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Standing Committee on Access to Information, Privacy and Ethics

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• (1530)

[English]

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

[Translation]

Welcome to meeting No. 47 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

[English]

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 or 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 fully participate.

[Translation]

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.

[English]

In accordance with the committee's routine motion concerning connection tests for witnesses, I am informing the committee that all witnesses have completed the required connection tests in advance of the meeting.

I would now like to welcome our witnesses today. As an individual, we have Mr. Michael Wernick, the Jarislowsky chair in public sector management at the University of Ottawa. From the Glacier Media Group, we have Mr. Kirk LaPointe, vice-president, editorial, and publisher and editor-in-chief of Business in Vancouver.

[Translation]

I would now like to welcome Mr. Simard, of the Bloc québécois, and Mr. Julian, of the NDP.

[English]

Mr. Wernick, you have five minutes, sir. The floor is yours. You'll be followed by Mr. LaPointe.

[Translation]

Mr. Michael Wernick (Jarislowsky Chair in Public Sector Management, University of Ottawa, As an Individual): Thank you, Mr. Chair.

I'd like to thank the committee for having invited me to testify.

I'd like to acknowledge the presence of Mr. LaPointe. I'm very honoured to be attending this meeting in the company of such a distinguished journalist.

[English]

I will dispense with my biography. I'm sure the clerk can provide it for you, and anybody can find me on LinkedIn or Wikipedia. I left government more than three years ago, but my interest in public sector management continues with my role at the University of Ottawa.

I'll say right away that I have not spoken to anyone inside the government about my appearance and testimony today. I haven't read any of the other briefs to the committee or transcripts of appearances, so I don't know what other advice you've been getting or will have to sort out.

I was a senior executive in the federal government for 28 years, and at the deputy minister level for 17. About half that time, I worked for Liberal governments, and half that time for Conservative governments. I offer the committee some experience and perspective on how access to information impacts the work of the federal public service and works in practice, along with some suggestions on how it could be improved.

My views on ATIP are on the record. They're set out in detail in a one-hour video on YouTube posted by World Press Freedom Canada. I was pleased to participate in a debate they sponsored on access to information in September 2021. Members may have missed it, because they were out campaigning for the election held two weeks later.

In the interest of brevity, I sent a written statement to the clerk last Thursday, which I hope has been circulated to you. I don't propose to read it all today. The short form of the main points I'd like to leave you with today are as follows.

One, the request-based regime of the 1980s' ATIP is not enough. The act should be expanded to become a transparency act for the 2020s and 2030s. The commissioner should be restyled a transparency commissioner and given a broad mandate to examine and make recommendations regarding transparency practices across the entire federal public sector, including the public service, all Crown corporations, Parliament itself and the courts.

Two, there is nothing that would stop a government, now or in the future, from curtailing, rolling back or making exceptions to the transparency practices that have built up over the last 10 or 15 years. To make that more painful, the act should be expanded now, before the next election, to contain a robust statutory obligation for routine, regular and proactive disclosure of a long list of information categories, set out in my brief, so there can be no backsliding after October 2025.

Three, the entire access regime should apply to any taxpayer-funded staff and ministers' offices, including the Prime Minister's Office, to create a completely level playing field between political staff and public servants.

Four, there is no way that a request-based model for accessing information and, indeed, the protection of privacy can perform well unless governments finally take seriously and invest in the storage, management and retrieval of records. No government ever does that, and the state of records management in the federal government is shambolic. To start the long, hard work required to fix this mess, the act should be expanded to contain reporting and feedback loops that force the government of the day to pay attention and report progress to Canadians and, indeed, this committee.

Five, the concept of duty to document is one of those things that sound good if you say them fast enough, but would not work in practice. It could have harmful and unintended consequences.

As a former secretary to the cabinet and clerk of the Privy Council who had responsibility, over three years, for the cabinet process and papers, I'm eager to speak about issues around cabinet confidences and the deliberations of cabinet and its committees. I've set out my views on cabinet government in some detail in my 2021 book, *Governing Canada*. They certainly came up in the debate hosted by World Press Freedom last September.

The short version of my message is this: It would not be in the public interest to make it harder for cabinet to deliberate and take decisions.

With that lead out of the way, I will be pleased to take questions from the committee.

[*Translation*]

Thank you, Mr. Chair.

● (1535)

[*English*]

The Chair: Thank you, Mr. Wernick.

Mr. LaPointe, you have five minutes to address the committee. Sir, please go ahead.

Mr. Kirk LaPointe (Vice-President, Editorial, Glacier Media; Publisher and Editor-in-Chief, Business in Vancouver): Thank you, Mr. Chair.

It's good to see Michael Wernick today.

Thank you so much for the opportunity to discuss access to information reform with you today. I'm Kirk LaPointe. I'm the publisher and editor-in-chief of Business in Vancouver, the business news outlet in British Columbia, and the vice-president of editorial

for the Glacier Media chain of news outlets, the largest in western Canada. I also teach ethics and leadership in the journalism program as an adjunct professor at the University of British Columbia. Part of my role is instruction in freedom of information law, and it's also, of course, part of my duties as an editor.

My familiarity with ATIP dates back to my roles in the 1980s and 1990s in Ottawa, as bureau chief of the Canadian Press and a host on CBC News Network, then known as CBC Newsworld. I've advocated strong use of ATIP in news operations that I've run at CP, then at Southam News, the Hamilton Spectator, CTV News and the Vancouver Sun, now at Glacier Media. I personally have filed more than 3,000 requests, and newsrooms I've managed have filed well more than 15,000.

I approach ATIP not as an opportunity to scandalize the government of the day but as an important instrument for the public we serve to understand our history, the decision-making of those who serve us, and the inherent complexities, challenges and dilemmas of public administration. The work I've done has shed light on everything from cabinet discussions on the War Measures Act to value-for-money evaluations across a range of departmental programs to the expenses to operate our official residences and much more.

My lens has been what I subjectively consider the public interest, and my instrument has been a law that I believed would illuminate the operation of government. Until Bill C-58, that belief took several steps backward. Recent reforms to the law have made progress in recapturing some of the original spirit of the law as envisioned by Ged Baldwin, the Conservative MP I knew from my earlier days in the national capital, but there remains a very long road ahead to fulfill his vision.

