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• (1540)

[English]

The Chair (Mr. John Brassard (Barrie—Innisfil, CPC)): I call this meeting to order.

Welcome to meeting number 41 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Therefore, members can attend in person in the room and remotely by using the Zoom application. Should any technical challenges arise, please advise me. Please note that we may need to suspend for a few minutes, as we need to ensure that all members are able to participate fully.

Pursuant to Standing Order 108(3) and the motion adopted by the committee on Monday, May 16, 2022, the committee is resuming its study of access to information and privacy systems.

Go ahead, Monsieur Villemure.

[Translation]

Mr. René Villemure (Trois-Rivières, BQ): Mr. Chair, can you tell me whether the sound checks were done?

The Chair: Madam Clerk, did the witnesses go through the sound checks?

The Clerk of the Committee (Ms. Nancy Vohl): We have only one witness, and he is here, in person, so there was no need for a sound check.

[English]

The Chair: *Merci.*

Thank you, Mr. Villemure.

I would now like to welcome our witness today. Michel W. Drapeau is a professor in the faculty of law at the University of Ottawa.

The floor is yours, Monsieur Drapeau, for a five-minute opening statement. We'll follow that with questions and answers.

Please proceed, Monsieur Drapeau.

Colonel (Retired) Michel Drapeau (Adjunct Professor, As an Individual): Thank you for having me.

As a published author of an annotated legal text on access to information for the past 20 years, and as a frequent user under the access to information regime for the past 30 years, I've come across every frustration possible. However, I believe that today we have

reached a new level. The right of access is now without a destiny, as it no longer serves its intended purposes.

Fortunately, there are some solutions at hand. I covered some of those in a recent article I wrote that was published by the Macdonald-Laurier Institute.

[Translation]

For the right to know to have any meaning, timing is everything. It is not only crucial, but it is also the most important factor in ensuring that the electorate has meaningful access to information in government records. Both transparency and accountability promises in public administration are meaningless unless swift access to records can be guaranteed.

[English]

Today the access process is increasingly bogged down in impermissible long delays, not so much at the federal institutional level but at the level of the Office of the Information Commissioner, whose sole purpose in life is to investigate complaints involving a possible contravention of the act. Let me explain.

Year in and year out, approximately 70% of the access requests are closed within the legislated timelines by federal institutions. This includes extensions. So that part of the ship is not yet at a critical level; far from it. However, at the level of the Office of the Information Commissioner, it is not unusual to wait a minimum of two years for them to complete their investigation of a complaint. To illustrate, let me give you three examples experienced by my own law office during this month of October.

Over the past three weeks, my office received results from the Office of the Information Commissioner for a complaint filed in 2012, and another one concerning a complaint filed in 2018. During the same period, an OIC investigator advised us that she had just now been assigned to investigate one of our refusal complaints that had been filed in 2020. By the time that investigation is completed, we will have been waiting well over two years to get the results, and maybe to get some records.

These are not isolated cases. They are typical of the responses being experienced with our complaints.

• (1545)

[*Translation*]

Such delays are unacceptable because they have a very negative impact on users. What's worse is that users have no recourse except to wait, since the law dictates that the OIC must first publish its investigative report before the complainant can apply to the Federal Court. Fortunately, however, the time taken to be heard by the Federal Court is measured in months, not years like the OIC.

[*English*]

In my opinion, there is an urgent need to have the Auditor General conduct a system-wide audit to ascertain whether there are sufficient resources at both the Office of the Information Commissioner and the federal institution level to respond in a timely manner to users exercising their right of access.

In the 39 years since the access regime has been enacted, there has never been any such audit of a system that consumes \$90 million a year.

First is the information office, the Office of the Information Commissioner. The office is currently funded with a staff of 93 to accomplish the single task of an investigation of complaint. To perform that task, its senior leadership team is currently composed of one commissioner, three assistant commissioners and five senior executives at the EX level. This is one senior executive for every 10 employees. This seems to be a particularly top-heavy organization.

Further, more than 50% of the allotted personnel at the Office of the Information Commissioner are employed in leadership, management, legal and public affairs functions, leaving only 40 investigators to handle complaints. There's a reason we're waiting so long.

Separate and apart from a system audit, I think there's also a need to consider whether the OIC should be subject to a time limit to respond to a complaint. In my estimation, I propose a one-year limit on the OIC to submit a decision.

Second, there is a need for the Auditor General to review whether each federal institution is properly staffed to undertake the volume of requests.

Additionally, there is a need to revisit the current 30-day calendar. My proposition is to modify the act to enable federal institutions to respond within 30 business days as opposed to 30 calendar days. This might significantly improve the performance level of institutions. We're waiting, in any event, 45 days and more to get a response for a single request, so why not adjust the time factor to make it more convenient and more realistic?

Having said that, I'd be happy to respond to your questions on any of my recommendations.

The Chair: Thank you, Mr. Drapeau.

We did allow for a little extra time during your testimony. You're the only witness for this session and we wanted to hear what you had to say. I appreciate that, sir. Thank you.

We're going to go to a six-minute round first.

Mr. Kurek, you're up.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): Thank you very much.

Thank you to the witness for joining us here today. Also, if I could note, thank you for your service to our country in the armed forces. I know that the work you do in your law practice is unique in this country, so thank you for that.

Access to information is fundamental to democracy and accountable government.

On October 17, the Macdonald-Laurier Institute published an article that you wrote, entitled "Access to information: A quasi-constitutional right in peril". You listed six steps for ATIP reform, three of which you believe can be implemented immediately.

I'd like to give you the opportunity to expand on those six as quickly as possible, and as I know time is limited, specifically on those three that could be implemented immediately.

• (1550)

Col (Ret'd) Michel Drapeau: The first one is that last year, 52% of the access requests overall were directed to Immigration, Refugees and Citizenship Canada. It was an explosion of requests that I had never seen before. There were 145,000 directed to that particular department.

I think it would be fair to say that it's a bit of an abuse of process. Access requests are not designed to provide records or access to records to applicants for immigration and so on and so forth. There is a less complex, less busy, less procedural system that could respond to their need to have access to their records. That will unburden the access regime.

If we go back two years and use that as a typical year, then I think the system is reasonably equipped to deal with it. Last year was unprecedented. It also resulted in—

Mr. Damien Kurek: I'm sorry. My understanding of the system is that the RCMP faced a similar challenge when it came to a change in administrative process regarding records as well.

Col (Ret'd) Michel Drapeau: It did, but not to the same extent.

At the same time, the Information Commissioner received 10,000 complaints, as opposed to the 5,000 or 6,000 they would have in a normal year. You have a system that's bogged down at the federal institution level and the OIC.

Last year was a disaster year. It was basically that all parts of it were off. If you can take 52% of the requests and use a more administratively friendly request that doesn't have the kind of impediment, the kind of restrictions or the kind of exemptions that the access act has, it will bring it down to a more measurable level and something we can do.

That's my first recommendation. We can do this. I think they are working at the moment on a way to develop an alternative approach within that particular department. They should be pressed to do that.

My second recommendation—I'm trying to go through them quickly—is you should get the Auditor General to do a report. Each department basically begs for assistance—each ATIP section within a given department—from the deputy ministers in order to get sufficient resources to meet the volume of requests that they get year in, year out. In some cases, they are successful. In other cases, they have to line up, because the department is short of resources.

We—this committee, or even the OIC— have absolutely no idea at the collective level of what a fair number is or the type of people we need at each institution to handle the volume that we have. Through time, we'll come up with it.

I'm using the RCMP as a good case in point. They are grossly understaffed. As a result, as users, when we try to get access to records in the pursuit of sealed litigation or in the pursuit of interests of the clients who come to us, we have to line up for months, and sometimes for years, before we have it. If we get ahead of the queue, we're only displacing the problem someplace else.

I think the Auditor General ought to do a review, a system audit, to see whether or not we have an adequate number of people and to see what that number is.

Before we can impose upon each one of those ATIP coordinators the type of criticism we see in annual reports, and sometimes in the media and so on, that they're not doing their job.... I think they are doing as good a job as they can be permitted to do with the personnel that they have. As I've said, 70% of the requests are responded to within the established deadlines.

The third point is user fees. At the moment, one pays \$5 to submit a request. That \$5 amount was instituted back in 1983. In today's value, that's \$15. To me, spending \$90 million of public funds—this, of course, without any contributions from the users—is passé. I, as a frequent user, don't mind paying, because I'm getting a service for free at the moment. Not only am I getting a service for free, but in 2015, the then-government made the access regime much friendlier than it was. At the time, before 2015, you had to pay so much if your request generated more than five hours of access search time. If you had to pay for photocopies—

Mr. Damien Kurek: I apologize. I'm basically out of time.

I'll request that the you submit that article to this committee, because I know it unpacks some of those things. I look forward to the other questions, but if you would be willing to submit that information, I think it would be very helpful.

I am out of time. That's the challenge we face here.

Thank you.

• (1555)

The Chair: Thank you, Mr. Kurek.

For the next round, we'll go to Ms. Khalid for six minutes.

Go ahead, Iqra.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you very much, Chair.

Thank you, Mr. Drapeau, for being here today. We really appreciate it.

I will continue down the path of what you were just talking about with respect to user fees. In 2016, you stated that you don't believe there should be any fees, but now you're saying that the fees should be adjusted to the cost of inflation.

