bring to the attention of the new government something being done under the new government. I do not take away from any criticisms of the previous government.

● (0925)

Mr. Wayne Long: Thanks for that.

I totally respect that you're very passionate about it. I think we can all agree that this isn't a political issue. It's an issue that's been going on and on.

With respect, you're a national figure. You've been characterized as a big mouth without a blow horn and I don't think it's any secret to any of us that your reputation at times precedes you. You have to carry that with you. Do you acknowledge that, because of who you are, some of your opinions fall on deaf ears?

Mr. Ezra Levant: I have a lifelong track record of Conservative activism, and I'm appearing before a committee under a Liberal majority government. I accepted the invitation in the hopes that, instead of just being a Liberal-Tory back and forth, we could talk about the specifics. I lead with the fact that I'm not a subject matter expert, but I do have a story that I have outlined that I think should be of concern to your own standards. I'm not asking you to live up to my standards.

Mr. Wayne Long: That's fair.

Mr. Ezra Levant: I'm asking you to live up to your own standards.

Mr. Wayne Long: You're very opinionated, and I respect some of your opinions on things. Say you're the new access to information commissioner. What would you do in your first 30 days? Here's your chance to tell us in a proactive way what you would do.

Mr. Ezra Levant: As I say, I'm not here with a large prescription like my friends. I think that sometimes cost issues are put up as a barrier. That should be looked at, and I know the Prime Minister has said it should be five loonies, and you should get them back if it's not on time. I support the Prime Minister on that.

We are appealing the egregious cases I bring to your attention, but there are certain things you can't appeal. That goes to culture and that's the excuse used by Hélène Bertrand; the whole shop here has to focus on the important work of business, they don't have time for troubling inquiries.

I'll yield to my two friends here for specific or comprehensive advice.

Mr. Wayne Long: What's the first thing you would do to make a cultural shift?

Mr. Ezra Levant: You know what? Leading by example from the top is always the best way.

I want to give you an example that I did not raise because I didn't want to be overly partisan.

Mr. Wayne Long: That's fair.

Mr. Ezra Levant: I chose one issue and I chose the egregious issues that I would hope that even the most partisan Liberal would say that this is not us.

Because I'm a political fella, we put in an access to information request of email communications between the Prime Minister's principal secretary, Gerald Butts, and the public service. Not exempt communications within the political staff, but communications to the public service. We were given a blanket zero, none exists.

That could be an example from the top of leading by example. My prime minister's office is being run in such an open way that we will show you the communications to the public service—not to the exempt staff—from the principal secretary. That could be an example.

Everyone would say, whoa, if the boss is doing that, maybe I won't delay for 300 days.

Mr. Wayne Long: I would agree. Cultural shifts have to happen from the top. Cultural shifts take time. We have discussed that.

Mr. Conacher, it is quite clear that you are frustrated. As you said, you have been here again and again, and you certainly have a name for every report and committee. I don't know what you are calling our committee, but I guess we will probably find that out at some point.

Do you have any hope?

Mr. Duff Conacher: I always have hope. Otherwise I wouldn't be doing what I do. I would be home watching *Oprah*.

No, I haven't become cynical after all these years—always skeptical, but not cynical—and I always have hope that there will be some changes made.

Mr. Wayne Long: Tell me what you have seen in the first, say, 80 days, or however long it has been, that gives you hope.

Mr. Duff Conacher: Disclosure of the mandate letters to the cabinet ministers was a good first step. The rhetoric has been great, and rhetoric from leaders is important. It is not enough to change culture. It is important to start with that, but changing culture actually means changing rules, and then training people as to what the rules mean and getting them to commit to a new culture.

Those have all been proven to be very important, not only in terms of organizational development change, but also in terms of psychological mindset change, having people make written commitments to change.

There have been a few signing ceremonies, with ministers making written commitments beyond the oath, which are also giving me hope for change because people tend to feel very guilty about signing off on something and then not doing it, as opposed to just saying it.

Other than that, there are steps forward and backwards. There have been a few changes made on fees. The major changes, though, are the eight things I have set out, and they have been there since 1994. Allan Rock talked about some of them in a July 11, 1994, interview, and here we are in 2016. Because it is 2016, real change is needed.

● (0930)

The Chair: Thank you, Mr. Long. We are at the seven-minute mark. That's the way it goes, but we will have an opportunity to go around the table, I am sure. We have a full two hours.

Mr. Jeneroux, you have up to seven minutes, please.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, all three, for being here today. For those of you who travelled here, thank you for taking the time to come before our committee. I believe it is important.

I would like to ask some questions, maybe more on the topic at hand and less about your backgrounds or character, if that is okay, and also to remind my colleague across the way that it has been about 200 days, not necessarily 80 days, that we have been in this new, "sunny ways" government.

We heard from the minister about frivolous and vexatious requests. He came before us about a week ago and indicated that the removal of certain fees and having certain fees is a way to filter frivolous and vexatious requests.

I am curious as to your thoughts. Hopefully, we have time for all three of you to weigh in on what you see as a hurdle in terms of making requests and, if there are certain requests out there that obviously the minister sees as frivolous and vexatious—I would imagine you don't consider your requests frivolous or vexatious—on a way to mitigate some of those.

Mr. Vincent Gogolek: I believe there are two parts to your question. One relates to fees as a way of dissuading requesters, and the second part is the actual proposals for some sort of legislative change related to frivolous and vexatious.

We actually prefer the second aspect. We think fees are not a very effective way of doing this. If somebody has resources and wants to, let's say, conduct a vendetta against a department, they are able to do that. The imposition of fees doesn't really change that.

However, bringing in legislative change to try to deal with.... As I set out earlier, we heard about the government's proposals only very recently, so we didn't have time to do a complete study of what happens across Canada. The numbers are very small, which doesn't mean they don't exist.

There are people out there who will abuse the system, and something has to be done. We would prefer that it be dealt with directly. We think it is very important that this be dealt with by the Commissioner, with the public body, the department, or the crown corp going to the commissioner and saying, "Here is this request; here are the circumstances", where they have to meet the test—rather than just saying, "This requester has put in two requests in one month. We are completely swamped. I don't know what we are ever going to do. We are just going to ignore that, and if the requester doesn't like it, then they have to go to the commissioner." I don't think that is the way to go.

The Chair: Mr. Conacher.