Too often in its history, users of the law have been made to feel they are being done a favour to exercise their right to know. Delays and denials have stretched credulity. Too many public servants have seen their role as protecting bureaucracy and political masters. Technology now permits the footprint of history to be erased and overwritten. Significant investments in the vast apparatus of their own communications by successive governments, in a form of self-congratulatory vanity press, have far outweighed any investment in ATIP.

I have been assisted in my perspective in the last decade by running for municipal office here in Vancouver in the mayoralty race. It might surprise you that I've gained a fuller appreciation of the perspective of the politician and the public and media environment that correctly gives rise in the era of social media to a defensiveness and a guardedness, to a lack of candour and a lack of acknowledgement of errors in judgment or decisions that went awry. I think I can speak more knowledgeably about where you sit, what conditions you endure and how it might affect what you wish to share with the public. I can understand the fear that comes with any environment of extensive disclosure, because it comes with admitting mistakes. Of course, everyone makes mistakes. That's why there are erasers on pencils. Even the Pope has given up on the claim of infallibility.

I would hope that you would also understand my appeal to the bigger picture, because the defensive culture of communications is a prime contributor to the suspicion and cynicism in our political systems that can give rise to the most vulgar of our social media and to appallingly low voter turnouts and participation in political parties. In denying access to the critical pathology of public policy, to the process of decision-making, media must resort to picking at the bones instead of the meat, which in turn cheapens our craft and our image. A few reforms might address both.

My own modest reform recommendations for advancement of the law arise from many of the basic impediments I've experienced.

First, there has to be an investment in resources to limit the delays in responding to requests. If government professes to subscribe to openness, it should also tell the public how much it spends on its own promotional publicity and communications, and then link that spending to the spending on providing better access to information service.

Proactivity is an important ingredient, but Bill C-58 takes only baby steps. Any reform ought to require proactive disclosure of a range of information in government, including internally conducted departmental audits 30 days after their completion, while the paint is still fresh, to understand, in something approaching real time, whether programs are actually value for money.

A second proactive area would include the simultaneous release of records—studies, correspondence, research, advocacy—that prepared departments and their ministers for policy announcements or the introduction of legislation, with an exemption, of course, for Privy Council confidences. For that matter, all contracted services to government ought to be subjected to the act's purview.

● (1540)

It is time for the blackout period on Queen's Privy Council records to be at the most 15 years instead of 20, as is the case in my own province of British Columbia—or even 10. The longest political reign in my lifetime—that of Lester Pearson and Pierre Trudeau—barely reached 15 years. Disclosure of minutes and records from their earliest date would rarely touch upon a sitting administration, but the relevance of information withers with time.

My last recommendation for this review would see this committee call out the abuses of the letter and the spirit of the law across the public service: the use of personal email or encrypted apps for

government communication, oral briefings instead of written reports and the vesting of copyright with contractors to avoid disclosure, among many other things. Reforming this law can't extend into these traits, but a recommendation of a review of public service law could curtail these chronic problems.

Thank you so much for your time. I am happy to answer any questions you might have.

The Chair: Thank you, Mr. LaPointe.

I'm glad Mr. Wernick had an extra minute to give you so that you could get in that last recommendation. It worked out well for the committee.

Here's what I'm proposing.

We have two qualified witnesses. I don't expect that we're going to have any interruptions today. What I'm proposing is a first round of six minutes each, a second round of five minutes each and then a potential third round of five, five and two and a half and two and a half. If everyone is okay with that, we can continue. There may be a need to not continue with that last round, but that's what I'm proposing today.

With that, we're going to go to Mr. Kurek first, for six minutes.

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

Thank you to our witnesses for coming and speaking to this committee. I really appreciate your expertise and experience.

My encouragement, as is always is the case—and I know for sure that you, Mr. Wernick, mentioned that you had sent in a brief, and Mr. Lapointe as well—is to please feel free to send further details to this committee so that we can do everything we can to try build a substantive report at its conclusion. Thank you in advance for that.

I have a question for both of you. I've started with each round of witnesses by asking them this question. It's simple. Is an effective access to information regime essential for a modern democracy?

I'm starting with you, Mr. Wernick.

You're on mute.

● (1545)

Mr. Michael Wernick: Yes, of course. I don't think I need the rest of the time. I think—

Mr. Damien Kurek: I'm sorry.

Mr. LaPointe—

Mr. Michael Wernick: There's feedback coming. I'm hearing feedback from the floor. Should I try again?

Mr. Damien Kurek: You answered the question perfectly.

Mr. LaPointe, I'll go to you.

Mr. Kirk LaPointe: Unquestionably, and I would say, particularly in light of an increased context in which governments are becoming more and more sophisticated at controlling messaging, that the public has an opportunity as part of its democratic exercise to avail itself of a right to know, and largely things that governments don't wish on any given day to necessarily disclose.

Mr. Damien Kurek: For my next question, I will ask for maybe just a yes or a no or maybe a couple of seconds of expansion, just to keep it short.

This is for Mr. Wernick first and then Mr. LaPointe. Is Canada's system adequate, yes or no?

Mr. Michael Wernick: No.

I do hope that we're going to get to actually speak at a little bit more length about these issues—

Mr. Damien Kurek: We'll get there. Don't worry.

Mr. Michael Wernick: No, of course not. It dates from the 1980s, and I've said in my opening statement that we need a transparency law for the 2020s and 2030s.

Mr. Damien Kurek: Mr. LaPointe, you're next.

Mr. Kirk LaPointe: No.

Mr. Damien Kurek: Thank you very much for that.

Mr. Wernick, I'm curious to hear about this, because cabinet confidence is certainly an interesting and challenging subject. You highlighted in your opening statement that dynamic, that balance that needs to be found in ensuring that there's respect for the process but also in ensuring that Canadians have answers from their top elected officials. I'm wondering if you could expand a bit on what would be an appropriate balance to ensure accountability and access to cabinet confidence.

Mr. Michael Wernick: Citizens, taxpayers and voters have information on all of the outputs of government. They see the results of the decisions, the announcements, the procurement contracts, the awarded grants and contributions, the audits, the evaluations, the research studies and so on. All of the outputs of government and a lot of information about what government does are available to Canadians.