Can you help us understand how you got to that conclusion from where you were in 2016?

Col (Ret'd) Michel Drapeau: It's truly from a practical perspective. I'm in the business of law. We have deadlines that we are facing. We have to go to court and to make a plea. I use access on a regular basis in the pursuit of our files, whether they are for military or veterans or whatever. I depend on it. I have a quasi-constitutional right to have it, but as I said, that right is in peril. I'm not getting any results. I'm not only not getting the records I'm after, but if I were to make a complaint, I would have to line up for two or four or six years.

By having a fee—a *genre de ticket modérateur*—perhaps fewer people, or those committed to using the access act for their own personal needs, would be prepared to pay a minimum fee. That will, in fact, increase the possibility of the deputy ministers increasing their staff responding to it because it is a public service.

Most provinces charge a fee. It's in excess, in fact, of what I'm proposing. I, as a business, even propose that we could be charged a little bit higher fees if for no other reason than to accelerate the process and for no other reason than to respond truly to what is a quasi-constitutional right. At the moment it's not.

Christmas is upon us soon. I don't expect that the staff in a federal institution or the information commission will double overnight. It won't happen. One way to do it is perhaps have the user pay for some of the services. It's nowhere near \$90 million, but it's going to discipline the process and at the same time provide some welcome financial relief in these days.

Ms. Iqra Khalid: Thanks very much.

Continuing on that, you did mention the ever-increasing number of requests for information that you're receiving now.

How many of those requests for information do you believe are vexatious or frivolous and clogging up the system? I know Mr. Kurek has said before that he's put forward 300 requests for information. How does that equate to how effective your office is?

Col (Ret'd) Michel Drapeau: I don't know. I frankly don't know. The Information Commissioner may know.

Up until the recent amendment to the act, one could not qualify any of the requests as vexatious. The federal court of appeal had long ago declared that the motive of the requester is immaterial. Regardless of his motive or the frequency of it, you had to respond.

That has been disciplined from the last time the act was amended. I think it can be disciplined more, for the benefit of the user community that uses it for a practical, honourable purpose, by having a fee. That's my approach to it.

Ms. Iqra Khalid: You think that increasing the fee would limit some of those vexatious claims.

What is the impact of having an online button now so that people can file their claims online? How is that impacting the number of claims we're receiving?

Col (Ret'd) Michel Drapeau: I don't know. The Information Commissioner should be able to answer that.

Ms. Iqra Khalid: You mentioned in your opening remarks.... I missed the number. I thought I heard that about 60% of the requests relate to IRCC.

Col (Ret'd) Michel Drapeau: Can you ask the question again?

Ms. Iqra Khalid: You mentioned in your opening remarks that about 60% of the total that you receive are with regard to the immigration department. Is that correct?

Col (Ret'd) Michel Drapeau: This year and this year only, 52% of requests were submitted to that particular department.

Ms. Iqra Khalid: Do you think there's a correlation between the number of requests you get per department and the delays or the backlogs within service delivery within that department?

Col (Ret'd) Michel Drapeau: I don't think so. I think, historically, for the past 30 years and more, the departments that received the highest numbers tended to be the same from one year to the next. CRA is one. The Department of National Defence is another. The RCMP is another. Those departments tend to rank within the first five.

I don't think that the climate or the public issues have had a dramatic impact upon the volume of requests received by each one of these departments.

• (1600)

Ms. Iqra Khalid: If I do still have time, you've mentioned that you've wanted more oversight over the access to information system. Now you're appearing before our committee today to help us in reviewing the system as it is.

Are there any very specific recommendations that you think are your top priority that should dominate how we frame this report?

Col (Ret'd) Michel Drapeau: Right from the get-go, we decided as a country, after a white paper on access, that the way to go was to have an Information Commissioner. We did not need to do this. The white paper had other options. In the States, for instance, you don't. You put in a request to an agency, and if you're not happy with it, you complain to the agency. If you're not happy with a response, you go to federal court.

In Canada, we had an ombudsman style with the Information Commissioner. It was designed with basically three roles. The first one was to investigate the complaint; the second was to monitor and enforce the act upon the various federal institutions, and the third was to report to Parliament, but the primary task and the only role is to investigate complaints.

Now we find, years afterward, over the past decade or so, that it has grown so top-heavy that we have less than 50% of the staff who investigate complaints, 40 out of the 93 people, and when we find four commissioners.... Pardon me—do we need four commissioners and five executives and so on? All of that is at the expense of their sole function of investigating complaints, and that's what I want. If a department doesn't give me or excludes information and records, for example, my only avenue is going to the Information Commissioner.

I'm in the business of law. If I don't get an answer from that, then I have the ability to go to the Federal Court and get the Federal Court to adjudicate my request, except I have to wait until the Information Commissioner issues a report. At the moment, I have to wait four years, six years or eight years, so it's killing us if we need to have access to these records through the only legal but quasi-constitutional mode, which is the access regime.

The Chair: I didn't want to stop you, Mr. Drapeau, because you were on a roll there, but we are over time on this round of questioning.

[*Translation*]

We will now start the next round.

Mr. Villemure, from the Bloc Québécois, you may go ahead. You have six minutes.

Mr. René Villemure: Thank you, Mr. Chair.

Thank you for being here, Mr. Drapeau.

On October 5, I asked Ms. Maynard, the Information Commissioner of Canada, whether the federal administration had a culture of secrecy or a culture of openness. Basically, she said that staff didn't always know what information they should be disclosing.

Do you think the federal administration has a culture of secrecy or openness?

Col (Ret'd) Michel Drapeau: I think it has a culture of secrecy, but that's a function of being a public servant, whether the person is in the RCMP, the Canadian Armed Forces or another organization. They are asked to keep information confidential and share it only with those who have authorization. That's what public servants do every day. They protect the interests of the Crown. That's their job.

The act sets out 13 exemptions, or situations in which government employees may refuse to disclose a record, in order to protect information that should remain confidential. Almost as a matter of practice, they determine that certain information is personal or confidential, and that's where the commissioner comes into the equation. When the requester believes that they should have access to the record, which is often clear just from reading the document, they can file a complaint. Then, they have to wait for a decision by the commissioner, who has access to the full record.

Mr. René Villemure: In March, Foreign Affairs magazine published an article on disclosure in the U.S., which is very different from the situation in Canada. According to the article, public servants preferred not to disclose too much information so as not to risk getting into trouble. Do you think it's the same here?

Col (Ret'd) Michel Drapeau: Fundamentally, yes I do.

In Canada, every department has its own access to information team. Those are the people who have the experience. They have a duty not just to apply the act, but also to help those requesting information. For example, they can suggest to requesters that they rephrase their request in order to access more information, receive the records more quickly or trigger fewer exemptions.

The access to information team in each department plays a key role, serving as the intermediary between requesters and public servants.

• (1605)

Mr. René Villemure: Would you say the culture of secrecy is more obvious at Immigration, Refugees and Citizenship Canada, the Canada Border Services Agency and the RCMP? Is it more entrenched in those organizations, or is it no different than it is at the Canada Revenue Agency?

Col (Ret'd) Michel Drapeau: I couldn't tell you.

Mr. René Villemure: All right.

Under what circumstances can the government cite national security when it comes to the awarding of government contracts?

Col (Ret'd) Michel Drapeau: That is possible in a wide range of circumstances. I'm not a public safety expert, but depending on the nature, purpose or requirements of the contract, it may be in the government's interest not to disclose certain information, such as the value of the contract, the parties involved or the scope of the contract. Each case is unique.

Mr. René Villemure: Some records are highly confidential, and it's obvious why, but other records are more general. Are some situations more valid than others when national security is cited as the reason for not disclosing a record?

Col (Ret'd) Michel Drapeau: The answer is yes.

As I pointed out, the Access to Information Act sets out 13 exemptions, including national security in all its glory. Those exemptions are interpreted differently and can apply to cabinet confidence or certain personal information.

When an ATI request involves national security, I expect all government employees, including those who work in access to information, to take a very careful and conservative approach, disclosing only what is possible, practical, relevant and legal to disclose.

Mr. René Villemure: You are talking about disclosure on a need-to-know basis.

Col (Ret'd) Michel Drapeau: It's not just on a need-to-know basis, but also on a legal need-to-know basis, as per the act.

Mr. René Villemure: I'll give you an example that will amuse my fellow members.

Does leasing land along the border and setting up trailers on that land fall under the umbrella of national security?

Col (Ret'd) Michel Drapeau: I'm amused, as well.

I couldn't say. I'd have to know what the trailers were being used for. I'd need more specifics.

Mr. René Villemure: All right.

You talked about how long people have to wait for their ATI requests to be answered. Does the Office of the Information Commissioner have enough tools to deal with complaints related to wait times? Is it a matter of funding or a lack of will?

Col (Ret'd) Michel Drapeau: I don't think the commissioner's office lacks funding. It has a sizable budget.

My position is simple: when less than half the people at the commissioner's office are assigned to the administrative task of reviewing complaints, there's a problem from the outset. Let's start by fixing that problem.

Then we can turn our attention to the funding the office has to work with. To be fair and frank, I don't even think the Information Commissioner can determine what she needs in terms of resources. She can make recommendations, but it really requires the expertise of an outside organization, in this case, the Office of the Auditor General. The Office of the Auditor General has the capacity to examine how many complaints come in and how long it takes to review them. Some complaints are obviously more complex than others, but the Office of the Auditor General can determine whether there's a better way to do things and whether more staff is needed to handle complaints.