Mr. Duff Conacher: I certainly don't think it's needed. If the department wanted to deny disclosure, they would deny it. It would go to the commissioner, who would mediate it. That's what happens in Ontario, where the commissioner has the binding power. The mediators work out frivolous and vexatious requests, because the person is not requesting anything that is there or available, and they get things done in a couple of months in most cases.

Also, if you have an information management system that uses the Internet for the purpose the Internet works best for, which is to search for documents, and you proactively disclose and upload documents to the Internet, then you say to the requester, "It's there. Go and search for it yourself." The way to solve this is proactively, not by creating another loophole. We need to close loopholes, not create new ones.

● (0935)

Mr. Ezra Levant: The Prime Minister said $5, and if you don't get it in time, you give that back. I think that $5 is enough to stop absolutely wasteful people, but it's not too high to stop low-income people, let's say, or people on a budget.

On the question of what a frivolous complaint is, let me give you an example. Did anyone drink a $16 orange juice? That sounds so trivial, small, and frivolous, but a lot turned on that. What to one person is trivia can be important to another. I think the bias should be toward openness.

Again, just because the Prime Minister's video is fresh in my mind, one of his key points was to modernize it. It's true. A lot of the cost involved is for physical photocopying. Why would you do that these days, when things can be done electronically? I think the vexatious aspect of making someone photocopy can be overcome just through technology. I really believe that.

Finally, if someone truly were vexatious, in civil court you could have them deemed to be a vexatious litigant by a judge, but you would have to really go and make your case to deny someone their day in court. By definition, I think governments find all critics vexatious and troublesome, until they're on the outside, in which case what they are doing is called “noble inquiry”.

We're in a building that calls the biggest troublemaker in the country Her Majesty's Loyal Opposition and gives them a free house. We love troublemakers in Parliament. It's the nature of our system.

Mr. Matt Jeneroux: Wonderful. Thank you.

We have about a minute, so maybe we'll start with you, Mr. Levant.

Cabinet documents remain confidential in a lot of ways. The minister would obviously like to keep things related to national security and certain other parameters around cabinet documents confidential. I'm curious. In your opinion, should more be available from cabinet documents?

Mr. Ezra Levant: I'm going to yield to my friend. I think I'm more respectful of cabinet confidences than, perhaps, my friends are.

I understand there has to be a place where the most frank conversations can be had, those that would be embarrassing to the country, not just to the politicians, if they were made public. I don't mind embarrassing politicians anytime, but the country and its interests should be protected. I think cabinet could be such a place.

My friends have more history on this file than I do, and they may have more insight.

The Chair: We're at the seven-minute mark.

Mr. Gogolek and Mr. Conacher, perhaps you could give us just quick responses to that.

Mr. Vincent Gogolek: What we're talking about here is not throwing open the doors of cabinet. We're talking about protecting the legitimate interest with an exemption, the same way other important interests, such as national security specifically, are protected.

What we have right now is a blanket claim for a class of documents nobody gets to look at. No third party, commissioner, or court gets to look at them, and that has to change.

Mr. Duff Conacher: I agree. If the commissioner has the power to look at any document, then the exemptions become legally regulated as opposed to being at a whim.

The commissioner and everyone in the commissioner's office are under oath. There is no reason they can't see any secret document, and there's no worry about having those disclosed to anyone unless they should be disclosed under the law.

The Chair: Thank you.

We're well past the time, Mr. Jeneroux, and we appreciate the committee's patience.

Mr. Blaikie, go ahead for up to seven minutes.

Mr. Daniel Blaikie (Elmwood—Transcona, NDP): Thanks to each of you for your presentation. I want to follow up with Mr. Gogolek and Mr. Conacher.

Both your organizations at various times have advocated for expanding the access rules, not just to government organizations proper but to ones that are controlled by government or significantly funded by government.

I'm wondering, on the issue of exclusions, creating loopholes or black holes, the extent to which claims about sensitive commercial information at that point can be used as governments contract out services, and whether your organizations have experience in cases where contracting out to third parties has created the kinds of loopholes or denials of requests for information that you're concerned about regarding exclusion, let's say, for cabinet documents.

● (0940)

Mr. Vincent Gogolek: There seem to be two parts to the question.

One is commercially sensitive information, which has its own exemption under the act. That gets applied, and should be applied in the normal way, hopefully by the commissioner with order-making power.

In terms of expanding the scope, and Mr. Conacher talked about that earlier, we in our larger submissions talked about extending this to private organizations that receive or carry out a governmental function and receive large amounts of government funding.

In terms of examples, in British Columbia there was considerable outsourcing done, which we take no position on in terms of policy. In 2004 we asked for copies of the contracts, and one of them was with IBM, for the maintenance and the running of the government computer system. The government fought us for eight years. After five years we started having birthday parties for the freedom of information request. They still fought us. They took us to court after we won at the commissioner...and they lost every time. Eventually they had to fold.

It does give you an indication of how sometimes these things can be fought.

Mr. Conacher, we agree that there should be a broader criteria, that it shouldn't be up to the minister to put something in a schedule rather than having it, by definition, included.

Mr. Duff Conacher: I'll just be brief.

I agree with all of that. Publicly funded public function institutions can't be created by government and exempted from this and any other key accountability law that people struggled for decades to have cover every institution that is spending the taxpayers' money or serving a public purpose. It should be automatically covered. Then an organization could appeal to the commissioner, and then to the courts if they thought they should not be covered by the act, but I don't think most of them would. I think you would just solve the problem that way and get rid of this danger.

Mr. Daniel Blaikie: Just for clarity, for my sake, currently do the exemptions or exclusions for commercial interest operate as an exemption or as an exclusion?

Mr. Vincent Gogolek: They operate as an exemption.

Mr. Daniel Blaikie: Okay.

Is that something, then, that's already monitored by the Information Commissioner?

Mr. Vincent Gogolek: She's only able to make recommendations. She can't order something to be produced.

Mr. Daniel Blaikie: When we've had various government officials here, including the minister, and we've talked about duty to document, a quick response from them is that, well, this already exists, it's in Treasury Board policy.

Can you highlight for us, when you talk about a duty to document, what exactly it means to go above and beyond policies that are already here, and why the current policy is not sufficient?

Mr. Duff Conacher: I can start on that just briefly.