In fact, there's more information available to Canadians than probably at any time in our history. The frontier of the discussion is about the deliberative processes before decisions are taken. My point is that if there is not a degree of confidentiality for those deliberative process before a decision, you will impair the ability of cabinet to take decisions.

Mr. Damien Kurek: Mr. LaPointe, would you have anything to add to that?

Mr. Kirk LaPointe: I would agree with Mr. Wernick that of course at the point of deliberations before decisions are reached, cabinet confidences are quite apt. I would argue, though, for an earlier disclosure of the inputs after the decisions are taken than there is today.

Mr. Michael Wernick: I agree with Mr. LaPointe on a 10-year rule. Something like 10 or 12 would be perfectly adequate now.

Mr. Damien Kurek: For my final question, Mr. Wernick, one concern that I've certainly found is that decisions are often made beyond the official briefing notes and the official correspondence. It was mentioned before about text messages, phone calls and messaging apps that can circumvent accountability mechanisms like access to information. I've requested audio recordings that were, in fact, promised and I have never received them.

In your unique experience in government, have you ever seen these other fora of communications detracting from the system's ability to ensure that there's that public access to information?

• (1550)

Mr. Michael Wernick: I think the bigger issue, Mr. Kurek, is that there is an entire nervous system of political staffers who work for ministers in the Prime Minister's Office who are equal partners, and in some cases, the most important partners, in the decision-making process. You have an act that only covers the public service and that record is available after the fact.

The political side is basically under an invisibility cloak, hence my recommendation that the act be extended to taxpayer-funded staff who work for ministers.

The Chair: Thank you, Mr. Kurek.

[*Translation*]

I'd like to inform the committee members that we received Mr. Wernick's documents, but that they have not yet been translated into French. That's a problem for today's meeting, but we will have the translated versions tomorrow.

[*English*]

Next up is Ms. Hepfner for six minutes.

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

Through you, I would like to direct my questions to Kirk LaPointe who was my boss and, I believe, the editor-in-chief at The Hamilton Spectator when I worked there back from 1999 to 2001.

I can attest that it's true that you have long been a proponent of the ATIP or FOI system. I've told this committee on a number of occasions that back in those days, we had a mandate. We had to file a certain number of FOIs every week or every month and I think that was your decision.

I'm wondering if you can talk a little bit more about why the volume of FOIs is so important to a journalist to be able to access information that way.

Mr. Kirk LaPointe: Thanks very much. It's also good to see that one of us has had an advancement in our career.

The reason is that so much of information is staged for us today. So much of journalism is actually taken from whatever is laid in front of us. Then there's also a certain amount that we have to react to, whether it's a tragedy or an event of some sort where we have to simply be there to respond and be the chroniclers of that.

I don't think there is enough room in the public sphere for material that is of a journalist's own basic initiative. I think that access to information—freedom of information, as it's called in the province—is an opportunity for journalists essentially to devise what they believe the public wants to know and then go about getting it without necessarily being just at the trough of what governments will lay out before us.

It also sheds important light on what is sometimes a bit of a chasm between what the public is told and what is really happening.

Lastly, I think it also serves as a bit of an instrument for the public to have input into journalism and to demand certain things from us—to go and seek the information that the public wants. Without it, I don't think that we come close to even approximating the activities of government.

In a system that's absent a very effective ATIP, we're left with a system that is largely rolled out, orchestrated and choreographed by governments of the day. I don't think that this is anywhere near the service that the public needs.

Ms. Lisa Hepfner: Thank you.

The system has changed quite significantly since those days. Since Bill C-58, we've eliminated all fees beyond a five dollar application fee, and there's a system of proactive disclosure for ministers' offices, ports and other government institutions.

Back in the days when I was at The Hamilton Spectator, we would get a summary of how much it would cost to fulfill our requests. Sometimes it was hundreds of thousands of dollars, and we would just drop it.

Would you say that with the changes this government has brought in, the government has become more open and transparent in some ways? Can you reflect on the changes since those days?

Mr. Kirk LaPointe: I used to say that the system was cumbersome, confusing and costly. Now it's just cumbersome.

Ms. Lisa Hepfner: Do you understand why that might be?

I think there's been a huge increase in the number of FOI requests. You can now make your request online. You don't have to fill out those little pages, which we used to have to fill out, and send them off by snail mail. It's a lot faster and a lot easier to do.

Do you feel it would be a better system if the government could respond to people within, say, 30 days, but without fulsome information, or would it be better, from your perspective, if the government had more time to respond to these requests and responded more fulsomely?

• (1555)

Mr. Kirk LaPointe: I'm in support of... I think the Information Commissioner has basically said that there ought to be a cap on the amount of time that a delay could take place. I would be open, as I

think most journalists would, to partial disclosure and a kind of rolling file that would come out. A certain amount during the 30-day window would be important.

Ultimately, I think what we have to stop are these incessant delays that, in a lot of cases, appear to delay the important research of access to information for months and sometimes many years. That has to be something this committee is very firm on in order to make sure that we really are getting a new culture introduced inside the public service to respond quickly.

Ms. Lisa Hepfner: We heard from the Information Commissioner at this committee that she has the ability to approve institutions declining bad faith requests, and she thinks that this power should be used more often.

Do you think that would help?

Mr. Kirk LaPointe: “Bad faith” is a subjective term, as are terms like “vexatious”. We'd certainly not want to give a blanket to that without quite clearly understanding the criteria.

I saw some of the criteria of the Information Commissioner around this, but I would hold the fort on that before seeing a pretty extensive list of criteria to ensure that what we're getting are truly vexatious requests.

Ms. Lisa Hepfner: Thank you. I only have a couple of seconds left.

Are you concerned at all that if we removed the number of exclusions that are now within the ATIP system, it would make government more closed off and people would find other ways to communicate so that they wouldn't have to be subject to the legislation?

Mr. Kirk LaPointe: It's definitely a worry, as has been the introduction of technology to let public and political staff obviate normal requests. I think, though, that it can be countered to some degree with a much wider amount of proactive disclosure of certain records.

[*Translation*]

The Chair: Thank you, Ms. Hepfner.

Mr. Simard, you have the floor for six minutes.