Mr. René Villemure: That's great. Thank you.

I'm done, Mr. Chair.

The Chair: Thank you, Mr. Villemure and Mr. Drapeau.

[English]

The next round is Mr. Green from the NDP. Matthew, you have the floor for six minutes.

Mr. Matthew Green (Hamilton Centre, NDP): Thank you very much, Mr. Chair. Welcome to committee in your first official capacity. Through you to the witness, the witness raised some very important questions. I would like to explore the difference between what the causation and the correlation is with some of the inconsistencies and inefficiencies that he's identified with the entire process.

He referenced specifically just the sheer volume through the immigration cases. I would ask through you, Mr. Chair, to the witness, if he would care to comment on whether or not he sees a correlation between failures in specific ministries to adequately address basic public inquiries with the rise in the rate of ATIPS. In short, is this a failure of a ministerial department that is causing the ATIPS, or is there another theory that he has, given his overview of the—

Col (Ret'd) Michel Drapeau: I'm not equipped to answer this question because I don't have the statistics for each one of the departments for their performance level in any given year, so I cannot address that.

• (1610)

Mr. Matthew Green: But it was acknowledged that in your opinion the managerial staff is top-heavy and that the operational staff, that complement, needs to be more vigorous and complete in terms of their full-time equivalents.

Col (Ret'd) Michel Drapeau: I would have no hesitation to answer your question in regard to the Office of the Information Commissioner, where these figures are public. For each one of the federal institutions, I would need more data before I could pronounce on it, and it's data that I don't have.

Mr. Matthew Green: Even within the existing budget, in theory without allocating more money, there's an opportunity to have an increased number of people actively involved in the process.

I want to talk a little bit around the technical aspects. One of my biggest frustrations, and I'm sure members on the committee can share this, is getting scanned PDFs back that are unsearchable and the unsearchability in the way in which we collect data. Mr. Chair, you will recall this Liberal government had a minister of digital government, and that just disappeared.

When big data is released to him and his clients, is there a difficulty there as well in being able to find the information accurately, given the way in which it's scanned, rather than being presented as searchable PDFs?

Col (Ret'd) Michel Drapeau: If that question is for me, in a typical request that we would put in, normally we would indicate whether we wanted to have the records electronically or sent by regular mail.

If it is sent by CD-ROMs and we have a number of them, the act provides that the information coordinator inside each one of the departments or federal institutions has a duty to assist. It belongs to you to make your requirements known, and it belongs to them to make sure they do whatever is necessary to ensure your requirements.

Mr. Matthew Green: I'm familiar with that. I guess what I'm trying to get at is that one of the things we often hear at this committee is that the information needs to be digitized and it's hard to find. I'm wondering if maybe there are some system-level failures, but perhaps that's something for the actual department and the commissioner.

I'll move on to my next question.

In your commentary entitled “Access to information: A quasi-constitutional right in peril”, you state that your reforms include

service fees, or fee for service. Wouldn't this change create greater barriers to individuals making the ATIP requests, given that it's a constitutional or quasi-constitutional right?

Col (Ret'd) Michel Drapeau: Well, the act provides at the moment for an information coordinator in a given department to waive fees. If there was an issue of fees being an obstacle to obtaining and exercising the right of access, it's already provided for.

The report indicates that last year, I think roughly \$30,000 worth of fees had been waived. That provision exists in there. Otherwise, up until fairly recently, there was a \$5 fee for the first 20 years that the act was in place, plus—

Mr. Matthew Green: Thank you. I have only a minute left. My apologies for being curt.

I'm hoping that you as a lawyer may be familiar with the case of *Dagg v. Canada*—or the Minister of Finance—in 1997. In the decision, the Supreme Court held that the overarching dual purposes of access to information are to, one, “facilitate democracy” by ensuring that “citizens have the information required to participate meaningfully” in democracy; and two, to have “politicians and bureaucrats remain accountable” to citizens.

Do you believe that the continued inefficiencies of access to information are the result of the government prioritizing self-preservation over the democratic processes and accountabilities to its citizens?

Col (Ret'd) Michel Drapeau: The short answer is no, I don't think so.

Mr. Matthew Green: Okay.

Those are my questions. Thank you.

The Chair: Thank you, Mr. Green. You were well under time. I appreciate that.

We'll move to the five-minute rounds now.

[*Translation*]

Go ahead, Mr. Gourde. You have five minutes.

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

Thank you, Mr. Drapeau. Your experience is very helpful to us.

If the access to information regime is inadequate, can it have a negative impact on Canadians or Canadian institutions?

Col (Ret'd) Michel Drapeau: The answer is yes, absolutely.

The access to information regime is the only legal way for an individual like you or me, or an organization, to access information controlled by the government. It's the only available legal avenue. People can submit requests for all sorts of reasons: medical, economic or industrial. They can request information for reasons related to tourism, civil proceedings and so on.

If people don't have that right or if they can't exercise it within the prescribed time frame, they are negatively impacted.

• (1615)

Mr. Jacques Gourde: Take, for example, an RCMP or a police investigation into an organized crime group that had infiltrated a government department in order to obtain a permit of some sort.

Say the investigator submits an ATI request for the list of Canadians who had been granted the permit in question, but has to wait four, five, six or seven years to get a response. Would that kill a potentially fruitful investigation?

Col (Ret'd) Michel Drapeau: If I understand your question correctly, a request for a list of individuals who had been granted a particular type of permit would certainly be denied outright because the request relates to people's personal information.

Mr. Jacques Gourde: What happens if it's the RCMP submitting the request or the request arises from a court order?

Col (Ret'd) Michel Drapeau: The RCMP is not required to go through the Access to Information Act to obtain information. It will seek out the information in its official capacity using its network of police services and other federal institutions. It doesn't need to use the act at all.

Mr. Jacques Gourde: You said the wait times were unacceptable and cause a lot of frustration. In an ideal world, what would be an appropriate amount of time to wait for the information requested?

Col (Ret'd) Michel Drapeau: In an ideal world, the 30 days currently prescribed would be enough time to respond to a relatively simple request, one that doesn't involve a mountain of records from a particular department. I'm talking about a clearly laid out request dealing with a specific topic. Whether they were 30 business days or calendar days would have to be determined.

Keep in mind that 70% of requests are answered within the prescribed 30 days, but a request for more time counts as a response. I think that's a good standard.

Personally, I'd like the time frame to be a bit less rigid, so that the 30 days were working days. Hopefully, more people could obtain the records they had requested or receive an extension request within that time frame. Ideally, the requester would receive a response within 30 working days.

Mr. Jacques Gourde: Unfortunately, the other 30% of requests take way too long to process. Have you seen cases where the request took an outrageous amount of time to process, five, 10 or even 20 years? You don't have to name any departments, of course.

Col (Ret'd) Michel Drapeau: I haven't come across any that took 10 years, but I've seen five years. A lot of requests take between one and five years to get resolved, and that's true for a number of departments.

Take, for example, the complaint we filed in 2012, which I mentioned earlier. It took five or six years for the commissioner to ask us whether we still wanted the records in question. We said yes. We weren't going to change our mind and drop the complaint because the commissioner made us wait six years. We wanted to get the records; we wanted that information.

After we heard from the commissioner, we had to wait another few years to get the records. We received the information we had requested 10 years after our initial request.

Mr. Jacques Gourde: You said requesters could wait four, five or even six years. That can really hurt the work that investigative journalists do. They have to submit ATI requests for some of the stories they work on, and that's information Canadians deserve to know.

Col (Ret'd) Michel Drapeau: The wait times are due to all kinds of things.

In some cases, the delays don't have to do with all of the requested information. Some requests are prickly because they involve information belonging to third parties such as companies, which are, themselves, subject to an access to information regime.

A third party might be an airplane manufacturer or a food processor. Third parties tend to ask for more time to process the request. They may also take the matter to court or refuse to disclose commercial information. Third parties often cite the exemptions prescribed in section 20 of the act. Those tend to be the cases that drag on.

Mr. Jacques Gourde: Thank you.

The Chair: Thank you, Mr. Gourde.

Thank you, Mr. Drapeau.

The chair's job is easy when everyone sticks to their allotted time.

[English]

Voices: Oh, oh!

The Chair: Mr. Fergus, you have five minutes, sir.

[Translation]

Hon. Greg Fergus (Hull—Aylmer, Lib.): We want to make your first real meeting as chair a pleasant one, Mr. Chair.

• (1620)

[English]

The Chair: You're making it easy on me. Thank you, Mr. Fergus.

[Translation]

Hon. Greg Fergus: Mr. Drapeau, I greatly appreciate your being with us today, and thank you for appearing a number of times in relation to the Access to Information Act. Your extensive knowledge and expertise are very helpful to the committee.

We know that 70% of requests are responded to by the deadline, so let's set those aside and focus on the other 30%. The number of complaints has been on the rise for years, especially since everyone turned to electronic sources.

The Information Commissioner said that some requests were vexatious, and you mentioned that in your opening remarks. She also suggested that government employees needed to learn how to manage the emails in their inboxes. Requests that come in by email are often looked at by the entire team, and those emails can be repetitive. Sometimes employees get the same information five or six times.