A duty that's written down in a policy is not a duty unless there's an enforcement body. It's just a best practice. It's law enforcement 101. If you have a sign on the side of a highway that says you can only go this fast, and everyone knows there's no police ever watching, people do not follow that rule.

There are no police who can watch now on that duty to document because it's not a legal requirement. Even if it was a legal requirement under the act, the commissioner can just watch you go speeding by and can't stop you, because she has no power to stop anyone.

Mr. Vincent Gogolek: I'd just like to follow up on that with a couple of things.

One is that your equivalents in British Columbia yesterday came out with a recommendation that the B.C act be amended to include a written duty to document, and to include it in the Freedom of Information and Protection of Privacy Act, where our commissioner, who has order-making powers, would be able to deal with that.

I'd also refer you to the joint statement of the information commissioners in this country who called for this to happen. I think it's important for the committee. If you're looking to bring forward recommendations for potential quick-wins legislation this fall, including this would be important, because otherwise we're waiting until 2018 to even start talking about it. This is something that's going to start happening, and this is an opportunity for this committee to recommend that the federal government be ahead of the curve for once.

● (0945)

Mr. Daniel Blaikie: Would you say there's a real risk of losing important information because of a failure to document in the interim? If we wait, that is a period where there may be important information that simply no longer exists because it was never generated in the proper way.

Mr. Vincent Gogolek: In terms of a risk, yes.

Mr. Duff Conacher: I would just echo that, in particular with the amount of new government spending. It's a more dangerous time than ever right now with that amount of public money going out the door and no duty to document. That's when you get waste and, historically, corruption and abuse.

The Chair: We're right at seven minutes, so thank you very much.

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

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you, gentlemen, for coming here today.

I don't want to belabour the point, but I think something that's come up through many other meetings is the question of fees. I want your opinion on that. Minister Brison has said that he would be willing to look at not charging the $5.

Let me give you a couple of scenarios and maybe you could comment.

One of the things we're studying is to make sure that the access to information is not only open to Canadians but is open internationally. Obviously, Canadians have paid for the service and they've paid for the infrastructure. I know that in Newfoundland they've changed the model in the sense that if you're requesting personal information there's no charge, but if you're requesting any other type of information there's a limit on how much time the person who's fulfilling the access to information request can spend doing the research to find the answer. I think that in Newfoundland it's 15 hours.

Do you believe that Canadians should have access to information within a prescribed period of time? As you know, requests for information can be simple or can be complicated. Should there be a limit on that time, and above and beyond that time should there be a charge? To level the playing field, especially since Canadians are paying for this regime, should we charge people internationally for access to information requests?

Mr. Duff Conacher: Well, I think there is now a reasonable limit of 30 days set in the act. Then, extensions can be requested because some requests, as you mentioned, do take longer.

Just to step back from it a bit in terms of a systemic issue, a request and search system is inefficient and wastes money. The Internet exists. When someone goes to a meeting in the government, someone else is there typing away the minutes, and then they send it around by email, and "click". Just have a button where they can click and upload it. Then the request doesn't have to be made and someone doesn't have to be there fulfilling it. That's where the waste is and that's where the cost is. Modernize the system and use the electronic tools that are definitely there, as I know you're hearing from open data activists, software developers, and others. It's all there to modernize the system, get away from this inefficient access search system, and move towards simply a search system. The access is proactive. It can be done. It is a cultural change but in terms of electronic change it's already there. People are not going to meetings and writing down on pads, and if they are, they can snap it with their phone and upload it.

Mr. Vincent Gogolek: I'd agree with that. I think that over time, hopefully, as we become more open, and more information becomes available on the web, the actual number of requests will drop because people will be able to get access to things.

However, in terms of charging fees, one of the things that you and the government have to keep in mind is that if you're going to be bringing in some sort of charge where there's going to have to be administration and some sort of selection, it raises the question of how we apply this fee, who gets it, and how we do this. What we have now with the $5 is something that we've known about at least since 2009 when former information commissioner Marleau said the $5 cheques cost $55 to process. In 2009 it was $2 million, a $2-million loss based on the 40,000 requests that were received that year.

Before you go down the road of imposing new fees, I think you have to look very carefully at the effects, not just financial but in terms of access. We're in favour of having broader access for everyone. We can file information requests to the American government, and Ontarians or Newfoundlanders can file requests to the British Columbia government. We're talking about an open system. We should be more open.

● (0950)

Mr. Raj Saini: Mr. Gogolek, in your submission to the committee, you said you were in favour of a mechanism that challenges the redactions made in records being proactively released by government. I just wanted to know how you would envision this working. Would it be done within ministries, or the commissioner's office? I found that very interesting, so I wonder if you could elaborate on that.

Mr. Vincent Gogolek: What we're looking at here is a way of actually helping the system in terms of making sure that what is going up is stuff that is actually useful.

I think the commissioner's office could be a logical place for this to be, because what will happen is that if information is not available online, if what is being proactively released by government is in a format that is not suitable, or you have extensive redactions that force people to file.... Because what happens if you go to the government website, and you find that your exotic information requirements are not being met by what they have, then you file an access request and say, "Well, I'm not finding it here. I would like this information."

Ultimately, it's going to end up with the commissioner anyway, and this would be a way for these kinds of problems to be ironed out, as a mediation between the government on open data, or an open information user to be able to bring a concern, and say, "This is not helpful. I'm trying to use it for this purpose. All they have up is PDFs. I'd like an actual spreadsheet that I can manipulate." I think it would help the system work better.

The Chair: Thank you.

We're going to move to the five-minute round now.

I just have one quick question for Mr. Gogolek. In your opening comments you referred to the "quick wins" as something that, in B. C., did not have a positive connotation, and you just referred to it again. Could you just edify me, out of my own personal curiosity? What are you referring to?

Mr. Vincent Gogolek: This is something that came up before the last election with the provincial government, where there was discussion of how, in terms of attracting different groups of voters, the government could do things that would result in what they called "quick wins", which then resulted in various problems with records disappearing, and the use of non-government—

The Chair: Fair enough.

Mr. Vincent Gogolek: It was ironic. The minister, of course, being from the other coast, is probably not aware of that. We thought it was an unfortunate term.

The Chair: Fair enough. I'm from Alberta, and I didn't even know that.

Mr. Kelly, you have up to five minutes, please.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you to the witnesses for attending today.