Mr. Mario Simard (Jonquière, BQ): Thank you, Mr. Chair.

Mr. LaPointe, in your presentation, you said that government action could sometimes lead people to be distrustful or even cynical about political involvement, because they don't really have the relevant information to look at and evaluate.

I don't know if you saw it, but today in *Le Devoir* there's an article by journalist Émilie Bergeron, which reports that as a result of an access to information request, she happened to read in a Treasury Board document that the access to information issue was not a priority. So a Treasury Board document states clearly that for public servants, access to information is not a priority.

On the basis of your experience, and Mr. Wernick's, is this state of affairs widespread in the federal government? Is this idea that access to information is not a priority common to all the departments?

[English]

Mr. Kirk LaPointe: I'll defer to Mr. Wernick in a second here, but in my experience in dealing with the law now, dating back more than 30 years, I would say there still exists a very strong culture of protecting the bureaucracy and in some cases protecting the political masters. I understand that is a very broad generalization, and probably very unfair to a great number of people who I think are excellent advocates of disclosure within the system and are basically fighting for public access to the right to know. But in my experience at least anecdotally and on the basis of the thousands of requests that I've had some kind of hand in, it still is a culture that prevails.

• (1600)

[Translation]

Mr. Mario Simard: Would you like to add anything, Mr. Wernick?

Mr. Michael Wernick: I'd like to expand upon some of the messages in my document.

[English]

Records are not just required under the Access to Information Act. There is an infrastructure of document management, storage and retrieval that feeds requests under the Privacy Act: discovery and litigation proceedings, public inquiries, written parliamentary questions, questions and requests from House committees and Senate committees, and examinations from over a dozen officers and agents of Parliament. There are lots of people involved in the management, storage and retrieval of documents and records within the Government of Canada. It is quite an undertaking.

I would say that if you want to impose deadlines and penalties, you're pushing on a rope unless there is a lot more investment, care and attention to the issue of records and document management by future governments.

[Translation]

Mr. Mario Simard: Okay, understood.

In addition to the need for more resources, there is one question that always comes to mind.

I'm thinking of what happened during the summer. I don't know whether you were monitoring the glyphosate incident, in which the GMO watch group called Vigilance OGM, in response to an access to information request made a year earlier, received 200 blank pages that had been completely redacted.

That leads me to wonder who, under the current act, is accountable. There is an overriding principle in politics, and that is accountability. People are accountable for what they do.

From the standpoint of information, how can decision-makers be kept under control? Are decisions made only by public servants? At the end of the line, shouldn't ministers be held accountable for information that is disseminated and information for which dissemination is denied?

Mr. Michael Wernick: No. However, a deputy minister or someone of equivalent rank has to establish a process. In fact, accountability initially rests with the public service and the head of the institution.

A minister, or people in the minister's office, shouldn't be getting politically involved in decisions made in response to requests under the Access to Information Act. I believe that there has to be some distance between politicians, their offices and the public service.

Mr. Mario Simard: Could a mechanism be introduced to penalize certain public servants who might tend to withhold information or use it to get themselves out of bothersome circumstances?

Information is transmitted very quickly these days. In view of the time it takes to process access to information requests, any political issue has lots of time to simply disappear from the media before can get the whole picture.

How can public servants who do not respond to access to information requests be held somewhat accountable?

Mr. Michael Wernick: To begin with, there is feedback from the commissioner through institutional performance records and investigation reports. There are also committees like yours.

[English]

Mr. Kirk LaPointe: I will say there are a couple of things we used to do that we don't do any longer. We used to ask, under the act, for the process of responding to requests and how long those requests would stay in a deputy minister's office, or even a minister's office, before coming to us. It provided a little bit of accountability that way, shaming, if that was necessary. I think in journalism, in general, we often go away quietly when we don't get what we want. It's our fault. I think we ought to be telling the public a lot more about what we don't receive when we make a request.

Mr. Michael Wernick: One of the things that could be covered by the proactive disclosure provisions that I'm recommending would be that departments and agencies would have to post every single request that has been filed, every request that has been disclosed and the elapsed time. That would create a feedback loop.

• (1605)

[Translation]

The Chair: Thank you, Mr. Wernick, Mr. LaPointe and Mr. Simard.

[English]

Peter Julian, you have the floor for six minutes.

[Translation]

Mr. Peter Julian (New Westminster—Burnaby, NDP): Thank you very much, Mr. Chair.

Thank you, Mr. Wernick and Mr. LaPointe. Your testimony is very useful to us in connection with the current work of this committee.

[English]

I'm going to start with you, Mr. LaPointe.

You did an interview a few years ago in the *Courier* where you talked about Germany's transparency law, which creates, as you know, that legal obligation to disclose information and puts the onus on those who don't want a document released to argue against its release, as opposed to putting the onus on those who do want a document released to argue about why it should be released.

How would this approach have an impact on access to information nationally? Is it the kind of approach you think should be implemented federally?

Mr. Kirk LaPointe: Well, it would be the ultimate judo move.

I love the approach that they're taking. They're still having troubles in Germany with that approach, because an awful lot of companies have raised their hands and said that there's a great deal of commercial confidence that is potentially leaking into the system. However, it would clearly put the onus where I think initially it was designed to be, which was that governments needed to make the argument as to why things can't be released and third parties would have to make the argument about why they can't be released. Otherwise, there would be an automatic disclosure.

Mr. Peter Julian: The commercial confidence is because the onus is to protect that information. That's something that companies of course can advocate for, to keep that confidential.

Mr. Kirk LaPointe: Yes, they have that full right.

Mr. Peter Julian: Are there any other countries or jurisdictions that you believe Canada should emulate when we look at access to information legislation—other best practices worldwide?

Mr. Kirk LaPointe: I've used the American law hundreds of times, and I think there is simply a different culture of disclosure in the United States with its government. There is, I think, kind of an inherent...whether it's libertarianism or a certain suspicion of the power of government. As a result, it's freedom of information law, which predates ours—I think it goes back to 1971—is a far more fulsome provider of information to the public.

As journalists, we often will ask for the same information on both sides of the border when there is a cross-border issue, and the Americans always come out on top in terms of providing information, so at least.... I like many aspects of the American law and its culture.