Certainly, there's a better way to manage data. Given your experience, do you know of any countries whose government institutions do a good job of managing electronic data so that it's easier to respond to ATI requests?

Col (Ret'd) Michel Drapeau: I don't think so. I would say the problem is universal. In Canada, it's the same for a firm as it is for a public servant. Not all requests a public servant receives are equally important or of equal priority. Some emails are just friendly communications, depending on the situation. A public servant writing an email today certainly isn't thinking about the fact that the email could be part of a chain that ends up being disclosed under the Access to Information Act. If they did, they would be more disciplined in their communications, and there might be more substance in the records.

That's how it is nowadays, so we have no choice but to deal with these situations. In the case of a dispute, you might have a lengthy email chain that needs to be redacted because it contains information that is personal or subject to solicitor-client privilege. That has led to considerably more work for those responsible for access to information. Compared with the days of handwritten memos and documents, today, the volume of interpersonal communications is significantly higher.

That's the world we live in, and I don't think we can escape it. That's the sort of bureaucracy that has to be expected when an ATI request is made and when it's processed.

Hon. Greg Fergus: If you were the Information Commissioner, what advice would you give public servants to help them manage data more effectively and to cut down on the number of emails?

Col (Ret'd) Michel Drapeau: Annual seminars in all departments would remind them that one of their legal responsibilities is to comply with the Access to Information Act, which has quasi-constitutional value.

Public servants have a duty to the public, who pay their salaries. It was Parliament that wanted this law to exist. Everything that civil servants produce in the course of their daily work must therefore be accessible. Some information may be exempted, but in principle everything that civil servants produce must be accessible, as they are publicly accountable for their responsibilities and workload, among other things.

No one should be surprised or offended that an access to information request is made. Yet these requests are mostly perceived as an annoyance or something that upsets the bureaucratic order. However, these requests stem from the fact that we live in a democracy that respects the citizens who pay the salaries of civil servants, who finance public institutions and who want to obtain answers. The right to access information, the right to know, is a quasi-constitutional right that has been granted to citizens. Facilitating this right

is a duty for institutions, civil servants, parliamentarians and the public.

We have not yet reconciled these opposite sides. The viewpoint varies depending on which side you are on. While we may want as much information as possible to be released to us, the typical public servant aims for the exact opposite, wanting to protect everything they can. Most departments have not yet adopted the mindset that there is nothing wrong or offensive about an individual making an access to information request, and that they must respond to it to using the resources available to each department.

• (1625)

The Chair: Thank you, Mr. Drapeau and Mr. Fergus.

Mr. Villemure, you have the floor for two and a half minutes.

Mr. René Villemure: Thank you, Mr. Chair.

Good afternoon, Mr. Drapeau.

You mentioned section 20, which I believe covers trade secrets. Given the use of it today, would you say that this section is too restrictive?

Col (Ret'd) Michel Drapeau: More than any other, section 20 is the one that has been critically examined by the courts, which have considered all possible interpretations. The act contains a mechanism for handling third party information. If a request involves information provided to the department by a third party, the third party must be consulted and has a say. The third party may even require that certain information be treated as a trade or business secret.

This is often disputed. Even if the commissioner, the access to information official, decides to release some of this information despite the representations made by the third party, the third party can and often does take the case to court. That is a problem. There is a whole body of case law around this provision, which makes it cumbersome in terms of its application.

Mr. René Villemure: Is the section interpreted too broadly or too narrowly, in your opinion?

Col (Ret'd) Michel Drapeau: I think it's a mixture of the two.

The courts know and respect the ultimate purpose of the Access to Information Act, which is to make information public. However, the rights of third parties must be respected and certain secrets, including trade secrets, must be protected. The courts, including the Supreme Court, have struck a certain balance in this regard.

Mr. René Villemure: Do you believe that enough government entities are subject to the Access to Information Act, or are there entities or agencies that are exempt and should be subject to it?

Col (Ret'd) Michel Drapeau: There are still some who are exempt, but not many. Over the past 10 years, more and more public organizations, including the CBC and Canada Post, have become subject to it. And, as you know, parts of the House of Commons, the Senate and the courts are now subject to the act. The right to know has advanced considerably in the last decade or so, and that is good.

On the other hand, the Governor General and the Office of the Secretary to the Governor General are still not subject to it, and I wonder about that.

Mr. René Villemure: Thank you.

The Chair: Thank you, Mr. Drapeau and Mr. Villemure.

[English]

Mr. Green, you have two and a half minutes, please.

Mr. Matthew Green: Thank you.

I want to carry on in the spirit of the line of questioning of my friend from the Bloc with regard to potential interference with the access to information process.

There are many limits to enforcement due to confidentiality obligations. The Information Commissioner can only disclose information in the course of a prosecution or disclose to the Attorney General if there is evidence of a director, officer or employee of a government institution commissioning any offence against a law of Canada or of a province.

This excludes, however, ministerial exempt staff, consultants, and contractors hired by government institutions, and former directors, officers, and employees of government institutions.

Do you have any recommendations to address these limitations to enforcement?

Col (Ret'd) Michel Drapeau: Not at the moment. It's not something that I have paid particular attention to. I've come to live with this situation and have come to expect that some of those are excluded from disclosure.

However, if you look at the access regime as being allegedly universal, then I would tend to reach across to you and say that although that's probably a noble goal, this goal ought to be on you here, if any place. I haven't seen any movement among myself or colleagues to extend the right of access.

Of course, the ideal would be that it be 100%, but nothing has 100% coverage, whether it's within the court or even here in the House of Commons.

Those people, at the moment, are excluded, and the decision of whether or not to include them under the act belongs to parliament. That's where, I think, it is fair and proper that it be addressed.

● (1630)

Mr. Matthew Green: You have recommended restructuring the Office of the Information Commissioner so that it only serves its mandated investigative functions. Are there any specific additional functions of the OIC that you believe are currently hindering the capabilities of the investigative branch significantly?

Col (Ret'd) Michel Drapeau: I think the OIC has a big enough job to investigate complaints, and there are a sufficient number of them, about 6,000. Given its backlog, it wants to concentrate, to the greatest extent possible, all of its resources on investigating these. I don't see the need to provide the Information Commissioner with any additional tasks. Some other predecessors spent a significant amount of time and resources in presenting before this committee legislative changes that consume a lot of resources. Fortunately, we're beyond that at the moment.

I think the OIC should concentrate all of its available resources on the investigations and complaints to try to reduce, if not eliminate, the backlog. This will serve the ultimate purpose of the act.

The Chair: Thank you, Mr. Drapeau.

Thank you, Mr. Green.

We're going to move to five-minute rounds now.

We're going to start with Mr. Barrett from the Conservative Party.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): Thanks, Mr. Chair.

Thank you, sir, for joining us today.

You've noted previously on the topic of our discussions that the staggering delays in ATIPs can render them effectively useless. While we have heard that some may be perceived to be vexatious, though not found to actually be so, or perhaps someone might say some are frivolous, it's evident that government uses tactics to delay the information so that it's perhaps less damaging to them. What's the remedy for that?

I can give you an example, sir. One access to information request I filed, a very simple one, has been in process for over a year. One extension was sought, and then the department just simply stopped replying to me on requests for information on the status of that access to information request.

When there are apparent efforts by government, or those working in government, to not provide information because it's unflattering to the government, what's the remedy for that?

Col (Ret'd) Michel Drapeau: The remedy is with the Information Commissioner. You must have the ability to put a request in, and if your request comes as part of a pattern in a given department on a given subject with a given number of requests, then the Information Commissioner should have the ability to say she's going to be investigating this as a systemic complaint—that this subject or this department or the request from a specific user appears to be targeted for an absence of service.

I would expect the Information Commissioner to have the capacity, in fact, to react—not all the time, but react when such a need manifests itself—and be able to allocate some investigative resources or try to get to the bottom of it in defence of the reputation of the access regime, and also of your access rights.

However, at the moment, if you have the audacity to put in a complaint to the Information Commissioner, you'll have to line up and wait two years or more before you have an answer, whether or not your request is founded and whether or not it has been turned down or not addressed because it has been deemed to be vexatious.

Mr. Michael Barrett: We've seen varying amounts of time the information will take to be produced. There was an article about a well-known case in which it would take 80 years to unseal RCMP records. The proponent articulated before his passing that he knew he would be dead before he got that information.

Is it reasonable that with a 30-day limit, these fulfillments are being stretched for years and even decades for simple requests? This is when the government is allocating tens of millions of dollars to the system with no noticeable improvement for those who are exercising their right to request the information.

What is the next step? What do we do now to address this? It's two years to make a complaint and 80 years to get your information, or a decade for them to do a simple keyword search on what a reasonable person would find were not confidential or sensitive documents. What do we do?

• (1635)

The Chair: You have a minute.

Col (Ret'd) Michel Drapeau: My answer to you for that question, which I've published in my Macdonald-Laurier Institute article, is that the OIC, first and foremost, would be given a one-year limit to decide on the given complaint—one year. If within one year they haven't decided or they haven't completed it, then the user has the right to go to court. Then you have a real outline to provide you with the capacity to have your right respected, so go to court.

