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# Standing Committee on Access to Information, Privacy and Ethics

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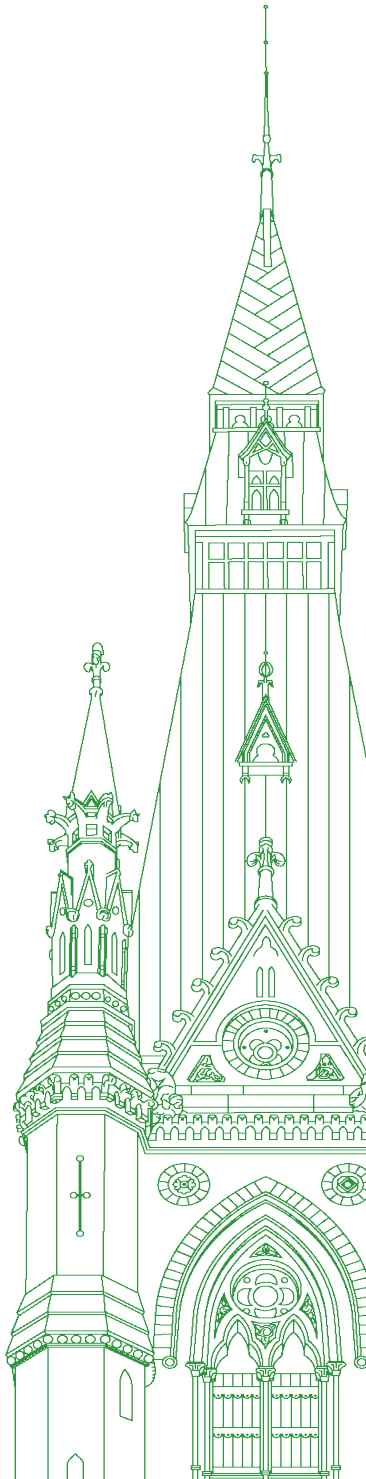

Chair: Mr. John Brassard

# Standing Committee on Access to Information, Privacy and Ethics

**Wednesday, October 26, 2022**

● (1640)

[*English*]

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

I want to welcome everyone to meeting number 42 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[*Translation*]

Today's meeting is taking place in a hybrid format pursuant to the House order of Thursday, June 23, 2022. Therefore, members are attending in person in the room and remotely using the Zoom application.

Mr. Villemure has assured me that the sound tests have all been completed with the witnesses.

[*English*]

Should any technical challenges arise, please advise me immediately, and please note that we may to suspend for a few minutes as we need to ensure that all members are able to formally participate.

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

I'd like to now welcome our witnesses today.

We have Mr. Ken Rubin, an investigative researcher and transparency advocate, who is appearing as an individual. From Canadians for Accountability, we have Mr. Allan Cutler, who is the former president. From Democracy Watch, we have Mr. Duff Conacher, who is the co-founder.

Mr. Rubin, the floor is yours for a five-minute opening statement, sir.

**Mr. Ken Rubin (Investigative Researcher and Transparency Advocate, As an Individual):** Thank you, Mr. Chair and members of the committee.

Your committee has invited me to give testimony about the state of access to information in Canada. Let me share my experiences with you. This is the 15th review, by the way, and I have given over 15 presentations on this topic out of some 40 or more to Parliament on public interest matters. I've been around the block.

My public interest quest to get access to information records started a decade and a half before the Access to Information Act regime was adopted 40 years ago. All that the access legislation that was adopted did was place more roadblocks in the way for me and others who are intent on exposing how Ottawa really operates.

Since the Access to Information Act's passage, officials have been saying, with a straight face, that the act has always worked pretty well, needing only occasional minor tweaking. Its most consistent need, they say, is for more millions of dollars—for them, of course—but those extra resources received unfortunately go to further propping themselves up while only permitting Canadians to receive severed materials that lessen our freedom to know.

I offer some evidence of how such rigged access mainly serves the vested interests of those wanting Canadians to know very little, if anything.

The first is hiding unmarked children's graves at disgraceful, racist residential schools. Second is covering up bribery and influence, from the CPR scandal to the sponsorship mess to the current SNC-Lavalin debacle. Third is ignoring for far too long Hockey Canada's, the armed forces' and the RCMP's disgraceful conduct of turning away from handling—and even encouraging—sexual assault and injury cases, all done under the eyes of government officials. Fourth is repressing the public knowing about the workings of the bread price-fixing scandal and downplaying the high-pressure sales stakes Canadians face at the big banks as the banks make record-breaking profits. Fifth is keeping Canadians in the dark about policies that give us the highest cellphone prices in the world, and about the behind-the-scenes lobbying that has given Canadians some of the highest drug and food prices in the world. It's hard to get at those things.

Further, it is more than sad and disgusting that our frontline health workers did not get fuller information and less confusing data from authorities during the pandemic. I personally witnessed the suppression of whistle-blower information of the kind Pierre Blais and Shiv Chopra had when they tried to alert the public of health hazards, and I received severed records after delays and complaints about officials actively assisting and funding the lethal asbestos and tobacco industries in Canada and abroad. I've seen highly redacted records—having gotten the consent of Maher Arar and Monia Mazigh—in which authorities' twisted misinformation led to the rendition of Maher Arar to Syrian torturers.

I and others have fought for records that highlight the wasted billions of dollars spent on information technologies that barely work. Just see the partial revelations coming out about the millions poured into the ArriveCAN app while cheap, known alternatives were ignored.

All of this is made possible because of a system of oppressive cabinet confidences; policy, legal and economic advice; commercial confidentiality; and the sleight of hand that buries, for instance, the real costs and beneficiaries of large contracts, like the multi-billion-dollar combat naval ship program.