Mr. Peter Julian: Thank you. That's very helpful.

What aspect of the current access to information regime do you believe creates the most barriers for journalists in this country?

Mr. Kirk LaPointe: Oh, I don't know. I think there's a 15-way tie for first place on that one.

I don't know that there's necessarily one that is a barrier. It used to be cost. Now, I think it would be delays, because the act seems to serve as a slightly better tool of history than of journalism. I think that, in some cases, even the disclosure of all requests by individual departments serves as a little bit of an impediment, because it permits other researchers and other journalists to see what has been requested. As a result, a great many investigative works that are done by journalist organizations will try to find other ways to secure that information, that access to information, so as not to, essentially, tip off the competition about what is going on.

It's a small price to pay if the larger reward is that we get faster service in all of this, but I would say delays are now the largest issue for us.

Mr. Peter Julian: Okay.

You've lived and worked right across Canada. Do you see any regional variation, for example, being in British Columbia? Do you see access to information playing out differently in the regions, or does it have the same impact right across the country?

Mr. Kirk LaPointe: Well, when it comes to the cabinet confidences, in British Columbia they are 15-year confidences. They're not 20 years, the way they are federally. That permits us to look at records that cabinet would have deliberated on or decided upon earlier; we can go back 15 years.

One of the central problems is that outside of that Toronto-Montreal-Ottawa window, the law isn't used all that much out here. My counterparts out here barely use the federal law. We use provincial and municipal laws here in order to gain access to information. I think that should tell us something, that there is generally a belief that the law doesn't work and so it's not worth trying.

It used to be that I could walk into someone's office and talk about the requests I had with them, and deal with them locally on something. Now, of course, that's an impossibility being three time zones away. I think other researchers out here just shrug and don't use the law.

• (1610)

Mr. Peter Julian: That's very helpful.

This is my final question, because I know the chair of the committee will be shutting me down shortly.

Should more information be provided to Canadians on how the process works, how to handle responses, so that generally Canadians can also have a better understanding of the access to information regime and how to navigate it?

Mr. Kirk LaPointe: I teach it, and I can tell you that in three hours, it's very difficult, even with graduate-level students, to walk them through the process. I can only imagine what it's like for a typical citizen to try to wade through all of this.

Tutorials, any number of videos, any number of how-tos, I think would be helpful for the average citizen to try to work through it. Quite honestly, I think there ought to be almost the equivalent of a help desk in order to help people frame their requests so that they're going to be well received.

I know of instances where groups of public servants have gathered around a request on a table and decided the words that were essentially tripwires to permit them to not disclose material. I think, again, it's something that would assist the public in order to do it. We have all kinds of other government help desks to help you file your taxes and do a number of things. This ought to be one of those as well.

The Chair: Thank you, Mr. LaPointe. That was a little more time than usual.

[*Translation*]

We are now going to the second round. Each member will have five minutes to ask questions.

We'll begin with you, Mr. Gourde.

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

Thank you to the witnesses here with us today. Your presence is very important to us.

As part of government activities, decisions are no doubt made every day. When Canadians or journalists want to obtain additional information about certain decisions or actions, they use the Access to Information Act. Unfortunately, the responses received are all too often redacted or don't say much.

Do you feel that there has been an overuse of redaction to hide information that is really not in any serious need of being protected?

Here, we can get on with our work. If there is abuse somewhere, we can invite people to appear to explain themselves. We often, in fact, agree with people who come here to explain why they made certain decisions. On the other hand, the fact that so much information is hidden may perhaps explain why people are so disenchanted with the public service.

Could each of you in turn tell us if the amount of information being hidden is excessive?

Let's start with you, Mr. Wernick.

[*English*]

Mr. Michael Wernick: I think that people in good faith in the departments are trying to comply with the requests and then sort out the various exemptions and reasons why there would be a need for confidentiality or withholding. It could be legal advice. It could be something like evidence in a harassment complaint, evidence given by residential school survivors in an adjudication hearing, tax returns and business.... There are all kinds of reasons.

I agree with Mr. LaPointe that the onus of the law could be flipped to disclose unless and justify that, but that means you need some precision about definitions around national security, cabinet confidences and so on, but I do think the regime could be flipped over.

I do want to make the point that journalists are not the only users of the act. They are, of course, important ones. Ultimately, this is for citizens, voters and taxpayers, but the act is heavily used by brokers and resellers. It's used by lawyers suing the government. It's used by lobbyists and special interests trying to block a government initiative, or torque legislation or regulation. It's heavily used by businesses trying to get information on their competition, and it is used by foreign governments.

We can't be completely naive about the purposes of access to information requests and the need to do careful screening at some point in the process, but I do agree that it could be flipped over to an onus to disclose unless.

• (1615)

Mr. Kirk LaPointe: I would agree with Mr. Wernick about, of course, the usage. I would say, however, that probably one of the reasons journalists only comprise around 10% of the user base of the law is that they feel frustration with it, and they largely just don't try.

[*Translation*]

Mr. Jacques Gourde: In your statement, you made a number of recommendations. Of these, which would like to see included in the committee's report if you had to choose just two or three?

Mr. Michael Wernick: I believe that for a system to be transparent, there are two important factors. The first is a legislative framework that establishes all the obligations and practices for proactive disclosure.

[*English*]

There is nothing stopping the next government from rolling back, curtailing or making exemptions from all of these practices of proactive disclosure. You should put it in the law and make it painful to repeal and painful to backslide.

I think adding proactive disclosure to the act would be helpful. I agree with Mr. LaPointe that giving the commissioner a help desk function would be useful to assist Canadians in making requests. I think it's very important that the act be extended to taxpayer-funded political staff.

[*Translation*]

Mr. Jacques Gourde: And what about you, Mr. LaPointe?

[English]

Mr. Kirk LaPointe: I would simply repeat a couple of them that I think are the most important ones.

One has to do with the sense of delay and the investment that's necessary in order to make sure there is the infrastructure to make the provision of the law more efficient.

The second part, I think, would have to do with proactive disclosure across a wider range of documentation and records to make sure that journalists and other researchers don't have to resort to using the law for things that ought to be rather routinely available.

[Translation]

The Chair: Thank you, Mr. Gourde.

[English]

Next I have Ms. Saks.