As I said, in the States there's no information commissioner. You put in a complaint to the agency where you first requested records, and if they don't respond to your request, then you go to court. In Canada, you have to line up and wait until the Information Commissioner provides you with a report of their findings. That could be six or seven or eight years, so hold the Information Commissioner to produce a report within one year. Surely they can do that, and they should. Then if they don't provide you the records that you're after, you have the ability to go to court in order to ensure that your quasi-constitutional right is respected.

The Chair: Thank you, Mr. Barrett.

We're going to move to the last five-minute lines of questioning now. Ms. Hepfner, you have the floor.

Ms. Lisa Hepfner (Hamilton Mountain, Lib.): Thank you, Mr. Chair.

Thank you to the witness for being here today.

I want to go back to the point... Correct me if I'm misquoting you here, but I think you said that more than half of the requests in the past year were questions directed to immigration.

When we had the Information Commissioner here at committee, we heard that she was extremely impressed with everything that the department has done to improve this system. There are online portals where people can check their information, rather than having to file an access to information request. She was very impressed.

I'm wondering if you knew about this. What are your thoughts on how this might improve the entire system, once those systems are up and running?

Col (Ret'd) Michel Drapeau: Last year, the 145,000 requests being made basically brought the system to a halt. I don't know if the significant increase in complaints all result from the same.... They probably do.

Now the Information Commissioner has 10,000 complaints from last year, so something is amiss. I don't think we need to have applicants obtain their records or whatever information they're after by going through the access regime. It wasn't designed for this. In fact, it totally overcomes the capacity of the bureaucracy within those departments and within the OIC to respond to the other users.

A first priority, I believe, is to make sure that this particular system to respond to immigrants, refugees and so on be outside the access regime and, to the degree possible, have a positive response. In other words, you don't even need to ask for it; you can have access through this particular medium or this particular platform on request.

Ms. Lisa Hepfner: I understand that that is under way at that department. What do you think the overall impact will be on the system?

Col (Ret'd) Michel Drapeau: I think it will substantially reduce this sudden increase, both in complaints and requests, and have a beneficial impact. When I say it increased by 52% this year, before this year there were still a high number. Removing them from it will probably bring the volume of requests more in line with the ATIP staff, both at the federal institution and the OIC office.

Ms. Lisa Hepfner: I understand you said that in 2015, this government really opened up the system. There was a lot more access and more information available to Canadians.

Can you talk about that a bit more? What was the impact of opening up the system and making more information available to Canadians?

• (1640)

Col (Ret'd) Michel Drapeau: There were a number of institutions—like CBC, Canada Post, the National Arts Centre and a number of others—that came under the act. The courts, many agencies of Parliament, the House of Commons, the Senate and so on all became subject to the act, and CBC was on top of that.

That opened it up quite substantially. Many of these organizations have responded fairly, but some of them have responded not so well. They still have a lot to learn. We have considerably reduced the number of institutions that are still absent and still excluded from the act.

Also, over the past decade or so, with regard to the costs a user would have to endure, the user rate of \$5 has remained, but in those days you had search fees, photocopying fees and so on. Sometimes those fees were in the hundreds of dollars.

Ms. Lisa Hepfner: I remember that well as a journalist 20 years ago. The costs would be prohibitive—

Col (Ret'd) Michel Drapeau: Exactly.

Ms. Lisa Hepfner: —for a lot of news organizations, so you dropped the whole thing.

This government also brought in Bill C-58, which gave the Information Commissioner the power to make binding orders related to access to information, the release of government records, time extensions, the language of access and the format of disclosed information.

Can you comment on that legislation and what sort of impact it's had on the system?

Col (Ret'd) Michel Drapeau: I don't have any statistics to see how often...or what guidelines the IC has given herself. As to how to use this power, I have a sense—and it's an opinion—that she's acted in a timid fashion, maybe as she should, so that people could begin to understand. Basically, using a power is the last club she has.

How often she's used it... Are there some specific institutions that have been targeted more than others and some specific sections of the act, such as section 20? I don't know, and her report doesn't provide us with this kind of information. I wish it did.

The Chair: Thank you, Mr. Drapeau.

Thank you, Ms. Hepfner.

Mr. Drapeau, I want to thank you today, on behalf of the committee and Canadians, for coming before us. You've provided us with some valuable information.

I know that you're experienced in coming to committee. You came prepared and accorded yourself very well, sir. Thank you for being here.

Col (Ret'd) Michel Drapeau: Thank you very much.

The Chair: I'm going to suspend for a couple of minutes while we move to committee business.

Again, thank you, Mr. Drapeau.

We'll be back in two or three minutes.

Thank you.

• (1640)

(Pause)

• (1645)

The Chair: I call the meeting back to order. We have some committee business.

As I mentioned to the committee last week, I did meet with the analysts and the clerk this morning to get a sense of where we're at in the transition. There are a couple of issues that I think need to be dealt with. One is related to the travel motion that was passed by the committee. The report has already been tabled in the House, so I don't necessarily see the need to travel. Monsieur Villemure, I know that it was your motion, but I don't see the need for us to be travelling to either Denver or Palo Alto now that the report has been tabled. I think we should discuss not having that trip happen.

Maybe you can start us off with a few comments, Monsieur Villemure.

• (1650)

[*Translation*]

Mr. René Villemure: Thank you, Mr. Chair.

In fact, since the report has been tabled and we now have a lot of work to do, I don't think it's wise to maintain the trip, even though I always thought it would be interesting.

[*English*]

The Chair: Okay.

I don't think we need to go to a vote on that if there's unanimous consent from the committee to not plan that trip.

Ms. Iqra Khalid: Chair, very respectfully, I think perhaps we should table it for now, unless we need to make a decision as soon as possible. Can we just keep it on the back burner in case we do change our minds later?

The Chair: My understanding is that discussions with the company indicate that what they do is not even germane to what the committee was studying. They don't do facial recognition. To me, tabling the trip with no purpose really doesn't make any sense. If the report's already been tabled in the House and this company doesn't do facial recognition, there really is no reason for us to plan it or have it on the books or table it in that regard.

My preference would be to get rid of it. That way, it's clear to the clerks and the analysts that there is no plan for this committee to travel.

Ms. Iqra Khalid: Again, respectfully, Chair, I know that Monsieur Villemure had really presented this not in an effort to be specific about that company but to expose and explore the bigger issue of facial recognition and artificial intelligence. I'm not even sure if this company would be willing to let us go in, but I still think that perhaps we should keep our options open in terms of going to California to visit them.

The Chair: Again, in the discussion I had with the clerk—you might want to help out here, Nancy—the company has nothing to offer this committee in terms of what the study was. There's nothing germane to the study, and the study has been completed and presented.

You may have some more information.

The Clerk: Thank you, Mr. Chair.

Actually, I was in contact with Palantir at the time. What you have to keep in mind is that it's not just about the company and the desire of the committee. It's mostly about the fact that the House did accept it and gave permission to the committee to travel. The committee does not have to travel, but if the committee wants to do so, the committee can.

There are conditions as part the motion of the House. If the committee wanted to travel at some later time, then the committee would possibly have to redo the process and ask for a budget. The committee could do it again later, but at this time there are conditions to the motions of the House.

The Chair: Yes.

Again, I think we can revisit this later if we need to. We don't have to deal with this now. If it's the will of the committee to ask the House for permission to travel, then we can do that at a later time.

Do we have unanimous consent to annul the plans for the trip?

Some hon. members: Agreed.

The Chair: Thank you.

Mr. Green, I see your hand is up on Zoom. This is going to be new for me, trying to get everybody's attention here, but go ahead.

Mr. Matthew Green: I just wanted to acknowledge the passing of Mr. Michael Dagg. I wanted to go on the record today and acknowledge his passing on September 1. He was somebody who obviously contributed to this committee. I want to take a quick moment to acknowledge his passing. I found out just now, through the testimony of Mr. Barrett.

Thank you.

The Chair: Thank you, Mr. Green. I wasn't aware of that. I appreciate your bringing that to our attention.

Monsieur Villemure, I have you next on the list.

[*Translation*]

Mr. René Villemure: Thank you, Mr. Chair.

I would like to table the following motion:

That, further to the commitments made in the testimony of October 17, 2022, on the use of public funds related to the Roxham Road Crossing, the committee requires to receive from Mr. Pierre Guay, President of Importation Guay Ltée, the Department of Public Works and Government Services and the Canada Border Services Agency the following documents:

- (1) The Report on the use of the Hotel Saint-Bernard;
- (2) The justification(s) for invoking the "national security exception" for each of the leases and contracts;
- (3) The agreements reached between the federal government and Pierre Guay in the context of the crisis at Roxham Road.

That these documents be submitted, in both official languages, in an unredacted format, to the Clerk of the Committee no later than October 31, 2022.

These are the documents that the witnesses have already agreed to provide to the committee. At the same time, I would like to table a small amendment to replace the date of October 31 with November 14.

- (1655)

[*English*]

The Chair: Thank you, Mr. Villemure.

The clerk has just reminded me that technically you're not allowed to move an amendment on your own motion. If it's the will of committee members, we can accept the amendment.

First, we need to hear what the amendment is and then we can decide after that.

[*Translation*]

Mr. René Villemure: The amendment would replace the October 31 submission date with November 14, 2022.

[*English*]

The Chair: Okay, the motion is in order.

Is there any discussion on the amendment?

Go ahead, Mr. Fergus.