● (1645)

**The Chair:** You have one minute, Mr. Rubin.

**Mr. Ken Rubin:** Ours is a relatively young country, but we are well known for our secrecy and corruption worldwide. Canada places low down when ranked for disclosure capabilities. Other countries, however, like New Zealand, quickly release cabinet records.

I've suggested many solutions, but they've been ignored. What we need is an automatic, quick, thorough disclosure, guaranteed under freedom of expression and constitutional rights, and a duty to serve and strong penalties built into right-to-know legislation.

Let's get on with ending the culture and corruption in Canada so that we can get real data and not spins and spits of information fed to us by the feds. No doubt, though, I and others still will have to make use of our greatly improved right to information should that happen. Otherwise, as in the past, I and others will continue struggling to get tidbits of data against many odds and barriers.

More need to join us. As my website says, “What people do not know can often hurt them.”

Finally—

**The Chair:** Thank you, Mr. Rubin. I know you have a lot more to cover—

**Mr. Ken Rubin:** Just a final paragraph...?

**The Chair:** Okay. I'll give you another couple of seconds.

**Mr. Ken Rubin:** It's your turn and Canadians' turn to pull back the curtains and make us truly have the right to information, as should be the case in a real democracy.

Thank you very much.

**The Chair:** Thank you, Mr. Rubin. I'm sure there will be lots of questions for you as well.

Next we have Mr. Allan Cutler, from Canadians for Accountability.

Mr. Cutler, I understand that you're not working off notes. I'm just going to ask that you speak clearly, legibly and slowly, so that the interpreters are able to follow you.

Thank you, sir. You have five minutes.

**Mr. Allan Cutler (Former President, Canadians for Accountability):** Thank you.

Unlike Mr. Rubin, I'm not going to talk about what needs to be done. I'm going to tell you how it exists and the reality of the situation for whistle-blowers, for people who are trying to find out what's going on.

ATIP is supposed to help, not be the guardians of the castle drawbridge who won't put it down. They're supposed to help, and they don't. Many ATIPs, and I've had this experience, are over a year old. I have one right now that is five years old. The statement I have from them is that they don't know when they'll get around to it; they have other priorities. That tells you the way they look at ATIPs.

I have also had an ATIP officer just bluntly say that if you have a problem, complain to the Information Commissioner. Why do they say that? It's because they know that the Information Commissioner is so overloaded that it could be two to three years before she or he and their executives get around to looking at the situation. You have a real problem.

Michael Dagg unfortunately has passed away now, but he was very active in the ATIP industry. I have a copy of a letter that was sent to him by archives. I have two letters, actually. One was on a particular request. They said they needed a thousand-day extension beyond the 30-day statutory time. The second letter I have is the one telling him it would be an 80-year extension. They put it in writing that it would take 80 years to get him the information.

The other thing that goes on is this. Michael and I were both dealing with Brad Birkenfeld and the Department of Justice in trying to get the documents that Brad gave them in 2008. We even had letters that said we were authorized to get the information. The Department of Justice would not give us the information. At two different times they said there were zero files. Another time they were suddenly up at 6,000-plus files. They were all over the place.

Finally, I asked them why they now, eight years later, have sent documents to CRA. All of a sudden there was this access request that came in from CRA, and they answered it. Well, they must have told CRA what to write. I asked them why they had sent it after eight years of doing nothing with it. They just simply said to me, “We don't understand the question.” I'm waiting for documents to tell me why they just sat and did nothing: “We don't understand the question.” That tells you the attitude they have. Of course they don't want us to have the information at all. They are really avoiding us.

ATIP officers are supposed to help, by legislation. They don't. For example, an RCMP officer says to me, “The ATIP branch does not answer questions. If I say I'm looking for particular information on a document, it's, 'If you have questions that you need to answer, route them to the media relations office.' ”

The other thing is that when I say what I'm looking for, I hear, “That's information. If you would tell me the document....” But I can't tell you the document. I can tell you what I want and what's on the document; I just can't tell you it's document 4 in this file. How am I to know that? The RCMP just turned me down—oh, and that one has gone to the Information Commissioner. It's in abeyance. It's been about a year now. Eventually it will get looked at. I know that.

**The Chair:** You have one minute, sir.

**Mr. Allan Cutler:** Okay.

Quickly speaking, whistle-blowers can't wait for these long delays. They don't go through access anymore. There's no point. They're exposed. The longer it sits as a request, the more likely it is that they are going to be spotted and exposed, so they don't want to go there. They won't go there anymore. We do everything we can to work around it. We don't do that.

As Ken said, when we get the information, it's vetted to the point of uselessness. Let's say you get an access; you get this huge stream of exemptions. One, I'm not a lawyer, so I'm not able to look at what all these exemptions are. Two, I'm not allowed to challenge an exemption, because I'm not allowed to look at what the information was that was part of the exemption. Again, it's back to the Information Commissioner: Wait in line. Suffice it to say that it's broken.

● (1650)

The external whistle-blowers I use and I deal with nowadays say—and more than one has said to me—there are long delays and documents are being destroyed. They consider government corruption just part of doing business now.

**The Chair:** Thank you, Mr. Cutler.

I don't want to sound rude to any of our witnesses, and certainly not to any members of the committee, but as the chair I am going to get into the habit of giving one-minute warnings on the time—and we'll do that as we go around as well—to be fair.

Next is Mr. Duff Conacher, the co-founder of Democracy Watch.

Mr. Conacher, you have five minutes for your opening statement.

**Mr. Duff Conacher (Co-Founder, Democracy Watch):** Thank you very much, Chair and committee members, for this opportunity to appear before you today.

Like Ken Rubin, I've been here several times before on this and other issues, and on this issue it was dating back 20 years. What I'm going to do today in my statement is summarize 18 key changes needed to the act and the enforcement system, and then I'll welcome your questions about them.