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

I'm going to follow along the lines of my previous colleague.

Mr. Wernick and Mr. LaPointe, you both mentioned that not only journalists access ATIP requests, but it could also be historians, researchers and individuals who are looking at legal cases. Canadians have lots of questions, not just about the issues of the day but about the historical issues of the past when they file for ATIP requests.

In August of this year, B'nai Brith put out a statement that it had submitted an ATIP request about Nazi war criminals who had potentially entered Canada and whose names had been reviewed under the Deschênes report commissioned in 1985. They put in an ATIP request for all of those names and the background information of that report. Their request was denied and deemed unreasonable because it would take an estimated 1,285 days, more than three and a half years, to answer the documentation of their request, so here we have a situation of historical record in archives.

Mr. Wernick or Mr. LaPointe, whoever would like to start, do you have any suggestions as to how we manage questions and requests like that, which are of a historical interest to communities or also potentially have legal ramifications?

Mr. Michael Wernick: No government that I've ever worked for has really taken record storage management or retrieval seriously. I worked as the deputy minister at the department of aboriginal affairs, and we were often called upon in litigation and other proceedings to go back to documents from the last century and the century before.

I don't know how you imagine that government record-keeping works, but it's scattered across over 300 organizations, thousands of work places, and different technical formats. Some of it is on paper, and some of it is in the software of the 1970s and 1980s. There has never been a serious investment in digitizing and catching up on historical records. They are the hardest to manage and retrieve, and they don't lend themselves to scanning for search words and keywords. There's a very expensive, labour-intensive, manual process involved in going back to anything that's more than about 20 years old.

• (1620)

Mr. Kirk LaPointe: It's my hope that as we start to get greater and greater machine learning in AI.... I know that we're seeing some research out here on the west coast from our universities about how certain documents will be able to be scanned and read with it, but we're still some time away. All you can start to do now is to build a better system that is going to enable better record-keeping and more clearly accessible record-keeping. Then you have to catch up later on what has been filed across, as Mr. Wernick says, 300 different organizations.

Ms. Ya'ara Saks: Thank you to both the witnesses.

Barely a month before this news release by B'nai Brith, the Information Commissioner's special report on archives made light of an interdepartmental working group to advise on proactive declassification of historical records as part of its thought process.

Again, it's almost like it's all being funnelled through this one channel of ATIP. Would there be any wisdom in having some kind of classification process of priority records or the types of records being asked for so that they could be better managed, especially when it's interdepartmental communications that are being sought or historical records? Do you have any thoughts on that?

Mr. Michael Wernick: I think you could weave some of that language into a proactive disclosure chapter of the act if there is a part of the act that covers proactive disclosure and there's an onus to disclose unless you can provide a reason not to. Subject to the limitations of the records system, some of that would speed up considerably.

Ms. Ya'ara Saks: Mr. LaPointe, do you have anything to add to that?

Mr. Kirk LaPointe: Having used [*Technical difficulty—Editor*] national archives many times, I can say that there probably is some kind of a relationship between ATIP and archive law to facilitate, perhaps, a greater declassification of records as they enter the archives.

Ms. Ya'ara Saks: Mr. Chair, how much time do I have?

The Chair: You have 30 seconds.

Ms. Ya'ara Saks: Okay. I'm going to cede my time.

Thank you.

The Chair: Thank you.

[Translation]

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

Mr. Mario Simard: Thank you very much.

Mr. Wernick, in your introductory remarks, you spoke about restyling the information commissioner role to that of a transparency commissioner. You said earlier that the legislative basis had to be changed to ensure more proactive disclosure. You also said that the commissioner's mandate should be broader.

I understand that it's something that might be found in a new legislative structure, but what do you mean by a broader mandate?

Mr. Michael Wernick: I think it would be possible to follow the example of the other commissioner, the Privacy Commissioner of Canada.

[English]

Privacy commissioners have not been shy about conducting studies, issuing reports, and commenting on the privacy practices of government entities and, indeed, private sector firms. I think it's entirely possible to give a specific mandate to the transparency commissioner to conduct ongoing studies and make recommendations on the continuing improvement of transparency practices.

My view is that it should cover the entire federal public sector, not just the executive branch departments and agencies but also all Crown corporations, Parliament itself and the courts, all of which are part of our system of governance.

[Translation]

Mr. Mario Simard: Thank you.

Mr. LaPointe, you said something earlier that caused me to raise my eyebrows. You said that journalists represented only 10% of those who make use of the federal act. Earlier, in an answer you gave to my colleague Mr. Julian, you said that provincial and municipal statutes were perhaps better structured and used more often than the federal act.

Do you have any figures that could be used for comparison? Are there many more journalists who use provincial and municipal statutes rather than the federal act to gain access to information?

• (1625)

[English]

Mr. Kirk LaPointe: Yes, there are. There's some data to that effect. In British Columbia, I think journalists use the law here upwards of 35% to 40% of the time. I can understand entirely the reasoning behind all of this, and I think some of it has to do with distance and the relationship of local government and provincial government to any news organization. There are national organizations that focus in Ottawa, Montreal and Toronto in particular that would have a more acute interest in national affairs, so I can understand where they would be the ones using the law there, and in various provinces across the country you would see local and regional organizations using the law locally.

[Translation]

Mr. Mario Simard: Okay.

I'm asking this question because you mentioned a help desk.

What I'm wondering is whether the federal act is more complex to apply than the same types of measures at the provincial and municipal level. If so, that would appear to indicate, as you mentioned,

a certain kind of assistance for people who want to use the Access to Information Act.

Is the federal act more complex?

[English]

Mr. Kirk LaPointe: Well, don't get me wrong, but I'd be very happy to see a help desk at a provincial and even a municipal level too. A lot of it has to do with the vast array of records at the federal level and the fact that many of them don't have as concrete a relationship to a community as would provincial or municipal records. I think that in itself directs journalists away from taking a look at national issues when they're in one of the regions of the country. I think there's obviously far more focus on federal matters in the capital and in Montreal and Toronto, the larger business centres of the country.

[Translation]

The Chair: Thank you, Mr. Simard.

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

Mr. Peter Julian: Thank you, Mr. Chair.