Hon. Greg Fergus: There's no discussion on the amendment. I think three weeks works out.

[*Translation*]

My only concern is in relation to the provisions of Mr. Villemure's motion. Perhaps he could explain. In fact, he and I had a discussion and agreed that it would not necessarily be the bodies named in the motion that would be responsible for providing the documents referred to in the motion, but perhaps other people better placed to provide the information.

So I would like Mr. Villemure to explain that to everyone here. It may not be necessary to amend the motion, but we should at least agree amongst all of us to clarify these provisions.

[*English*]

The Chair: Before we go to Mr. Villemure, am I hearing correctly that the spirit of what he's proposing is something you can agree with? Do you need clarification, Mr. Fergus? Is that correct?

Hon. Greg Fergus: Mr. Chair, it's going to depend on—

The Chair: Let's find out, but I feel perfect. Let's find out from Mr. Villemure.

I have you next, Mr. Barrett.

Mr. Michael Barrett: Are we discussing the motion by Mr. Villemure with the November date or the October date? Are we debating an amendment or the motion with the November date?

The Chair: Mr. Villemure, perhaps you can provide some clarification on that. My understanding is that you were looking for the October 31 date. Is that correct?

[*Translation*]

Mr. René Villemure: The motion tabled has the date of October 31. Now, with a parliamentary recess week coming up, we could give some oxygen to the people who have to produce the documents, to make sure that they are produced in a complete way. That is the spirit of the change I am proposing.

In response to Mr. Fergus, it is clear that the documents requested here must be provided by the person responsible for them. If we take the example of the report on the use of the Hotel Saint-Bernard, Mr. Guay, in my view, is well placed to provide it. On the other hand, he is not in the best position to provide the documents on national exceptions. It is therefore necessary for the person responsible for each of the issues mentioned in the motion to produce the relevant documents. We agree that not all the people mentioned have to answer all three questions.

[*English*]

The Chair: Does that provide some clarity for you, Mr. Fergus?

[*Translation*]

Hon. Greg Fergus: I just want to make sure we're all on the same page.

[*English*]

The Chair: Okay.

I have Ms. Khalid next, and then Ms. Saks on Zoom.

Ms. Iqra Khalid: Thanks, Mr. Chair.

I'm just wondering if we've accepted the November 14 date.

The Chair: Yes.

Ms. Iqra Khalid: Okay. All right.

I have two points I want to raise.

I know Monsieur Villemure and I did have a conversation about this, and I really respect and appreciate the wonderful expertise and passion that Monsieur Villemure brings to the table. I really appreciate it.

We heard from Monsieur Drapeau earlier today that 30 business days seems like a reasonable time to give to departments to be able to produce documents. In this instance, I realize and understand and appreciate, based on our conversation, Monsieur Villemure, that perhaps something a little bit more urgent would be necessary. If I may suggest very humbly and with a great amount of respect for the work that you do, perhaps we can move it to the end of November to allow for those 30 business days.

Then the second point I will make—and again I respect and understand the reason you've put this motion forward—is that I just think there should be a little bit more clarity as to which witnesses are required to produce which documents.

I think you just responded to Mr. Fergus that, for example, number one would be Monsieur Guay, that number two would perhaps be the Department of Public Works and Government Services and that number three would also be the public works department. Would that be something that we are able to just outline specifically, instead of saying, “Here are the witnesses. These are the documents. Now go figure out what you think it all means”? It would be great to have clarity on who is expected to produce which documents. In the event of vagueness or overbreadth, since we know that nobody really responds to anything, perhaps that is something you're willing to consider: to put a witness to each of the three listed items.

Thank you. Those are my comments, Mr. Chair.

• (1700)

The Chair: Thank you, Ms. Khalid.

Can I make a suggestion to committee members? It is that if you're proposing November 30, we stick to the issue of November 30 to start and then maybe circle back on some of the other concerns you might have with respect to the witnesses providing documentation.

With regard to the November 30 issue, Ms. Khalid, are you moving that as an amendment? No? You're just—

Ms. Iqra Khalid: It was just a friendly suggestion to see if Monsieur Villemure would accept it.

The Chair: Okay.

I'll go to Monsieur Villemure before I go to Ms. Saks on that.

[*Translation*]

Mr. René Villemure: Thank you, Mr. Chair.

The 30-day suggestion is not bad. We heard the witnesses on October 17. So it seems to me that by proposing November 14, we are respecting the spirit behind the 30 days. I personally see no reason to go further.

The Chair: Thank you.

[*English*]

Ms. Saks.

Ms. Ya'ara Saks (York Centre, Lib.): Thank you, Mr. Chair.

I'll just reiterate and be brief in saying that we've just heard extensive testimony on how the timeline is set up for failure. I think in this case, particularly if Monsieur Villemure really does want to get these documents, we would like to see.... Rather than a timeline that is cut too short when, as we heard in the testimony previously, there are just requests for extensions and requests for extensions, if we actually propose a reasonable extension—as described by probably the leading expert on ATIP requests and demanding documents in this country at this time—we'll actually get what we're asking for.

At the request of the chair, I won't dive into the clarity on each section—we can get to that afterwards—but, yes, I do want to see documents.

The other thing that I'd flag is that there has been a precedent in this committee of asking for unredacted contracts from private contractors. That is a complicated precedent in terms of corporate privacy and agreements, and we can expect that when we start to demand corporate contracts, there will be resistance to do that. We want witnesses to come forward. We'd like to have companies be able to come forward in the future and discuss their work, but when we ask for unredacted private contracts.... For a businessman, it does get complex. I know that Public Services and Procurement Canada said it will not disclose those things.

In an effort to not put the cart before the horse and to make sure that we get what we're asking for, I would ask if Monsieur Villemure is willing to consider those—particularly the timeline—at this time.

The Chair: Thank you, Ms. Saks.

On the timeline issue, I think it's a lesson for all of us as well. So that we don't have to deal with this in the future, any time we request document productions, we should actually apply a date to the request.

In this case, there was discussion at the committee, from what I understand, but there was no actual date. Mr. Villemure is trying to provide that date. He's quite right in the sense that the meeting took place on October 17. He's requesting November 14, which means we're close to that 30-day window. For the future, we need dates. I just want to be clear on that.

Mr. Villemure, I saw your hand up.

• (1705)

[*Translation*]

Mr. René Villemure: Thank you, Mr. Chair.

With respect to third party confidential information, it depends on what they are willing to disclose, as Mr. Drapeau said earlier. At our meeting on October 17, Mr. Guay said he was willing to disclose all the information requested. So I don't see how that would apply.

[*English*]

The Chair: Thank you.

Go ahead, Mr. Barrett.

Mr. Michael Barrett: Thanks, Mr. Chair.

With respect to the timeline and November 14, I think that's a lot of time. That's three weeks. Depending on the volume of documents that we're dealing with, it could take some time in translation. I understand that's going to be a bit of a bottleneck that we'd be dealing with.

I have a question for the clerk, Mr. Chair, on documents requested of the government and whether the expectation is that those come translated. I'm not clear on that. When we give a production request or order to the government, if that motion is passed and it's for November 14, do the documents come from the government translated on the 14th? Is that the expectation? Otherwise, if they're coming from a private business, they're likely to provide them in their working language, and then translation would engage. Is my understanding correct on that?

The Chair: That's a question I'll ask the clerk. It's a good one.

The Clerk: Thank you. The expectation usually is that they are provided to us right away in the two official languages from the government.

Private entities don't have to provide the translation. We do it. When it comes from departments, usually the expectation is that they will provide it to us in the two languages.

Mr. Michael Barrett: Thank you very much, Madam Clerk.

To follow up on that, we're dealing with three weeks, which is four weeks after that initial testimony. As Mr. Villemure rightly pointed out, Mr. Guay did say at that time that he was prepared to provide us with that information.

We're also likely going to lose, for lack of a better word, a week in translation. I'll invite you to correct me if I'm wrong on that, Mr. Chair. We wouldn't even get to public discussion or distribution amongst committee members of those documents until November 21. That's a lot of water under the bridge between now and then. I wouldn't have an appetite to go past the 14th of November.

The Chair: Thank you, Mr. Barrett.

Ms. Khalid is next.

Ms. Iqra Khalid: Thanks, Chair.

I really appreciate that clarification. That was an excellent point by Mr. Barrett.

I still respectfully feel that as we are continuing this ATIP study, there is no time lost. We all unanimously voted at the last meeting or the one before that to end that study and to not continue with it, so I don't see there being a sense of urgency with respect to collecting these documents or to putting out a report. In fact, if we all felt that there was more here, I think that we would not have unanimously agreed to end that study.

Perhaps in the interest of not putting undue pressure on Mr. Guay and to ensure that departments are able to get us the documents we need, I would propose that we delay the document request until the end of the month of November, or whatever is good for Mr. Villemure on that front.

The Chair: Just to be clear, are you moving that as an amendment to Mr. Villemure's motion?

Ms. Iqra Khalid: No, sir, I am not. I'm very humbly asking Mr. Villemure if he will perhaps take that as a friendly amendment to his main motion.

The Chair: I'll go to Mr. Villemure in a second.

On the issue of the meeting, yes, you are correct that the committee decided no further studies were required, but the document request is still in play. What Mr. Villemure is trying to do is to put a date to it.