The 18 changes are mainly based upon this committee's unanimous June 2016 report, the former information commissioner's March 2015 report and the current commissioner's January 2021 report, which have all called for key changes and, of course, the December 2021 report by the government, which was the result of its public consultations conducted last year that made it clear that all stakeholders support 10 key changes.

The first changes needed are to the rules. The Access to Information Act is broken, as all of these reports and the two other witnesses have noted.

Initially it should be changed to cover fully all government institutions, publicly funded institutions and public-purpose institutions, including cabinet offices. That's been recommended by many stakeholders and experts and commissioners. As well, the other recommendations I'll be going through have also been called for by stakeholders for years.

Second is to require every institution to create detailed records of decisions and actions. There's no reason that this cannot be done and uploaded onto a searchable website as meetings and communication decisions are ongoing in government. It's very simple to do and to set that up as an electronic system.

Third, there should be routine disclosure of not only those communications, meetings and decision-making processes, but of all records online that can be disclosed and are in the public interest to disclose. There should be routine disclosure on a searchable online database, which would reduce the need to make requests.

Fourth, there should be requirements for all institutions to respond to access requests as soon as possible, with permission required from the commissioner to extend beyond the 30-day time limit and a maximum extension of 60 days.

Number five, all exceptions to disclosure should be clearly and narrowly defined, and limited to areas in which secrecy is actually required in the public interest.

Number six, the commissioner should be allowed to review all denials of disclosure and to order disclosure if it would not cause harm or is in the public interest. If records are not disclosed because of a public interest exception, they should be required to be disclosed no longer than 20 years later, and less than that for cabinet records.

Number seven is that anyone who does factual or policy research for the government in an area not covered by an exception should be allowed to speak to the media publicly about the topic, their findings and their conclusions without being required to first seek approval from anyone.

Number eight, the act should be changed to allow for filing of an access request from anyone, even if they don't live in Canada.

Number nine, the $5 request fee should be eliminated and institutions should be prohibited from charging search fees for records that have not been maintained in a way that facilitates access.

However, no law enforces itself, so changes are needed to strengthen the enforcement. The enforcement system has been revealed to not be strong enough to stop delay and denial of the public's right to know.

Therefore, as number 10, the commissioner first should be given explicit powers to require systemic changes in institutions to improve compliance with the act, including managing records effectively.

As number 11, the commissioner should be empowered and mandated to penalize violations, with a sliding scale of fines depending on the seriousness of the violation, for things like intentionally obstructing access, not creating records, not maintaining records properly or delaying responding to a request.

**The Chair:** You have one minute, Mr. Conacher.

**Mr. Duff Conacher:** Thank you.

The number 12 recommendation is that the penalties should include, for government officials attempting to escape penalties by resigning or retiring, loss or partial clawback of any severance or pension payments.

Number 13, the commissioner should be required to issue a public ruling on a searchable website for every complaint they receive and every situation they review, and there must be a clear right for any member of the public to appeal a decision to court.

● (1655)

Number 14, the commissioner is currently chosen by the ruling party cabinet through a secretive partisan process. The Federal Court of Appeal has ruled that the cabinet is biased when making these kinds of appointments. A fully independent, non-partisan appointments commission should be established to search for and nominate qualified candidates that would be approved by an all-party committee of the House for these kinds of positions.

**The Chair:** Thank you, Mr. Conacher.

**Mr. Duff Conacher:** In answering questions, I'll also go into other key changes to ensure adequate resources and strong enforcement that's timely and effective to protect and uphold the public's right to know.

**The Chair:** Thank you, Mr. Conacher.

Before we start our questioning, I've been advised that there will be votes at 5:50, which means bells are at 5:20. When the bells ring, I'll seek the guidance of the group here on what we want to do. My preference is to get through the first round.

Go ahead, Mr. Barrett.

**Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC):** Mr. Chair, I'm wondering if you would find consensus around the table for us to try to complete two rounds by 5:40, which would give members 10 minutes to get to the House—I'm not sure if that's enough time—at which time you could potentially adjourn the meeting with all parties having had two full rounds.

Instead of interrupting at 5:20, once the bells ring, perhaps you could canvass the room for that.

**The Chair:** I'll seek consent of the room for that. That's fair, so we'll get through two rounds. That means I'm going to stick to tight timelines here.

Mr. Kurek, you have six minutes in the first round, followed by Ms. Hepfner.

**Mr. Damien Kurek (Battle River—Crowfoot, CPC):** Thank you very much, and thank you to the witnesses. Before I get into my questioning, I would just note for the witnesses to feel free to send further information, including specific recommendations. I know that a number of them have been outlined here today.

I have a couple of yes-or-no questions to all three witnesses in fairly rapid succession.

The first question is, “Is an effective access to information system essential in a modern democracy?”

We'll start with Mr. Cutler.

**Mr. Allan Cutler:** Yes.

**Mr. Ken Rubin:** Definitely.

**Mr. Duff Conacher:** Yes, very much so.

**Mr. Damien Kurek:** Do you find that our current system in this country would meet the threshold that you would believe is necessary for a modern democracy?

I'll start again with Mr. Cutler.

**Mr. Allan Cutler:** No.

**Mr. Ken Rubin:** Absolutely not.

**Mr. Duff Conacher:** No, I think we rank now about 54th in the world, so we're way behind.

● (1700)

**Mr. Damien Kurek:** I appreciate that.

I have a few more specific questions, and I'll ask for a bit more information.

Mr. Cutler, you mentioned some loopholes. In 30-40 seconds, could you talk about how this committee could make some recommendations to fix some of the challenges surrounding loopholes?