Mr. Conacher, in response to one of the questions, I was listening to you talk about taking hope from some of the rhetoric that is employed by the government. You thought this was very hopeful, at least, that there is much positive discussion in the air about openness and transparency. I would agree that it is nice to hear these statements, and we heard many very warm and wonderful-sounding statements from the minister when he was here last week. But the problem with this is that if the rhetoric ever later seems to appear to be mere lip service, the hope changes to cynicism, or at least skepticism.

I was particularly taken with Mr. Levant's story of the difficulty in getting the answer to a very simple question, it would seem; a form somewhere that any would-be applicant coming to Canada would have access to; that somebody would, after much argument, be told can't be made available for national security reasons.

Could you comment? I'll perhaps let each of you comment, but I'll start with you, Mr. Levant. What do you think of the credibility of the positive-sounding statements we have, and whether they are going to result in practice, or is this mere lip service?

● (0955)

Mr. Ezra Levant: I'm sorry. Could you put that last part again?

Mr. Pat Kelly: —the positive statements that we hear, of saying the right things about openness and transparency, but the facts of your case do not match up with that expectation.

Mr. Ezra Levant: I spent some time trying to get into the mind of the new government. I've watched more Liberal videos in the last few days than I have in my whole life. I believe it, actually; I believe that one of the motivations of Liberal MPs was a frustration such as all outsiders feel with not knowing what's going on on the inside. I believe there's enough idealism and goodwill there that I came here today in the hope, in the constructive hope that by showing some bad examples I would appeal to the better angels of a party that I have long opposed. It was to say, "Look, this is not who you are, certainly not who you say you are." I'm hoping that was a case of someone under pressure who didn't want to do the wrong thing and embarrass her bosses; but if you get one, two, three, four, or five things in a row like that, I think....

With these exemptions, you can use your discretion and your wiggle room either way. I think these egregious examples that I showed today.... I believe there should be a national security exemption; I think it's being abused. I believe that the department should work hard for the government's mandate, but that has nothing to do with the person who has a job to disclose the facts.

Yes, I think it can be fixed, and I have to tell you, I rather like the Liberal plan—default to open, a five-buck hurdle, put things online.... I have to say that none of that offends me as a conservative. I think they can do it, if they mean it, and I'm here hoping they mean it. I think this can be fixed.

I think Duff is so right. The stuff is digitized anyway. You want to have someone look over it to redact personal details and other obvious exemptions. Duff said he's getting tired of coming here time and again. This is my first time before the committee, and I'm being naively optimistic. I think it can happen. I know that wasn't exactly your question, but I think the problems I encountered could be solved by a change in culture and leadership at the top. I really do.

Mr. Duff Conacher: I'll just say briefly that I've never heard Ezra say that I'm so "right" before, in another sense of the word.

The Liberals have a minority majority: the largest number of seats with the lowest percentage of votes since Confederation. They should be walking on eggshells. These issues are issues that swing voters swing on. They pay attention to how government governs as much as to any substantive issue. It has been proven across the country in the last 20 years: parties that have promised to do these things have won elections and those that have failed to do them have lost elections.

The Liberals have this chance of offering either hope or false hope. They should be walking on eggshells and had better come through, or they will disappoint and lose voter support very quickly on something like this. These are hot button issues: honesty, ethics, openness, representativeness, waste prevention. It all goes to transparency, and transparency is part of ensuring all of those things. These are hot button issues for swing voters, and they will swing very fast and viciously, if you disappoint them on these kinds of promises.

The Chair: That uses up your time, Mr. Kelly.

We'll now move to Mr. Lightbound for up to five minutes, please.

● (1000)

Mr. Joël Lightbound (Louis-Hébert, Lib.): Thanks for being here.

I was inspired by Mr. Levant's story, but my question is actually for Mr. Conacher and Mr. Gogolek.

The commissioner recommends that extension be limited to 60 days and that if an institution wants to go beyond that, it needs to seek permission from the commissioner. What's your take on that in terms of delays and extensions for delay?

Mr. Duff Conacher: Again, it's an information management problem. Service Canada is having great difficulty just with the email system currently. There is a transition period that needs to happen. It has happened with lots of agencies. There are so many things from Canada Revenue Agency that you can now get online and file online. It's happening in parts.

But the overall information management system is the problem. That's why one of our recommendations is that the Information Commissioner be given the power to order changes to the information management system in an institution, if the institution is not complying with the act because of delay.

Having a 60-day extension rule as a cap is a good idea for changing the culture and forcing that change. But again, if the information management system is modernized, then it will change from an access system to a search system, and you won't have any of these problems and you will save a ton of money as well—for everybody.

Mr. Vincent Gogolek: In terms of the delays, what we have right now and what we saw with—I think it might have been Transport—in which the commissioner actually had to go to Federal Court and fight a battle over an 1,100-day extension that the government gave itself.... That's just not acceptable. At some point it has to fall to the commissioner to say: yes, department, this is a very large request; you get thus much more time.

This is what we have in British Columbia right now. There's a response period of 30 working days. There's also a 30-day extension that public bodies can take, if the request would overburden the department. In fact it's impossible to challenge the extension that the public body takes, because by the time you get a complaint before the commissioner for deemed refusal, the 30 days are up, so de facto what this amounts to is 60 days.

After that, the public body has to go to the commissioner to get an extension. We see no reason why that shouldn't be the case federally.

Mr. Joël Lightbound: You mentioned, Mr. Gogolek, the scope of the act and said it should apply to institutions or organizations that receive large amounts of government funding. Do you have a *de minimis* range—say, for instance, that 50% of their funding comes from the federal government—or is your recommendation broader?

Mr. Vincent Gogolek: It has to be substantial, and it has to be related to a government function; it's not just that you get money. I'm sorry, but I think we set that out, actually, in our response to the commissioner's consultation. We have a longer response there with the precise detail.

We have to extend this and extend it as a description, rather than have bodies added and removed from a schedule as they do or do not meet the criteria. It should be definitional.

Mr. Joël Lightbound: Thank you.

We've heard from Professor Drapeau from the University of Ottawa law school, who has mentioned the role of coordinators. He would give coordinators more independence, because access to information coordinators deal with 90% of the demands, and giving them more independence, he feels, would improve the system. Instead of always focusing on the commissioner, giving coordinators more power would be beneficial, in his opinion.