Mr. Wernick, I'm sorry that we weren't able to consult the documents you submitted. We'll have them tomorrow, as the committee chair mentioned.

If the information I'm about to ask you about is already in your documents, just let me know.

[English]

I wanted to ask you about this. Since you indicated agreement with Mr. LaPointe on the idea of both a help desk and a reverse onus, to what extent do you think that having that reverse onus on disclosure would help to increase the ATIP process, improve it?

Also, I'd like to ask you the question I asked Mr. LaPointe. What are the models that you see internationally that Canada should be looking at? You mentioned how we do records management, and I quote the word—I have it in yellow and circled—"shambolic". I appreciated your comments on that. Is that part of the problem, that compared to other countries we don't do a good job of managing documents?

Mr. Michael Wernick: I don't have at my fingertips any international comparisons. Frankly, I think probably no government does a great job on records management. It's just not something that politicians are attracted to investing in. It's seen as overhead. It's seen as bureaucracy. There's much more priority given in times of growth and in spending reviews.

Every time a spending review happens—and I've lived through many operating budgets being cut—priority is given to externally facing services to citizens. Things that get cut are internal services, like finance and audit and records management, because they aren't seen as investments in better service; they're seen as just overhead. I think that's a big mistake and I hope it will be avoided in the next spending review, which is inevitably coming, just like winter.

I would make the point, though, that there are areas of the federal government in which provinces are not heavily involved that require a careful consideration of national security. Provinces for the most part don't do a lot of international negotiations. They aren't involved in international conferences and discussions. They're not taking positions at international bodies. The federal government has to be very conscious of that. There are federal areas that are immensely interesting to foreign governments and their agents, so I think some screening, to make it less easy for the Chinese or the Russians or the Iranians to interfere with Canada, will have to be taken into consideration in the drafting of these provisions. I do think, however, that there is a lot of room for proactive routine disclosure.

A long time ago the hope was—and I remember the discussions—that proactive disclosure of procurement opportunities—contracts, grants, contributions, travel, hospitality, research studies, audits and evaluations—would eventually reduce the demand in access requests. It never happened, because people have moved upstream to the deliberative processes of government and they want to know about things before decisions are made.

I'd ask you to remember that a request is not a request is not a request. Some of them are extremely focused and they know what they're looking for and it's relatively easy to decide whether it should go out or not or to apply the screens. But there are also requests formed, particularly by the brokers and resellers, which are kind of like the trawl nets that go over the ocean floor scooping up everything that lives. I used to get a monthly request, when I was a deputy minister, for every note I had ever sent to the minister that month. There are often those kinds of requests for every communication between person A and person B going back the last five years, including all text messages and all emails and so on. These create a lot of challenge in going back and require a lot of effort to be put into processing requests. Then there are these trawl-net requests for everything that can be found, and the resellers and brokers then approach people and say, "Here's something that would be interesting to you."

• (1630)

Mr. Peter Julian: Just coming back, then, to that reverse onus, if you're supportive of proactive and mandatory disclosure, what are the documents, in addition to the ones you've just mentioned, that should be mandatory to disclose or proactively disclosed? In other words, can you add to that list you just gave us?

Mr. Michael Wernick: You can either hard-wire them into the legislation or you can create a list you can add to through regulation. It's up to you to decide how to construct it, but I will say that the government tomorrow could roll back any of the practices around posting research on travel, hospitality, procurement, contracts, grants and contributions and public opinion.

I would like to see a requirement to post final audit reports, final evaluation reports, any research studies commissioned by taxpayers, any scientific research paid for by taxpayers. You'll recall there was an agreement reached with government scientists about the muzzling of research a few years ago. That could be repealed or revoked. You could see some of that transparency around scientific research put into legislative language. I'd like to see all of the results of any environmental testing, product testing, health testing and safety inspections having to be posted. Those are some examples, and I'm sure the committee could come up with others.

The Chair: Thank you, Mr. Wernick.

Thank you, Mr. Julian.

We're going to Mr. Kurek for five minutes.

Mr. Damien Kurek: Thank you very much.

It's been very informative, so thank you for this.

I'll ask both of you my question, but I'll start with Mr. Wernick.

With respect to redactions, I've received responses to access to information requests in which 40 pages have been redacted, and there are references to the act, and then you have 48 pages, which can in some cases include an entire document that is not available.

My question is quite broad. How do we make sure redactions are done properly and are not done to avoid accountability when it comes to the public's right to know?

Mr. Wernick, I'll start with you, and then I'll go to Mr. LaPointe.

Mr. Michael Wernick: Whether it is a request-based model where something is released, or something is released unless there's an argument not to, redaction is the process of separating the releasable from the unreleasable. It does require the exercise of judgment and interpretation of the law and the practices.

The first screen should be clarity and definitions, with very precise and clear language and definitions, which could be updated from the 1980s version of them to catch up with current practice. Then I think you have to give the commissioner a role in challenging and overseeing, and the ability to call out what he or she sees as inappropriate redaction.

At the end of the day, you can go to the Federal Court, and the courts would have the final say on a lot of issues. I believe the Federal Court should have the final say on any issue to do with whether cabinet confidences are involved or not.

My recommendation, which you'll see in the brief, is that the definition of cabinet confidence is far too broad right now.

• (1635)

Mr. Damien Kurek: Thank you.

I want to hear from you, Mr. LaPointe, but first I'll follow up with Mr. Wernick on the need for resources for the Information Commissioner.

We've heard a number of witnesses say that it's all well and good to have the ability to make orders, but if there aren't enough resources to ensure that it's a meaningful process, or if those in the access to information commissioner's office don't have the resources to meaningfully follow through on those things, it's problematic.

Do you have any brief comments on that?

Then I'll get to Mr. LaPointe.

Mr. Michael Wernick: It's ultimately up to Parliament to decide how much to appropriate. You have a range of officers, agents and feedback loops from the Information Commissioner, the Privacy Commissioner, the Auditor General, the Parliamentary Budget Officer, the official languages commissioner, the Conflict of Interest Commissioner, the lobbying commissioner, the integrity commissioner, and on and on.

There are about 3,000 people and about \$40 million invested in watchdogs, and that doesn't go to the people who work in departments and agencies actually having to chase down information in computer systems, filing cabinets or old archives and paper documents.