**Mr. Allan Cutler:** There's a simple loophole that I mentioned before. I made an access request, and I've been waiting 60 days for the acknowledgement. The officials cashed the cheque, but they have not acknowledged my access request. The 30 days that they will ask as an extension—I guarantee it—doesn't start until they send me the letter. They've got 60 days already, and now they're going to look for more time.

**Mr. Damien Kurek:** Mr. Conacher, is there anything you'd like to add in just a few seconds?

**Mr. Duff Conacher:** Yes. In terms of submissions, I have made a submission to the committee regarding the 18 recommendations. You will be receiving it once it's translated.

To pick up on one that Michel Drapeau spoke about on Monday, his suggestion was to have a right to go to court after one year. I do not think that's the way to go, because the courts don't move any more quickly, and they also have a backlog.

The real solution is that Parliament should be required to provide whatever amount of funding the Information Commissioner proposes annually, that the Auditor General and Parliamentary Budget Officer should assess and determine what is needed to ensure an effective and timely enforcement of the act, and that there should be effective training of public officials about how to uphold the right to know and the right of access.

That would solve many of the problems, because along with the penalties that I suggested, everyone would know you're going to get caught if you're breaking the law, and you're going to get penalized very soon. That would clean things up enormously.

**Mr. Damien Kurek:** In a few seconds, Mr. Rubin, would you have anything to add to that?

**Mr. Ken Rubin:** Why don't we just start with creative avoidance of massive-scale record destruction if it's a draft? Also, oral communication is rampant. If you name it, this government and previous governments have done it.

**Mr. Damien Kurek:** I appreciate that.

Mr. Conacher, regarding ATIP requests, would you be able to highlight, in your observations, some of the worst offenders within government departments? Could you highlight those for us? Again, I'm on a tight timeline, so could you do that as quickly as possible?

**Mr. Duff Conacher:** It's simply better to refer to the Information Commissioner's report. Every year the list of which institutions are the worst changes. The overall record for meeting the 30-day deadline, which is the legal requirement, is very bad, so the violations are rampant across the board and across all institutions. I've waited years myself.

**Mr. Damien Kurek:** Okay. Just to follow up, I have a few thoughts, and then one more important question that I want to ask.

Mr. Conacher, are there any thoughts on Bill C-58 that you'd like to share with the committee?

**Mr. Duff Conacher:** Bill C-58 was a step backwards in some ways. It certainly didn't keep the 2015 promises of the Liberals to make government information “open by default”, which is a direct quote from the Liberals' 2015 platform. The commissioner now has power to make orders, but it's not strong enough. You need power and a requirement for minimum penalties if they violate the law: That's going to change the whole incentive to comply right away. That's a key change.

**Mr. Damien Kurek:** I appreciate that.

Mr. Rubin, in just 10 seconds, if you could...?

**Mr. Ken Rubin:** Bill C-58 destroyed the access act because it hived off, as a phony proactive measure, the Prime Minister's records, ministers' records and a host of other things.

**Mr. Damien Kurek:** I appreciate that.

I have a last question. I've heard from a number of witnesses that in relation to both access to information and to other issues as well, Canada needs whistle-blower protections both from within government and for those who would try to highlight some of the challenges from one or two steps surrounding it.

I'm going to go through all three of you again. Does Canada have appropriate whistle-blower protections, or do we need more?

I'll start with Mr. Cutler.

**Mr. Allan Cutler:** I wouldn't even start with me, because you would finish with me.

**Mr. Damien Kurek:** Okay.

**Mr. Allan Cutler:** We don't have them. We have never had them. The accountability act did not give them—

**Mr. Damien Kurek:** Okay. I'm almost out of time.

Go ahead, Mr. Rubin.

**Mr. Ken Rubin:** Pierre Poilievre and John Baird established the worst and lousiest whistle-blowing non-protection act in the world.

**Mr. Damien Kurek:** Okay.

Last is Mr. Conacher.

**Mr. Duff Conacher:** Yes, we're even further behind. We're ranked about 60th in whistle-blower protection, so compared to the rest of the world, we're even worse than we are in access to information.

● (1705)

**The Chair:** Thank you for your frankness, all three of you.

Ms. Hepfner, you have the floor for six minutes.

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

Thank you to our witnesses for being here today.

I'd like to go back to Bill C-58, which allowed proactive disclosure of lots of information from this government. I'm wondering—I guess from all three of you—if you think this helped to make government more open and transparent in any way.

Mr. Rubin, you can start.

**Mr. Ken Rubin:** Well, no, it didn't, because it's one-sided information.

Take briefing notes, the lists that are prepared.... What do you get? You go and get the briefing notes, and they're sanitized talking points. They have nothing to do with the real operations of government, which people should have the right to know. That in itself is illustrative of the proactive disclosure. You get a few Prime Minister's records, but you can't get all of his other records, so it's a farce.

**Ms. Lisa Hepfner:** Thank you.

Mr. Cutler, do you see anything more open and transparent in government since we've had Bill C-58?

**Mr. Allan Cutler:** Absolutely nothing: I have seen really no change from one bill to the other except for the fact that the whole process has fallen apart. The idea of getting information in a timely fashion has been thrown out the window. They don't care, because they know nothing will happen if they don't do it, so what can you do about it?

I can't do anything about it. You are the only people who can do something about that.

**Ms. Lisa Hepfner:** Mr. Conacher, would you like to weigh in as well?

**Mr. Duff Conacher:** Yes.

Bill C-58 ignored this committee's unanimous June 2016 report. It ignored all the other stakeholders. The information commissioners have documented in their annual reports very clearly that things are worse than they have been in the past.

I challenge you, as committee members, to work together and put forward a private member's bill. Ignore your leaders if they're saying they don't want to do this, because the June 2016 unanimous report didn't work to foster key changes.