That's not the opinion of all witnesses we've had, but I am interested to hear whether you had a take on that question.

Mr. Duff Conacher: I'll say quickly that, yes, if you had a better information management system, coordinators would know what can be proactively uploaded onto the searchable website. Then you are just reducing requests and turning it into a search system wherein the public is searching, as distinct from having people run around inside government trying to find something.

Again, it all comes down to modernizing the information management system. It will save money, it will save time, and it will turn it into an open government system.

● (1005)

Mr. Vincent Gogolek: Independence and independence of mind of the ATI coordinators is vital; it's important. I'm not sure that the proposal to make them order in council appointees is the answer, because what we saw in British Columbia and in some other provinces is that what used to be bureaucratic, neutral civil servants in the communications department were changed into order in council appointments specifically to bring them under political control of the government of the day.

I don't quite understand, given that experience, why we would go down that road. In terms of ensuring independence, having provisions in the act about interference with the work of the coordinators is probably a better way to go about it.

The Chair: That uses up that particular time.

We now go to our next questioner in the five-minute round.

Mr. Jeneroux, please.

Mr. Matt Jeneroux: This is a question for Mr. Levant. We heard, I think mostly from Mr. Conacher and Mr. Gogolek, about extending the act to cover crown corporations. I'm curious about your thoughts and comments on whether the act should include those.

Mr. Ezra Levant: I think it should. It would make sense to have some exemptions for business secrets or trade secrets. I look, for example, at the CBC. Certain aspects of their work are covered; certain are exempt. I think they have too many exemptions and I think they're too slow, but that's an example of a hybrid approach. There are certain editorial matters that are outside the scope of access to information. I think that's fair, but other things, like spending on limousines, are properly within the scope of access to information. I don't have the history or experience of my friends, but I think for public accountability—that's the business I'm in as a sceptical journalist, and that's the purpose of the act—my default answer would be yes. That's the Prime Minister's default: default towards openness.

Mr. Matt Jeneroux: Going back to my previous line of questioning, in terms of cabinet confidentiality documents, we have at least one very high-profile example in front of us now with the justice minister. Her husband has been accused of lobbying her department. The commissioner has come out and said that there is no problem with it; however, there is a bit of a screen there between what the actual example is and that. Perhaps you wouldn't mind commenting either on that particular example or just on the policy of cabinet confidentiality documents and what they should or should not extend to when it comes to ethical screens like that.

Mr. Duff Conacher: Sure.

I'm glad you raised the “almost impossible to be in a conflict of interest” act, because that is another one that has some secrecy problems. One of the problems is that the Ethics Commissioner is using these conflict-of-interest screens. They're actually illegal under the act. There is a positive duty, under section 25 of the Conflict of Interest Act, to disclose every time you remove yourself from a decision-making process. Even if you say, “Oh, we're creating this screen such that your staff person will always remove you from processes and you won't necessarily even know it, and therefore you don't have to disclose it”, you can't override the positive requirement to disclose every time you are removed. The screens have been put in place by the commissioner because, in fact, the minister does not have to remove herself from any decisions that will affect her husband's clients, because the act does not apply to 99.9% of the decisions of any minister. That's why it should be called the “almost the impossible to be in a conflict of interest” act.

The Ethics Commissioner has been doing this for years. It's an illegal act by her under the Conflict of Interest Act, overriding a positive duty to disclose every time you recuse yourself, and that practice should be stopped. The ministers are violating the act by using these screens and not disclosing every time they recuse themselves. It's also hiding the fact that they will not be recusing themselves at all from anything, and haven't in the past when these same situations have arisen.

● (1010)

Mr. Matt Jeneroux: Mr. Levant, do you have any comments on that?

Mr. Ezra Levant: I can't add anything to Duff's expertise.

Mr. Matt Jeneroux: Okay.

When looking at the “quick wins”, if you will, Mr. Gogolek, we're undertaking a consultation right here on our committee. The minister came in and added some clarification that he will listen to our committee, and he will reverse a decision if our committee says this is the wrong direction to go.

With regard to the order-making model, it was very clear in the budget that it was raised and going in that direction. I'm hopeful that you can provide some insights on what exactly we would be seeing if an order-making model were to present itself over the next few weeks and prior to us making our consultations we hadn't had a chance to weigh in on that. Could you elaborate on what we should expect in the first early days of an order-making model?

Mr. Vincent Gogolek: There would be a set-up period, and of course there would have to be a time for the commissioner's office to change because it changes the nature of the office to one that is actually quasi-judicial. But what would happen is that the commission, rather than saying, “Dear Ministry, we really think you should give Mr. Levant his records”, would then be able say, “Here's my order. You have 30 days to provide Mr. Levant with his records, minus pages 23 to 27, which are law enforcement”, or whatever the commissioner finds after a hearing is legitimately applied.

It would look, probably, hopefully, something like the B.C. model, rather than the U.K. model where if the minister decides or has a feeling that “I really don't think that would be good for government”, or maybe “I really don't think it would be good for my government that this information comes out, so I'm going to overrule the commissioner”, this is something that's been put into the proposals.

It was not there in the Liberal Party's platform, and I think people, during the election, would have been surprised to see that. We will give the commissioner order-making power. Put the minister and/or cabinet to have an override. I don't think it would be quite as attractive to the people of Canada, and we're hoping that it won't be attractive to this committee. We think this is the wrong road for reasons set out in our thing, and we hope that you will prevent that from happening.

The Chair: Thank you very much.

We've very much eclipsed our time there, but now we move to Mr. Bratina for five minutes, please.

Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.): In recommendation 6.1, “The Information Commissioner recommends that institutions be required to proactively publish information that is clearly of public interest.” So that raises the question, what is in the public interest?

An excellent example is the security of the screening process for the refugees—the intake. Mr. Levant, you were saying you were shocked that you would get a decision that, in 200 and something days, you would know the results of the questionnaire. I'm thinking that the questionnaire is probably a part of the integrity of the security screening process. Why would we let the bad guys know what questions we're asking in order to properly screen people coming in? Doesn't it seem sensible to you that the answer of “in excess of 200 days” would be that once we have everybody through the process, we can share aspects of that screening, but right now, no, we're not going to tell you?

I'm arguing back to your point to try to get the sense of public interest and security, and bringing it altogether. Do you see that side of it?