I hear what you're saying about November 30. I'll turn it over to Mr. Villemure to see if he will accept that. If not, we'll either have further discussion or we'll agree to the date.

• (1710)

[*Translation*]

Mr. René Villemure: I can't accept the date, because I don't want to assume that someone is simply not capable of responding. The request must be made according to our instructions, and if there is an issue, it will be raised in due course by the person. We will not presume to know their response.

[*English*]

The Chair: Thank you, Mr. Villemure.

Again, so that I'm clear, you're proposing November 14. Is that correct?

[*Translation*]

Mr. René Villemure: Yes, absolutely.

[*English*]

The Chair: That is the proposal that is on the table right now.

Is there any further discussion?

Mr. Kurek, do you have anything to add on the date?

Mr. Damien Kurek: No.

The testimony referenced in the discussion in the first hour of this meeting talked a lot about reasonable deadlines. I think one should acknowledge that this request was made during the testimony that took place at the last meeting. When it came to the motion that was passed, I think it was made very clear to this committee that it was to adjourn debate on the study, pending the production of some of the very relevant documents that will allow this committee to chart a path forward. Getting these documents, I think, is vital for the future work of this committee.

That request was made at that meeting. I hope that it was taken seriously at the time. Certainly it would suggest a bigger issue if it wasn't. However, I think Mr. Villemure in his motion has rightly said, as we've faced some challenges in this committee before by not having absolute clarity in things like document requests and whatnot.... I appreciate the discussion around timelines and translations. That's all very important.

I think it's quite reasonable to expect these in a time frame that would allow the committee to make a determination on a path forward. The next steps, of course, will be to determine whether the committee is satisfied, and the report is produced and things move on. If there is something that requires more digging into, it's up to the committee. All of us around this table are collectively able to determine that path forward.

Being reasonable, we shouldn't expect that the maximum deadline is always what's required. As I mentioned, I hope the request was initially taken seriously. This information should be available in an expeditious manner.

The Chair: Thank you, Mr. Kurek.

Go ahead, Ms. Khalid.

Ms. Iqra Khalid: Thanks, Chair.

Over my past seven years here as a parliamentarian, sitting on various committees, I've seen that departments do indeed take committee requests very seriously, as they should. I think we heard directly from the departments and witnesses that they would be providing the documents we have requested. I just want to make sure that we give them reasonable time to be able to make those productions.

For example, for Mr. Guay, it's a private entity; if we're asking him to produce a report on the use of the Hotel Saint-Bernard, does he have that time? Does he have the time to translate it? Do we have ample time to translate it before the committee circulates it?

Proposing the date to be a little bit further into the month has nothing to do with giving more leniency to the departments or to the people who should be fulfilling their promise to provide the documents that they have indeed already promised this committee. My concern is the practicality of it, to ensure that we are not putting undue pressure or unreasonable timelines on people who may not be able to meet those deadlines. I don't want to put our witnesses in a position of having those unreasonable timelines forced on them.

Having said that, I realize that the committee is not unanimous on moving it to the end of November. I understand and appreciate Mr. Villemure's leniency on November 14, that we're okay to go with that, but I do think that we need to clarify specifically what

documents we are requesting. For example, there's the report on the use of Hotel Saint-Bernard. If that is specifically being expected from Mr. Guay, then I think the motion should say that. I don't anticipate that any of these witnesses would be able to provide all three or any one. I just think it's better to have clarity.

As we work through this motion, perhaps we could iron out and clarify exactly from whom we expect what documents, Mr. Chair.

• (1715)

The Chair: Thank you, Ms. Khalid.

Are we okay? Are we clear on November 14 being the date, and then we can move on to this other issue? Are there no objections?

To the members on Zoom, are we good?

Okay, it's the 14th, then, Mr. Villemure.

I don't know how we're going to propose moving to some clarity here. You've heard some of Ms. Khalid's concerns. Is there a possible way to address those?

[*Translation*]

Mr. René Villemure: Earlier, I gave the example to my colleague across the way. I don't think the people we're talking to are that stupid. I don't want to restrict the scope of the mission by putting in too much detail; in my opinion, it's amply clear.

[*English*]

The Chair: Mr. Villemure's point is that his motion is clear enough. Are there any other questions on that? Is there any discussion?

Mr. Fergus, I see your hand.

[*Translation*]

Hon. Greg Fergus: I thank my honourable friend for making that clarification and changing the date of his motion. However, I would like one other small clarification.

If possible, Mr. Chair, I would be grateful for a few minutes. I would like to propose an amendment to Mr. Villemure's motion to clarify who will be responsible for what and for producing which document. In doing so, I would like to make sure that I do not undermine the purpose of Mr. Villemure's motion. If you give me two minutes, I can draft my amendment in both official languages.

[*English*]

The Chair: I will give you two minutes, Mr. Fergus. There is some other business that we need to discuss as well in terms of a work plan going forward. I was hoping to get to that under committee business, but I'll give you two minutes.

Hon. Greg Fergus: Thank you.

The Chair: You have two minutes. That's it. Thank you.

• (1715)

(Pause)

• (1720)

The Chair: We're back, Mr. Fergus. You've had a couple of minutes to think about this. You have the floor, sir.

[Translation]

Hon. Greg Fergus: To make Mr. Villemure's motion clear to everyone, I move to amend it by adding "(Mr. Guay)" at the end of the sentence in item (1); by adding "(PSPC)" at the end of the sentence in item (2); and, finally, by adding "(the RCMP and/or IRCC)" at the end of the sentence in item (3).

[English]

The Chair: Thank you for the amendments.

The only thing I would suggest that you haven't included on number 3 would be the potential to have Canada Border Services Agency as well, not just the RCMP.

Hon. Greg Fergus: You're right. Thank you for that.

I would take out RCMP and I would replace it with—

The Chair: I would do both, perhaps.

Mr. Villemure, I saw your hand up there. I don't know whether or not you're addressing the same issue.

[Translation]

Mr. René Villemure: Indeed, I would add the Canada Border Services Agency.

[English]

The Chair: Okay.

Mr. Fergus, just to be clear, in your amendment you have Mr. Guay as number 1 and PSPC as number 2. The third one would be the RCMP. My suggestion is that you add Canada Border Services Agency in there as well.

Hon. Greg Fergus: Actually, sir, I would suggest that we take out the RCMP and replace it with the CBSA. That's just based on the testimony that it was CBSA and IRCC that interacted with Mr. Guay. It was through them. They were the clients through which PSPC had spoken to them, but they established what Mr. Villemure was looking for in number three.

The Chair: Give me a second so that I can ask the clerk a question. Thank you.

Just so I'm clear, Mr. Fergus, in your proposal—this might have gotten lost in translation—was it the RCMP or IRCC that you were looking for initially?

Hon. Greg Fergus: For number 3, it was the RCMP and/or IRCC, but I would like to change that, if possible, to CBSA and/or IRCC.

The Chair: Thank you.

[Translation]

The committee heard Mr. Fergus propose an amendment to Mr. Villemure's motion.

Mr. René Villemure: Mr. Chair, I want to add something that I think is important. I agree with the items to be added in (1) and (2), but in (3) we should also add the Canada Border Services Agency, as Public Services and Procurement Canada has acted under the direction of the agency to meet its demands and needs.

• (1725)

[English]

The Chair: Just for clarity, Mr. Villemure, Canada Border Services Agency was there. Are you saying that you want PSPC to be included in number 3 as well?

[Translation]

Mr. René Villemure: According to Mr. Fergus, this department was included as he proposed that "PSPC" be added to item (3). For my part...

[English]

The Chair: No, that wasn't my understanding. It was IRCC and the Canada Border Services Agency. Those were the two that he wanted there.

[Translation]

Mr. René Villemure: What was the third one?

Hon. Greg Fergus: We only have Immigration, Refugees and Citizenship Canada and the Canada Border Services Agency.

Mr. René Villemure: So, in point 3, it's IRCC and CBSA. That's fine with me, Mr. Chair.

[English]

The Chair: The other problem that we have, just so that we're clear, is that in the preamble, we have Mr. Guay, the Department of Public Works and the Canada Border Services Agency, but there's no inclusion of the IRCC there.

Ms. Iqra Khalid: Mr. Chair, if we're adding witnesses to each of the three points, wouldn't it make sense that we just take out the list from the top and just say that "the Committee requires to receive:" and then have items 1, 2 and 3?

The Chair: That actually makes sense to me. Okay.

Mr. Villemure, if we remove the name of Mr. Guay, remove the Department of Public Works and Government Services and then the Canada Border Services Agency, if they are reflected in items 1, 2 and 3, that should be enough to indicate to the government and Mr. Guay what we are asking for in terms of these documents.

If you're okay with that, and we've included the IRCC in number 3, so....

[Translation]

Mr. René Villemure: That sounds very good, but Mr. Barrett wanted to make a point and I would like to hear it before we go any further.

[English]

The Chair: Okay. Sure. Go ahead, Mr. Barrett.

[Translation]

Mr. Michael Barrett: Thank you, Mr. Chair.

[English]

For number 1, the proposal from Mr. Fergus is to have Mr. Guay respond. Mr. Villemure commented earlier that he didn't want to be too restrictive. Now that we are prescribing who is providing which documents, I would be very interested to see on number 1.... This is a point of contention: We heard during our last meeting that there was disagreement on when the hotel was being used and what it was being used for. The government offered that the hotel was.... Excuse me; Mr. Guay offered that the hotel was being used.