I challenge all of you to work together, put out a unanimous report, and then put a private member's bill together. Jointly all support it and challenge the rest of your colleagues to vote against it and vote for excessive government secrecy and denial of the public's right to know.

**Ms. Lisa Hepfner:** Okay.

In that vein, we've heard from a number of proponents who would like to broaden the existing Access to Information Act to remove some of the exclusions that are in place, such as solicitor-client privilege and cabinet confidence. I'm wondering if any of you think this would remove the ability to have frank and open discussions and that some individuals might start using less secure personal networks to discuss government business. I'm wondering if this is a risk that any of you think is a valid point of concern.

Mr. Conacher, do you want to start?

**Mr. Duff Conacher:** This claim has often been made, but I think it's that you're unable to speak truth to power and have frank discussions when you're doing it in secret, because then the government can always deny what has been recommended from the public service and there's no record of it, so the public service can't speak up and say, “No, that's not what we recommended.” Openness facilitates having frank discussions.

If there's a duty to document, then it will be illegal to go off-line, so hopefully penalties for doing that, among other violations in the duty to document, would make it very clear that if there is a decision made and there's no documentation of it, obviously someone's violating the law.

That's the way to go forward to have good democratic and good government decision-making, as opposed to the secretive and bad government decision-making we often see now.

**Ms. Lisa Hepfner:** How about you, Mr. Rubin? Do you see any value in cabinet confidence?

**Mr. Ken Rubin:** With a few areas, I could see it, maybe for two or three years, but in most areas, no. It's just highly overrated. I went and got cabinet discussion papers when they were available, about 400 of them, and it was just like municipal council records. There was nothing in there that, in most cases, was highly sensitive. It's so overblown.

They're not cabinet confidence; they're cabinet records. They're just like any other record in the government.

Take the example of cabinet confidence. Do you know that the records of cabinet are never kept in full? There's no transcript. They're just sanitized summaries, and that is not full and frank discussion. Even if it is full and frank discussion, Canadians have the right to know that.

● (1710)

**The Chair:** You have one minute.

**Ms. Lisa Hepfner:** Mr. Cutler, what do you think of cabinet confidence?

**Mr. Allan Cutler:** I have the most limited experience of any of them.

What struck me when you were talking about not keeping records was that text messaging is rampant in the government. They're really avoiding keeping records, and they know what they're doing, because if they text back and forth, there's no written record. It's becoming more and more common to just avoid the whole business.

I'm certain Mr. Rubin and Mr. Conacher would agree with me.

**Ms. Lisa Hepfner:** One change I've noticed since I was a journalist filing access to information requests is that the cost is a lot lower for anyone who wants to access information. It's five dollars across the board. It doesn't matter how many documents you.... I was a journalist before, and we used to decide not to pursue a particular avenue of inquiry if it was going to cost too much money. Now it's just five dollars, and a previous witness in our last committee suggested that this fee should be higher.

**The Chair:** Ms. Hepfner, can I suggest that maybe in the next round you get to that question?

**Ms. Lisa Hepfner:** All right. Sure.

[*Translation*]

**The Chair:** Mr. Villemure, you have the floor for six minutes.

**Mr. René Villemure (Trois-Rivières, BQ):** Thank you very much.

Good afternoon, Mr. Conacher.

I'd like to ask you some rather specific questions.

Is section 20 of the Access to Information Act balanced? Is it too narrow or too broad?

[*English*]

**Mr. Duff Conacher:** I could say the same thing about any of the exemptions. They're all, unfortunately, too broad. They all need to be narrowed. Section 20 is one of the most regularly abused. That's our general recommendation. There can be a specific discussion about how to narrow any particular exception.

There are also exclusions, and those exclusions should all be turned into exceptions, because currently with exclusions, the commissioner has no power to review the documents to determine whether they're being withheld properly.

Those are the general recommendations I would make, and if you ask me about any of the sections, I would make the same statement. They're all too broad and they all need to be narrowed to ensure that what is not disclosed—for example, to protect national security, a police investigation or a cabinet decision-making process—is protecting only what really needs to be protected. Again, as the Liberals promised in 2015, government information shall be "open by default".

[*Translation*]

**Mr. René Villemure:** Thank you very much.

At the October 5 committee meeting, during our discussion with the Information Commissioner, I asked her if there was a culture of secrecy or transparency in government. She said that it was more of a culture of secrecy.

Would you like to comment on her statement?

[*English*]

**Mr. Duff Conacher:** I assume you're asking me again.

[*Translation*]

**Mr. René Villemure:** I'm sorry, yes.

**Mr. Duff Conacher:** Please forgive me, I should have practised my French more, but I have to answer you in English.

[*English*]

Yes, there is a culture of secrecy. The act is called the Access to Information Act, but it really should be called the "guide to keeping information from the public that they have a right to know". It's not surprising, because such a law encourages a culture of secrecy, not a culture of transparency.

Many others have pointed this out for more than 20 years. Certainly in my experience, many reports have called it out. This House as well has called unanimously for key changes to stop this culture of secrecy. It's well established. Again, we're behind more than 50 other countries in the world in terms of best practices in access-to-information standards.

[*Translation*]

**Mr. René Villemure:** You talk about good governance in your writing. Does the government overuse the national security exception when asked to divulge such things as contracts or agreements between parties?

[*English*]

**Mr. Duff Conacher:** Yes, and like all exceptions, it's too broad. There cannot be exclusions at all. There has to be a proof of harm if disclosure happens, and also a public interest override, with the commissioner able to examine all documents.

In the whole area of contracts, the area of commercial information, often much more information is protected than needs to be. All that needs to be protected is proprietary information that is very much the basis of a corporation's operations. Anything more than that—protecting contractees and subcontractees—is excessive government secrecy.