Mr. Ezra Levant: That's a very thoughtful response, because that could be the explanation. The first two answers were, it doesn't exist, there is no questionnaire, which put a drop of skepticism in my mind when I was later told it was a national security issue. But the tens of thousands of strangers from a strange land are hearing these things. They are not signing any secret affidavit about what questions are asked of them. I think that this is one. What you suggest is a possibility, but I would suggest that a government operating with a bias towards openness would tip the other way.

My analogy of Stephen Harper prosecuting the war in Afghanistan, I think, is very fitting. During that time, access to information was a major tool used by the Liberal opposition and others to enquire about the treatment of Taliban prisoners. That, surely, could have been swallowed up by the same concern you're suggesting. We can't talk about that in a time of war. Well, we did, because things of such a grave nature must be tested.

If there's a true secret there...but I don't even understand how that could be...asking someone who's...Canada what documents to show. I don't know how that could be any more secret than the war secrets that were scrutinized in the Taliban prisoners. Yes, that's a possibility, but it doesn't explain the other 300-day exemptions that we seem to be getting from this department. I'm a deep skeptic.

● (1015)

Mr. Bob Bratina: Mr. Gogolek, on a similar question, public interest, are there specific areas of public interest that there's a tension about that, that you feel may be pointing to smoking guns? What are the particular areas that you feel are being screened?

Mr. Vincent Gogolek: In terms of public interest, we have done quite a bit of work in terms of section 25 of the B.C. act, in combination with the Environmental Law Centre at the University of Victoria, relating to how that works. In B.C., we do have the one public interest override. There has been quite a bit of work done. We had a very extensive submission done by the University of Victoria Environmental Law Centre, which we submitted to your provincial counterparts. It is up on our website, at fipa.bc.ca. Under the month of February, you can go there, and you can also see a poll that was done about duty to document and other things—very large numbers in favour of these kinds of things.

There is quite a bit of discussion in there, and previously our commissioner has actually, by interpretation, expanded the public interest override. Yesterday, the special legislative committee examining the act called for changes to the act to codify that. We think that this is an important thing to be done at the federal level, and I believe a number of other witnesses have also called for that.

Mr. Bob Bratina: I am just wondering whether, instead of having a commissioner, we could have someone like a chief justice of the Supreme Court, where you would have a panel weigh the aspects rather than leaving it in the hands of an individual.

I would like a quick response to that, Mr. Conacher.

Mr. Duff Conacher: With all the officers of Parliament, Democracy Watch has always advocated three-person commissions. I think it would be a better system. We shouldn't have czars in any of these areas. As long as you have an appeal to the court, you effectively have that, in that it goes to a judge and then to a court of appeal. At the front line, I think it is not a bad idea at all to have a three-person commission to check the watchdogs themselves.

The Chair: That was an excellent question.

We now go to our very last question. Then we will have some time left over, colleagues, so if you indicate to me that you have some more questions, I think we will have a little more time.

Mr. Blaikie, you have technically three minutes, I guess.

Mr. Daniel Blaikie: Maybe I will just take a moment to express, in solidarity, a little bit of frustration with the kind of haste of change that has been suggested by the government. I haven't been here many times. It is my first time, but I think what is emerging already pretty clearly is that at the level of general study, I think these issues are actually pretty well known. I think the recommendations are pretty clear. We have a great report by the Information Commissioner on how to move forward, and it is clear that there is a pretty wide-ranging set of reforms that need to take place if we are going to change the overall culture.

There has been this interim directive. The idea is that we really need to let these things settle and see what effect they have, and then we will know better whether we can move forward with more substantial reforms. I am just wondering, in the opinions of the experts, Mr. Gogolek and Mr. Conacher, what bearing do the initiatives taken in the interim directive actually have on the other things. If it turns out that just enforcing the $5 fee, and not requiring fees for research, printing, and stuff, is a bust in one way or another, how does that really have an impact on whether we are going to expand the scope of access to information, say, to crown corporations? I am just wondering what real relation the measures in the interim directive have to the other kinds of measures that we are being asked to wait on.

● (1020)

Mr. Vincent Gogolek: Hopefully, some of the useful initiatives in the directives will have the effect of actually reducing the number of requests or speeding them up, so there could be beneficial effects. Like you, I don't think there is a relationship between what is being proposed in the directives and the fact that nobody outside of the officials claiming that a document is a cabinet document ever gets to take a look at it and speak authoritatively to say, “Yes, it is” or “No, I don't think so” or “Are you saying this is a cabinet document because you put it on a trolley and ran it through the cabinet room?”

There are a number of discrete issues. I don't think the directives will affect things like order-making power or cabinet exclusion.

Mr. Duff Conacher: I'll use the analogy of government scientists. A journalist called several of them and talked to the unions recently. The directive was given soon after the election: you can talk to journalists. The Treasury Board policy hasn't changed. People can be disciplined, up to and including firing, for violating the Treasury Board policy. They're not going to change the culture until the rule changes, so the rule changes have to come.

We've gone back to 1994 in terms of talking about the rhetoric of changing the Access to Information Act. The problems were known in 1986. That's 30 years; these things have been well known for 30 years now, and there is no reason to wait. Because it is 2016, we need the real change now.

What I'm worried about is that in 2018 the government will be saying, as Minister Clement did in December of 2014, “Oh yes, this act needs to be changed, but it's too late to get a bill through.” There were six more months at that time, and it wasn't too late: several bills went through Parliament in the first six months of 2015.

That's what I'm worried about. There is just no reason to wait at all.

The Chair: That takes us to the end of the official rounds of questioning. We still have about 20 minutes left, colleagues. I've had an indication from Mr. Kelly that he would like to ask some more questions.

Is there anybody else at the table? Mr. Saini, I will get to you soon, and Mr. Blaikie, Mr. Lightbound, and Mr. Scarpaleggia.

Because Mr. Scarpaleggia hasn't asked yet, is it okay if we move him to the top?

I just want to be fair to all members.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): The reason I haven't asked a question is that it's my first time at this committee, and it's very interesting, I must say. You have a very interesting committee dealing with a very interesting topic.

I'm curious about the aspect that says that the act should be extended to all of Parliament. Could you just, by way of background, tell me what you have in mind here? Are we talking about correspondence that MPs send? Are we talking about MPs' phone message books, are we talking about emails that an MP sends? I just want to know what one has in mind here.