For number 1, where in parentheses Mr. Fergus had proposed Mr. Guay, I would propose that it say Mr. Guay.... Were we using commas or ands in between?

Ms. Iqra Khalid: We were using “and/or”, I think.

Mr. Michael Barrett: I would like to additionally request that the government provide a report on the use of the hotel.

I don't know which agency would be best suited, but again I appeal to everyone's better angels that they be prepared to provide that information unless our wise clerk or analysts could perhaps prescribe who should be included there. The objective is to get a response from both parties on the use of the hotel.

The Chair: Mr. Barrett—and I saw your hand, Mr. Fergus—what you're proposing would be a subamendment to Mr. Fergus' amendment, so if you want to be very clear as to what you want, whether it's the government or a department of the government under item 1, then I would ask that you be more specific on that.

• (1730)

Mr. Michael Barrett: All of the departments can get back to me, but let's—

The Chair: Right. Do you want to just leave it at the government, or do you want to be specific to a department?

Mr. Michael Barrett: I'm not sure if we're able to get guidance from the analysts, Mr. Chair, if that's appropriate, based on the evidence that has been gathered so far on who would be able to provide us with that information. I don't imagine that's outside the scope of what the Library of Parliament can advise us on right now while this is live, and yes, I would like to propose it as a subamendment.

This is in keeping with what Mr. Villemure said, but to be clear, though I was being clever with my response that we will hear from all of them, I would only elect to hear from the department that is most likely to be able to furnish us with the information in a timely way.

The Chair: Okay. Fair enough.

Mr. Michael Barrett: Is that something the analysts are able to provide us with?

Ms. Alexandra Savoie (Committee Researcher): I was looking earlier at the blues because the official transcript is not out, and it was Mr. Paul-Hus who made the request for the report on the use of the hotel. He made it to a representative of PSPC, who referred to the CBSA in his answer. That's the only inkling I have that it perhaps would be the CBSA, but....

The Chair: I kind of like Ms. Khalid's suggestion that we go for an “and/or” for Monsieur Guay and PSPC and the Canada Border Services Agency.

Mr. Michael Barrett: Mr. Chair, if I may, I would like to hear from Mr. Guay and PSPC and/or CBSA. We only need to hear from one department, but I want to hear from both the private entity as well as the department.

Is that clear enough? It would be “1) The Report on the use of the Hotel Saint-Bernard (Mr. Guay and CBSA and/or PSPC) ”.

The Chair: Thank you.

Mr. Michael Barrett: Thank you.

The Chair: With regard to the subamendment, Mr. Fergus, is it a reasonable request?

Hon. Greg Fergus: I don't think it's going to make a material difference, but I don't want to be eating my words, because we've made the material distinction between the two. I think it's just easier to go with Madam Khalid's suggestion that “and/or” works better than “and...and/or”.

We're getting into the weeds here. I like the way we've been working collaboratively. I think there's a way for us to do it.

The Chair: I think we all want the same thing. We want to make sure that we get the most accurate information. I think that proposing this actually puts us in a better position to get the information that we're seeking from either/or, and/or Mr. Guay, PSPC and the Canada Border Services Agency.

Hon. Greg Fergus: The only reason I think it was good with Mr. Guay.... Monsieur Villemure heard the same thing that I heard, and I think we all heard it: that Monsieur Guay pretty much offered to provide us with that information, so I thought that was.... Let's just get it, and then no one says that there are commercial confidential reasons that they can't release it. If he does it, then it's great.

The Chair: What if he doesn't?

Hon. Greg Fergus: Well, he offered to do so before the committee.

The Chair: But if there's more information that's required.... I think, from my perspective, what's being proposed here is that there may be other information that's available. That's the only thing that I see as being plausible here by asking the other two agencies.

Ms. Alexandra Savoie: I'm just looking again through the blues, and in one of his responses, Mr. Stéphan Déry specified that the hotel was leased at the request of the CBSA, so I think that would probably be the party to ask.

Hon. Greg Fergus: Would “Mr. Guay and/or CBSA” work for Mr. Barrett?

• (1735)

The Chair: You have the amendment on the floor.

Hon. Greg Fergus: I'm happy to amend my amendment to Monsieur Villemure's motion to concord if Mr. Barrett would agree to “Mr. Guay and/or CBSA”.

Mr. Michael Barrett: I would like to hear again from Mr. Guay and the government. It doesn't need to be "and/or" an additional agency. I accept that it's the CBSA, but ultimately I'd like to hear from both.

The Chair: Go ahead, Mr. Fergus.

Hon. Greg Fergus: I'm fine with it.

The Chair: Perfect.

That deals with the subamendment. Are we on the subamendment or the amendment?

The Clerk: That's the subamendment. We should probably go to a vote with respect to the House motion, unless there's agreement from everybody to adopt it.

The Chair: If there's no further debate, we'll go to a vote on this.

(Subamendment agreed to: yeas 10; nays 0 [*See Minutes of Proceedings*])

The Chair: Thank you.

The subamendment carries. That leaves us with the amendment. Let me clarify it with the clerk.

We dealt with the subamendment, which changed what the amendment was. We're on Mr. Fergus's amendment. Is there any further discussion on that, or can we go to a vote?

Ms. Iqra Khalid: Chair, can you read out what it looks like in its present form, please?

The Chair: Go ahead, Nancy.

The Clerk: It's very messy, but I will do it.

• (1740)

The Chair: It's your writing.

Some hon. members: Oh, oh!

The Clerk: It will be, "That, further to the commitments made by the testimony of October 17, 2022 on the Use of Public Funds related to the Roxham Road Crossing, the Committee requires to receive:", and we have agreed that if we add notes to items 1, 2 and 3, we are going to strike the part after "receive".

Then it will be "...the Committee requires to receive, 1) The Report on the use of the Hotel Saint-Bernard (Mr. Guay and CBSA and/or PSPC); 2) The justification(s) for invoking the "national security exception" for each of the leases and contracts (PSPC); 3) The agreements reached between the federal government and Pierre Guay in the context of the crisis at Roxham Road (CBSA and IR-CC); that these documents be submitted, in both official languages, in an unredacted format, to the Clerk of the Committee no later than November 14, 2022."

That is what the final motion would look like.

What you're going to be voting on right now is the part after "requires to receive". Do you want to strike "from Mr. Pierre Guay" and so on, and then add the text between parentheses at points 1, 2 and 3?

Is that clear?

The Chair: It's clear to me.

I see that Mr. Villemure's hand is up.

[*Translation*]

Mr. René Villemure: Thank you, Mr. Chair.

Until now, I was under the impression that under item (2), it was Public Services and Procurement Canada and the Canada Border Services Agency.

The department told us the other day that they acted on instructions from the agency, their client. If we don't include the Canada Border Services Agency, we risk being turned down.

[*English*]

The Chair: In the notes that I've taken on my sheet, it was SPAC or PSPC, and the border agency was included in number 3, not number 2. Am I correct in that?

The Clerk: Maybe the analyst can make sure, but my understanding is that SPAC in French is Services et approvisionnement Canada.

[*Translation*]

Ms. Alexandra Savoie: PSPC stands for Public Services and Procurement Canada.

Mr. René Villemure: Since we are discussing the details, PSPC acts on the instructions of its clients. In this case, that client is the Canada Border Services Agency.

If we don't include it in our request, the department will simply reply that it acted on the instruction of the agency, and we will be no further ahead, because it will be incomplete. It is the same as in point (3).

[*English*]

The Chair: Thank you, Mr. Villemure. That's a fair point. If the committee is okay with that, I would propose that we include it.

Mr. Fergus, do you want to make an amendment on that?

Hon. Greg Fergus: I was just going to ask, Mr. Chair, if we can do "and/or". I want to get the information and move on.

Rather than doing "and", so we have to wait for both, and then somebody's going to include one word and not include another, this "and/or" will get the information so that we can move on.

[*Translation*]

Mr. René Villemure: If we get the full information, I don't see any problem with it.

Hon. Greg Fergus: This is part of the text of the motion.

Mr. René Villemure: All right.

[*English*]

The Chair: Okay. We'll include "and/or" in that. We'll take that as an amendment.

We are voting on the amendment to the motion. Can we have a vote on that, please?

(Amendment agreed to: yeas 10; nays 0 [*See Minutes of Proceedings*])

The Chair: The amendment passes, so now we're on the main motion as amended.

Is there any discussion on that? Seeing no discussion, either in the room or on Zoom, we'll move to a vote.

(Motion as amended agreed to: yeas 10; nays 0 [*See Minutes of Proceedings*])

The Chair: Thank you, Madam Clerk.

The motion as amended passes.

As an update to the committee in terms of going forward—again, that's with the work plan—we have three witnesses confirmed for the continuation of the access to information and privacy study.

The other thing that I need to discuss is a draft report that's been completed—it hasn't been brought to the committee—on the RCMP device investigation tools. That's ready. It can be studied next week for two days, on Monday and Wednesday.

Of course, we have the constituency week after that, and then we'll have to determine what we're going to do on November 14 and November 16, but the plan this week is to continue with the study on the access to information and privacy system.

Are we all good? Okay. That's it.

Thank you so much, everyone. Thank you for your patience with a new chair.

The meeting is adjourned.

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