● (1715)

[*Translation*]

**Mr. René Villemure:** Thank you very much.

Mr. Cutler, thank you for being here today and for everything you've done for many years to protect whistleblower information.

I will put the same question to you about the Commissioner's statement, as to whether there is a culture of secrecy or transparency. She told us there is a culture of secrecy.

What's your opinion on this?

[*English*]

**Mr. Allan Cutler:** Excuse the *en anglais*. My French has really declined since I retired officially from the government. If you don't use it, you lose it.

[*Translation*]

**Mr. René Villemure:** No problem.

[*English*]

**Mr. Allan Cutler:** Yes, there is a culture of secrecy, and it's hard to explain, except that nobody wants to tell you anything. That's really what it is. It's closed units.

You ask for access to information and they tell you.... As I said, the RCMP told me that what I was asking for was information, not documents. Well, that's a way of preventing me from getting into where I want to be. This happens all the time. It's like a closed door, and I'm out there banging on it, trying to get in. I have a battering ram, but it's not working.

I'm using expressive material, but it's so frustrating, because they have the culture—

[*Translation*]

**Mr. René Villemure:** I'm sorry to interrupt, but I'd like to ask you two more questions.

In your view, has government culture in this area changed in all these years?

[*English*]

**Mr. Allan Cutler:** Not in the last couple of years, but over the last 10 years, yes.

[*Translation*]

**Mr. René Villemure:** Has it changed for the better for the worse?

[*English*]

**Mr. Allan Cutler:** Oh, no....

[*Translation*]

**Mr. René Villemure:** Would you say that the Liberal Party's culture has changed?

[*English*]

**Mr. Allan Cutler:** I don't put it down to a party so much as a bureaucracy, and a culture within a bureaucracy.

All you have to do is look at Phoenix, which is a prime example. In the private sector, you'd be fired for the debacle. In the public sector, they were, in the worst-case scenario, transferred to a new place, and they still got their bonus.

**The Chair:** *Merci* , Monsieur Villemure.

Next we'll go to MP Desjarlais from the NDP. Sir, you have six minutes.

**Mr. Blake Desjarlais (Edmonton Griesbach, NDP):** Thank you very much, Mr. Chair.

I want to thank my colleagues for good questions, and also the witnesses for being present. I think those are good words that you shared with us at the beginning of this meeting.

I want to delve into parts of what you mentioned.

I think for Canadians, it's particularly important to understand the framework of access to information versus the right to information. It's easy to talk about access—imagine going to a library and not being able to read any books—versus the right to actually have the information.

I'd like to have testimony from each of the witnesses, starting with Mr. Rubin, on the difference between access to information and the right to information.

**Mr. Ken Rubin:** Right now there's a myth that we have the right to information, but until we firmly establish under charter subsection 2(b)—which is freedom of expression—that we have a right to access freedom of information, we're at a loss.

I don't care what the courts say about a quasi-constitutional thing. Until it's put in there as an amendment to the act that we have the constitutional right, we don't have that right. It's a privilege, and it's taken advantage of by government people.

That's part of the problem with the culture of secrecy. Everybody likes to say on both sides that it's broken. Well, in whose interests is it broken? It's in the vested interests of the government officials who want that secrecy and who want to continue with that secrecy.

Until the system is really reformed with less secrecy and until we have a right, it is never going to work—never.

**Mr. Allan Cutler:** He's absolutely right. I have a right to access information, in my opinion. Am I able to access it? No.

As I've said, it's like a closed door, and they keep the key, which is even worse, so they're not going to let me in, but what else can I say about it, except that the information's there? You can change the law, but you also have to change the culture. You need the people at the top, the politicians of all parties, to say, “This is what it will be.” Then the bureaucracy will conform.

● (1720)

**Mr. Blake Desjarlais:** Thank you very much.

Mr. Conacher, would you comment?

**Mr. Duff Conacher:** Government secrecy is a recipe for corruption, waste, abuse of the public, and decisions that protect private interests and violate the public interest. “Sunlight is a good disinfectant”, as a wise U.S. Supreme Court justice said about a century ago.

The secrecy that is allowed under the Access to Information Act is not the only form of excessive government secrecy. Secret lobbying is allowed. Secret investments by cabinet ministers, by MPs and senators, by their staff and by government employees are allowed.

As mentioned before, our whistle-blower protection system is actually protecting people from having the whistle blown on them, as opposed to protecting whistle-blowers who are reporting wrongdoing. All of that secrecy adds up to bad government decision-making.

**Mr. Blake Desjarlais:** Thank you very much to each of you for that.

Just quickly, I would like to confirm this. Mr. Rubin mentioned this idea that it's a privilege. I want to confirm for the study that the concept of the right to information is currently not within the existing ATI system. Is that true?

**Mr. Ken Rubin:** It's a statutory provision that was even decimated further by Bill C-58. It's not part of the Constitution Act. Until we get that, we're lost. We will never.... The powers that be—the corporations, the law enforcement agencies, the bureaucrats and the politicians—will not allow this, even though Parliament and MPs right here have problems getting information and should realize that their rights are being screwed around with too.

**Mr. Blake Desjarlais:** Mr. Cutler, would you comment?

**Mr. Allan Cutler:** It's interesting that Mr. Rubin mentioned information for parliamentarians. I know for a fact that I asked a couple of years back for some information and I got it through Access to Information. The particular minister I was dealing with asked for it through an order paper, and on the same question he had different information.

I couldn't believe it. How do you control that? The bureaucrat, in the way the bureaucracy is structured, controls the flow of information. If they don't like you as a minister, as a politician, they're going to make it very difficult for you, because they have tremendous power from the top down.

“Things have to change” is the only way to say it.