Mr. Gogolek?

● (1025)

Mr. Vincent Gogolek: What we'd be talking about in terms of the coverage of Parliament is that there would have to be an interplay, because of course, as a member of Parliament you have certain privileges that are recognized in law. Some situations have arisen before in which the House of Commons has raised privilege when information was about to be released, and they went to Federal Court. There would have to be a balancing.

But at the same time, the administration of Parliament, the administration of the courts, where the money is spent—things that don't affect and are not affected by privilege—should not be covered by it.

Mr. Francis Scarpaleggia: You're talking about financial information, expense reports. Is that what you're talking about when you're talking about having access to documents from the offices of members of Parliament? Is that all we're talking about? Is everything else covered by privilege? I'm not sure.

Mr. Vincent Gogolek: Well, privilege is a little long... and of course you're probably more familiar with the scope. There is a discussion to be had in terms of how far privilege extends.

I can draw the analogy with legal privilege, under which some people are claiming that even releasing the total amount paid in a year in fees is a violation of privilege. Well, I don't think so. I think that's public accountability. There is a point at which that—

Mr. Francis Scarpaleggia: That's an expense item.

I'm just trying to understand. When you say “extend the act to Parliament”, do you mean to financial transactions by members of Parliament? That wouldn't be a big deal. It's already pretty much done.

But is it just that, or does it include notes I send to my staff, does it include notes I sent to my constituents? What would the obligation to document be? Would it be that I must document all meetings I have with my constituents? I'm just curious as to what we're talking about, that's all.

Mr. Vincent Gogolek: Some of this would relate to lobbying, on which I'll defer to Mr. Conacher. He may have a few things to say about that.

I think it would extend beyond simple financial...because of course there will be discussion in terms of claiming the expense. There would be written exchanges that might relate to it.

Obviously, if we're going to cover Parliament, there will have to be some recognition of parliamentary privilege in it. I think it's more effective to deal with it in the legislation as such.

Mr. Francis Scarpaleggia: That's a good answer. Thank you.

Mr. Conacher.

Mr. Duff Conacher: A line will have to be drawn. MPs are public employees, but the sense of your boss knowing what you do on the job as an employee is different from the public at large knowing what's going on involving privacy issues and personal information of staff and things like that. The public doesn't have a right to know all of those situations.

The other area in which there will have to be a line is that every MP is also a member of a party and takes part in party activities, right up to the Prime Minister, and what they do for the party is something that I think can be hidden from the public, as long as it's not done with public money.

The biggest concern is MPs' offices being involved in wrong-doing, in terms of an employee position and the use of the public's money, or using the public's money for party activities.

Lines will just have to be drawn. They'll have to be drawn carefully in the legislation, and then the legislation.... No matter what, any law is vague words on paper, and the Information Commissioner will make orders, some of those will be appealed, and eventually after eight or 10 years we'll know exactly what those words mean in terms of where the lines are.

Those are the general areas in which the lines will have to be drawn.

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

We'll now go to Mr. Kelly for five minutes.

Mr. Pat Kelly: Thank you.

The current government has released the Prime Minister's document on open and accountable government, and I think we all agree with the aspirations it contains. One that it contained—and this is also repeated in each of the mandate letters that the ministers received—is at all times to avoid the appearance of conflict of interest. From time to time questions have come up about what most people would reasonably think would be the appearance of a potential conflict of interest, whether it be in the case of the chief of staff of the agriculture minister or the relationship between the justice minister and her husband.

When these questions come up, the answer is always something along the lines of saying "we have followed the advice of the Ethics Commissioner, and there's nothing wrong, there is no story here, there is no apparent conflict of interest, no appearance of conflict of interest".

I would like you, Mr. Conacher, if you could, to expand on the obstacles to actually understanding, or having the information or the correct basis to judge, whether screens are maintained or not. You talked about believing that the screen system is not legal. Could you give us more on how we can take at anyone's word that there is no problem when there seems to be a clear appearance of a conflict?

● (1030)

Mr. Duff Conacher: First of all, the act does not have that standard. The act allows cabinet ministers, the Prime Minister, senior government officials, all cabinet appointees—

Mr. Pat Kelly: It's the mandate letter and the open government statement, though.

Mr. Duff Conacher: Yes. But I'll just say with the act, they're all allowed to be in a direct financial conflict of interest; they're actually able to make decisions that make themselves money. That's the act. That's why I call it the "almost impossible to be in a conflict of interest" act.

The appearance standard in the code, now called the "Open and Accountable Government" guide or document, dates back to when Brian Mulroney first released it, and even before that. Before it was released, Trudeau had those words in there, "appearance of a conflict of interest". It's never been enforced by any prime minister since Trudeau Sr., even though that standard has supposedly been there as a requirement for every minister and minister of state, parliamentary secretary, since the late seventies. What does it mean? It means a reasonable person looking at the situation says you're in a conflict of interest.

In terms of potential, that one is more difficult. I'm not actually worried about taking that right out, because if you are in a situation now that creates the appearance of a conflict of interest later, then later, when it becomes relevant, you can't act. You don't need to be looking in the future and trying to predict what's going to happen, and what portfolio you may be given. It will arise at that time and be an appearance of a conflict of interest, and you won't be able to act.

Unfortunately, despite all of the rhetoric, we have another prime minister who's not enforcing that standard yet again. There's more than one situation, not just the justice minister, where we have appearances of conflict of interest, and the people who are supposed to follow that rule are not being required to follow it.

Mr. Pat Kelly: In your opinion, the defence that whichever minister it may be is following the law, does not match the aspirational directions in the mandate letters or the statement on open and accountable government?

Mr. Duff Conacher: No, which is why we've called, since 1993, when Democracy Watch started, for those words to be put in the law, and have the Ethics Commissioner, as an independent officer of Parliament, enforcing them. If any prime minister means those words, and wants people to follow them, you put it in the law. You don't put it in a mandate letter and a code, and then not enforce it.

The Chair: Okay, good.

I'd just remind colleagues that we are actually talking about access to information, and while these questions do tie into information, let's make sure that our questions always go down that road.

Mr. Saini, please.

Mr. Raj Saini: I just have a quick question.