**Mr. Blake Desjarlais:** I want to make sure that Mr. Conacher has a chance to answer this portion.

**Mr. Duff Conacher:** Well, the exclusions and the loopholes define the rights to access, and so you're right. The Access to Information Act is actually more loophole than it is rules in providing access. The purpose in subsection 2(b) “is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions”, but the rest of the act does not fulfill that purpose in any way.

The 18 changes I'm calling for today, and that have been called for by many others in the past, would actually turn it into an open government law instead of a guide to keeping information from the public that they have a right to know.

**The Chair:** Thank you, Mr. Conacher, and MP Desjarlais.

[*Translation*]

The bells are ringing in the House.

Mr. Gourde, you have the floor for five minutes.

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

I'd like to thank the witnesses for being here and explaining the situation to us based on their experience.

I'm not reassured and neither are Canadians. We're talking about a culture of secrecy. We're talking about a culture of incompetence. Our access to information rights are being violated. In your opinion, if we continue on this path, where will this code of silence, hiding information from Canadians, take us?

I'll start with Mr. Cutler, then Mr. Rubin and Mr. Conacher can respond.

[*English*]

**Mr. Allan Cutler:** In my experience, I went through the sponsorship scandal, obviously, and everybody said things were going to improve. What I have witnessed since 2006 is a deterioration in society. The more the federal government accepts it, the more society accepts corruption, and you start looking at what people are representing. The government is representing the worst and not the best. In terms of access, when we're trying to get the information out, again, it is giving us the worst, not the best that it can give us—with some exceptions; don't get me wrong. Many access officers really want to do a good job, but their hands are tied by the legislation, by what's going on.

I've had misinformation given to me, and the answer is, when I'm challenging it, "Go to the Information Commissioner." I'm saying, "Well, wait a second; I can prove you're wrong when you're telling me I can't have something, but you're saying I have to go to the Information Commissioner."

There doesn't seem to be a good solution under the present act. We are a third world country with our legislation, and there's no denying it. We cannot maintain.... We're up there; we're a third world country.

● (1725)

**Mr. Ken Rubin:** Trying to get a public employee to talk to you is like trying to do something that you can't do. We have a serious problem in this country when people are intimidated by excessive rules from central agencies like Treasury Board, the Prime Minister's Office and the PCO. That intimidation ripples through everything we do. When corporations add their two cents and objections and when law enforcement says it's a matter of national security, on and on it goes. You don't stand a chance if you're just the average person. What we have to do is get rid of those—not the people, but the attitudes—and start from a constitutional right to know.

[*Translation*]

**The Chair:** Thank you, Mr. Gourde.

Do you have any other questions to ask? You have two minutes left.

**Mr. Jacques Gourde:** I'm waiting for Mr. Conacher to respond.

**The Chair:** Okay, I'm sorry.

[*English*]

**Mr. Duff Conacher:** The more the scandalous behaviour happens, whether it's dishonesty, unethical behaviour, secretive behaviour or waste, the more it becomes routine and the less it becomes news and the more accepted it becomes, as Mr. Cutler was highlighting. That leads to decline. That's why we need these wholesale systemic changes to change the culture, to penalize wrongdoing, to discourage violations of the public's right know, and reverse the trend, which is more and more encouragement of denial of the public's right to know. If these changes are not made, things will just get worse.

[*Translation*]

**The Chair:** Mr. Gourde, you have one minute left.

**Mr. Jacques Gourde:** I have no more questions.

**The Chair:** All right.

[*English*]

Next we're going to go to Mr. Bains.

Mr. Bains, you have five minutes, sir.

**Mr. Parm Bains (Steveston—Richmond East, Lib.):** Thank you, Mr. Chair, and thank you to our witnesses for joining us today.

My first question is for Mr. Conacher.

In your work review of access to information and privacy systems, what were your findings with respect to provincial ATI systems and their performances?

**Mr. Duff Conacher:** The provincial laws are generally based on the federal law, which happens a lot in Canada if the feds pass a law. The same thing has happened with the lobbying law and with some of the ethics rules. The provinces essentially copy it.

We see the same loopholes across the country. Some of the provinces have order-making power for the commissioners of the kind the federal commissioner has been offered and given recently, but that has not been enough to stop the denials and delays because, again, there are no penalties for violating the law.

If you park illegally anywhere in Canada, even if you're doing no harm and you're not parked in front of a fire hydrant and it's no bother to anyone, you'll pay a higher fine and receive more of a penalty for that than for a fundamental denial of the public's right to know key information that would reveal government wrongdoing and wastes of billions of dollars. That's a perverse system we have.

Some of the provinces have a public interest override. It's not strong enough, because the commissioners' enforcement powers are not strong enough. There are a few provinces with a few measures that are better than the feds' measures, but overall, the performance is the same because the same loopholes are there. It's the same weak enforcement and lack of penalties for these fundamental violations of key democratic rights.

● (1730)

**Mr. Parm Bains:** You've talked about timelines previously. Which Canadian jurisdictions have the shortest and the longest ATIP response timelines?

**Mr. Duff Conacher:** That's very difficult to summarize generally, because there are multiple institutions and it's changing year to year.

For example, soon after the Federal Accountability Act was passed, the Canadian government extended the law to 15 more public federal institutions, and there was suddenly a huge backlog of complaints and delays as those institutions got up and running. It's very difficult to generalize in that way.

The key thing is to remember that we are 54th or so in the world, so we're way behind in terms of ensuring an effective and timely right to know.

**Mr. Parm Bains:** I'll go to Mr. Cutler.

In this committee at a previous meeting, a witness testified that the Office of the Information Commissioner has adequate funding and that the issue is the internal allocation of resources.

Do you agree? Why or why not?

**Mr. Allan Cutler:** I cannot agree or disagree. I can only tell you that the job's not getting done. If they need more funding, give them more funding to hire people who actually work—not just executives.

I don't like waiting in line and having to hope that one day they'll pull me out. I'm also waiting as they prioritize the list, so I get put down at the bottom and the media get put up higher. There's a problem in the allocation, but also in the ability to do the job. If they need more people, give them that, but make certain that the people are workers.

**Mr. Parm Bains:** Thank you.

While the government reviews what changes need to be made in the long term, are there improvements government can make to the ATIP system in the short term?

Any one of you can answer that.

**Mr. Ken Rubin:** Yes, they could stop quoting every damn exemption that they can creatively use. They can get off their whatevers and answer the requests instead of waiting five or 10 years. They can do a lot of things, but they have an attitude problem about it, so they don't want to do them.

As for the provincial governments, they are equally first-generation secrecy places. They have the fees that they can still use as a barrier. What they use federally instead of a barrier is they say, “We'll give you a 120-day or 320-day time extension. Go away.” It's bad.

**Mr. Parm Bains:** Okay. Thank you.

Those are all the questions I have.

**The Chair:** Thank you, Mr. Bains.

[*Translation*]

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

**Mr. René Villemure:** Thank you very much, Mr. Chair.

I'd have been happy to use Mr. Gourde's and Mr. Bains' minutes.

Mr. Rubin, this week, an organization received 229 blank pages in response to an access to information request it had submitted.

What do you think of such treatment?

[*English*]

**Mr. Ken Rubin:** Well, I guess they had something really important to say if they couldn't get it out in about five pages. That's common. That's not uncommon at all.

They have machines now. They don't even have to be an access officer. They can say section this or section that, and it's all gone. It's just a blank page.

Really, one of the most positive things they do provincially is that if they're going to exempt a document, they have to list not only which exemptions they want, but the date and place of the document. Then, if someone wants to appeal it meaningfully, they have a bit of an idea of what foolishness has been done to give them nothing.

[*Translation*]

**Mr. René Villemure:** How very interesting.

Mr. Rubin, in your opinion, are there any entities or organizations excluded from the Access to Information Act that should not be?

Are enough organizations covered by the act?

● (1735)

[*English*]

**Mr. Ken Rubin:** No. Particularly the private sector, who sort of live off the teat of the government in many ways—

[*Translation*]

**Mr. René Villemure:** How about the government, Mr. Rubin? Are there any government agencies not covered under the act that should be covered?

I'm thinking of the RCMP or other entities like it, for example.

[*English*]

**Mr. Ken Rubin:** It's hard to keep track of all the subsidiaries of some of the Crown corporations and whether ones like Canada Post are covered or not, but if you have significant funding.... NavCan is called private, but it's doing a public function. There are so many agencies—including, by the way, NGOs sometimes—that should be covered under legislation. We all shouldn't be under the table. We should all be above the table. We all should be on a level playing field for release, not getting “no” 500 ways.

[*Translation*]

**Mr. René Villemure:** Thank you very much, Mr. Rubin.

**The Chair:** Thank you, Mr. Villemure.

[*English*]

Finally, MP Desjarlais, you have two and a half minutes.

**Mr. Blake Desjarlais:** Thank you very much, Mr. Chair.

I just want to thank the witnesses again for being present here today. I think it's really important information. I've learned a lot. I think what I want to take away from this for sure is that there is a cost to systemic and cultural problems with the interpretation of the right to access to information. I hear that, full stop.

I want to thank Mr. Rubin for highlighting the costs to Canadians. Residential schools, bribery, scandal, private corporation bailouts, the issues we're seeing at Hockey Canada, the armed forces, RCMP—these are real costs to Canadians, to their rights, and to their ability to actually understand these circumstances and how they're being impacted and harmed. I feel that and I hear that plainly today, so I want to thank you for that.

Recently, of course, we've seen even more suppression, such as the suppression of 10,000 documents by the Minister of Justice in relation to residential school survivors in a current case that's before the court. This is happening in live time, still today, so this isn't going away. These problems are mounting over and over and over.

Mr. Rubin, I don't have much time, but I would like you to give some remarks in relation to the statutory review of the Access to Information Act. You mentioned in your statement that you're not going to participate, but for someone with your knowledge and expertise, there has to be wisdom there in the reason. Could you please explain why you don't want to participate in this process?

**Mr. Ken Rubin:** It's because it's a pretend phony review built into the act. All they want to do is promote their idea of proactive disclosure, which is really phony. All they want to do is make little changes to the act. They don't want real changes. Then they want you to believe that they agree that you should hear this.

Take the example of the residential schools. I've applied for different indigenous groups for records. It's kind of disgraceful that they or their land claims researchers can't get certain records or have to wait so long for them. The harm was so great, and yet they're getting exemptions, such as from the RCMP, saying that sexual assault or other things were connected to those files and they can't release them. Well, I think it's high time they said, "You've done the harm—including the RCMP—so you damn well release them."

**Mr. Blake Desjarlais:** Hear, hear.

How much time do I have, Chair?

**The Chair:** You have 10 seconds.

**Mr. Blake Desjarlais:** I just want to again thank the witnesses for their testimony today. It means a lot.

**The Chair:** Thank you, MP Desjarlais. I guess I could have given you Mr. Gourde's extra 10 seconds or Mr. Villemure's time.

I want to thank the witnesses for coming today.

This panel was supposed to go until six o'clock, and then we were going to follow that up with committee business. With votes, we're going to have to cut it short. I would invite you to submit any information that perhaps you may have missed to the committee as part of our study.

I want to thank you all—Mr. Conacher, Mr. Rubin, and Mr. Cutler—for coming in today. You serve Canadians well, and I thank you for taking the time to be with the committee today.

I believe I do have consent, unless there is any objection, to adjourn the meeting.

The meeting is adjourned.