From what I'm gathering from your testimony here, you would like the Information Commissioner to have access to all documents, whether they be at the cabinet level, at the defence level, or at the national security level. The only concern I have for that is that if there are elements within the national security apparatus that might be so sensitive in nature, we have a screen there. I'm not aware of it, but I know there's probably three or four different levels of top secret screening. For a commissioner to have access to those documents, and to read those documents, to me suggests that this person should have a national security clearance screen. A commissioner, who's coming into this position, I would think would have some background in administration, in law, whatever, but now we're putting a further layer, that they would have a national security screen.

Is that pertinent? Is that necessary? How do we deal with that?

● (1035)

Mr. Duff Conacher: You have the Security Intelligence Review Committee made up of MPs, who have to have that screening level as well. It's no less—

Mr. Raj Saini: But I don't think they have the highest screening. Correct me if I'm wrong, as a new MP, but I don't think the MPs have top security clearance. If you're going to have somebody review those documents, they obviously have to have a higher security clearance.

Mr. Duff Conacher: I believe they do get that top level screening —Privy Council members as well.

Yes, it's going to reduce the number of people who could hold the position, but not so much that you're not going to have candidates for holding the Information Commissioner position. I think you want to have someone with that type of security screening for lots of other things that they would be reviewing as well, not just national security measures, and it's knowing that this person is going to take the role seriously and look at it.

Mr. Raj Saini: But do you think that one person or one commissioner should have that kind of knowledge and make a decision in a silo on a national security topic?

Mr. Duff Conacher: They will, because there'll always be an appeal to the courts. I don't think they should be a czar, where their decisions cannot be appealed to the courts.

Mr. Raj Saini: Mr. Gogolek?

Mr. Vincent Gogolek: It's an interesting question, and as Mr. Conacher noted, there is an appeal to the courts. It may be worth looking at in terms of somebody's having that level of screening as a condition of eligibility for the post. It's an important question, but I don't think it's something that takes it out of the possibility of being done. It's another step, another level of competence that has to be there.

I think it may also have the effect, if the commissioner is cleared to that level, maybe along with other investigators in their office, that it would provide the security and national defence apparatus with confidence in the decisions.

It's an important question, and that may be the way we have to go.

The Chair: Thank you.

We now go to Mr. Blaikie, please, for up to five minutes.

Mr. Daniel Blaikie: Thank you very much.

I want to come back to the theme of how we try to harness some of the goodwill and momentum and the positive rhetoric about openness and transparency to ensure that we do actually get meaningful reform within this mandate.

The last government, we know, came in on a white horse of openness and transparency and accountability and then proposed a two-step plan. There were going to be some immediate reforms and then there was going to be a more comprehensive kind of project to follow that would deliver the big goods.

If there are real issues about implementation.... I think we spoke earlier to the fact that the measures in the interim directive don't really speak to the larger issues that would have to be dealt with in the review. To say that we need to wait to see how those go before we can decide what we want to do on those larger issues is, I think, mistaken.

I've done a lot of organizing, whether political organizing or community organizing, and my next question is always, if we've had the general conversation and there's some agreement about what we want to do, how we take it to the next level so that we're getting some action. I think here it's pretty clear that this conversation isn't going to go to the next level until we have proposed legislation.

We can talk about the language the government is choosing to use, whether it's about having a ministerial override clause for the order-making power of the commissioner or whether it's examining what applying access rules appropriately to the PMO and to ministers' offices really means and what it would mean in the context of a larger act.

That's what I think probably needs to happen, if we're going to get any progress. What about the idea of moving more quickly on a substantive act, but not bringing certain clauses into effect, or giving either the President of the Treasury Board or whoever would be the sponsor of that legislation as a minister or the Governor in Council the opportunity to bring those into effect at a later date, if that's required for a kind of rollout of implementation within the civil service, but making sure that those commitments are in law and that it's clear what exactly the government intends to do over the next four to five years?

● (1040)

Mr. Vincent Gogolek: I think it's unfortunate that we're not having the full conversation right now, but that's the way it is. It's also unfortunate that some of the witnesses this committee heard from previously, who are well-known and have a great deal of experience in the field, did not have the opportunity to see the directives and the actual consultation proposals before they were here to testify. I'm sure they would have had interesting things to say.

There are some things that I think are matters of consensus. Getting rid of a cabinet exclusion is one of them. Having an entire class of documents which, at the say-so of an official, nobody ever gets to look at and nobody ever has access to I don't think is acceptable. I don't think you've heard any witness saying that this is a good idea and that we should keep this and please do not touch it.

It's not part of the proposals. I think it's important that it go in.

Duty to document is another one concerning which I think it's important for this committee to urge the government, if they're going to do a limited number of amendments, that it should be one of them.

Mr. Duff Conacher: I'll just say you cannot fulfill a promise to be open by default with this act in place.

The government is essentially saying, we're not going to keep that promise until the last year of our mandate with a possible a bill in 2018, and passing it just before the election. So they're saying, we're not going to keep that promise in this mandate. The rhetoric of open by default is not going to change the way that government operates nor the culture.

Mr. Daniel Blaikie: The President of the Treasury Board said they're going to mount their own consultation in parallel or after this committee's work. What do you think that consultation could hope to uncover, or who do you think that consultation could engage and speak to, that this committee process is not already engaging or speaking to? Who is left out of this study, understanding that this study isn't over and we have the ability to consult more people?

Do you see value added in the President of the Treasury Board going out on his own with his office and conducting a parallel study? Do you think it's likely that they're going to uncover things that would not be uncovered by this committee study?

Mr. Duff Conacher: The Information Commissioner did it last year, the government did it the year before that with the open government partnership planning and review process under the international open government partnership situation. It's been done and been done again and the same recommendations keep coming up.

It's time to act.

There's no need or justifiable reason for delay.

The Chair: Good.

Colleagues, we've just got a couple of minutes left.

I just want to thank our witnesses for coming today and I hope you've been able to say everything that you wanted to say at the committee. We certainly appreciate the skeptical criticism that was here. It created a great conversation.

I want to thank my colleagues and just remind them that we're going to resume Tuesday next week. Mr. Robert Marleau, the former clerk of the House of Commons, will be here. We also have three ATIP coordinators from three departments, and we're trying to get a fourth one as well. We're going to be able to directly talk to ATIP coordinators and find out just what is that they would like to see changed as well.

Colleagues, thank you very much for your time.

To our witnesses, thank you very much for being here.

The meeting is adjourned.