The private sector uses a term “cost of sales” or “cost of production”. There is a cost of transparency within the federal system, but you have the power of the purse and you have the ability to affect the appropriations and supply to those agencies.

Mr. Damien Kurek: Thank you.

You have about a minute, Mr. LaPointe, if you have something to add.

Mr. Kirk LaPointe: My world record for a redacted document was a 2,700-page one. I got lovely new sheets of paper to put into my fax machine at the time.

I would say that it probably does best in empowering the Information Commissioner to have greater oversight and, if necessary, to then have a small agency, a small board or a small adjunct to the Information Commissioner's office in order to help arbitrate redactions so that the public interest is served better.

The Chair: Thank you, Mr. Kurek.

We are now going to Mr. Bains for five minutes.

Sir, you have the floor.

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair.

Thank you to our guests for joining us today.

I'm going to Mr. Wernick first.

I think you briefly mentioned something about the Federal Court. One of our previous witnesses, Monsieur Drapeau, suggested

changes to the Information Commissioner process to help speed up the process of ATI. Specifically, he said to introduce a one-year period before complaints can be brought before the Federal Court.

What are your thoughts on his analysis?

Mr. Michael Wernick: I don't have enough knowledge to recommend anything. I think that some sort of reasonable period for disclosure, especially if something is subject to proactive disclosure, should be accommodated, but I am not in a position to offer what that cut-off should be.

The Federal Court is not a place you can just go to and get a ruling tomorrow. It's a busy place dealing with all aspects of federal law. Yes, they do expedited hearings, but be careful what you wish for. You may be clogging up the Federal Court if there's too easy an access to it for smaller matters that could perhaps be solved by some sort of dispute settlement mechanism or an intermediate body, as Mr. LaPointe suggested. I find I'm agreeing with him an awful lot this afternoon.

Mr. Parm Bains: Thank you for that.

Now, with reference to Bill C-58, it allowed proactive disclosure of many pieces of information—tens of thousands, in fact—that previously required access to information requests to obtain. Do you believe that this has helped at all to make government more open and transparent for Canadians?

Mr. Michael Wernick: I left government three years ago, so I think you're in a better position to judge that based on the feedback.

I do think it is the model to be expanded to a much longer list of categories of information, and if information is getting to voters, taxpayers and citizens directly without intermediation, that's a good thing for the transparency and accountability of the federal government.

• (1640)

Mr. Parm Bains: Thank you.

I'll move on to Mr. LaPointe.

You've been an adjunct professor and executive in residence at the University of British Columbia since 2004 in the graduate school of journalism program. What do you teach your students about access to information in Canada and the role of journalists, if anything?

Mr. Kirk LaPointe: I teach them to develop patience, to be further accepting of rejection as part of the craft. What I try to teach them is that it is still an important pursuit. I believe that it is one of the more sophisticated ways in order to do your research, because you're really depending on the actual official records. You're not depending on someone's interpretation of them or anecdotal comments. You're not just chatting up somebody in order to get an opinion on what it is that's going on. You're actually dealing with that.

I teach them to be applied, but I will say that year after year, in the course of the three hours, we actually file requests with them, and in I guess the dozen or so years that I've been doing this exercise, I've yet to see one of them come back in anything less than about 90 days and with anything approaching something that we could convert into a story.

It's a frustrating thing. I think a lot of my students are "one and done" with ATI. That is a great regret.

Mr. Parm Bains: Further to that, in this era of misinformation, disinformation and maybe how it's important to be first in getting the information out, have delays in ATI possibly contributed to journalists not being able to get the most accurate information out?

Mr. Kirk LaPointe: Well, I think that's true, because I think we're dependent on the interpretation of the information providers in the interim, before you see the official record.

I will say that where our craft makes its mistake is that we cover too much and uncover too little. Access to information is a way to uncover things. I don't mean that in a nasty or harsh way. I think it really does provide some kind of disclosure of important information, and I don't think journalism does that often enough. I think one of the reasons has to do with the complexity of this law and the fact that it is very difficult to use. As I said earlier, it's a better instrument of history than it is of journalism.

Mr. Parm Bains: I think Mr. Wernick talked about other jurisdictions. You also mentioned Germany, but are there other areas, other jurisdictions, that we can learn from that may be doing this better in a way?

Mr. Kirk LaPointe: Well, I think Canada now has been ranked, in the last survey I saw somewhere, around 57th or 58th in the world, so it's—

Mr. Michael Wernick: No. That's not right.

Mr. Kirk LaPointe: Is that not right? What is the number? I haven't seen the latest world ranking.

Mr. Michael Wernick: I'm sorry, but I actually think that's a good answer to the question, which is that you should go to some of the international ranking scores. I could send the committee a list of them.

In a ranking of the most transparent countries by U.S. News & World Report, Canada was second out of 85 countries. Open Data Watch ranked Canada 15th. The rule of law index from the World Justice Project ranks Canada 13th out of 140 on open government. That's not to be complacent. We should aim to be ahead.

I did look at all of these over the weekend, and the countries that are ahead of Canada on transparency are basically the Nordic countries, New Zealand and Switzerland. If you go to some of those international rankings, you'll find examples to follow. Most of them are small unitary states without significant provinces, but that may be an anomaly.

The Chair: Okay. Thank you, Mr. Wernick.

Mr. LaPointe, you can make a final thought, if you'd like.

Mr. Kirk LaPointe: Yes, I was going by the global right to information rating, and in the last one I have, which is from 2019, Canada was ranked 57th.

• (1645)

The Chair: Thank you, sir.

All right. That completes the second round of questioning. We are going to go to the third round. As I mentioned, it will be five minutes for the two sides and then two and a half, if that's okay.

[*Translation*]

I think that's going to be the last round of questions. We've received a lot of information.

[*English*]

In the absence of my colleague, Mr. Kurek, having any questions, I'm going to take the liberty of asking a question.

Mr. Wernick, you said earlier that the records management system is scattered across 300 organizations. You spoke about digitizing and catching up on that. I can certainly speak to that in my role as veterans affairs critic and how difficult it is to transfer documents from active service to Veterans Affairs. Oftentimes, we were told that there was no digitization of those documents and that they would actually have to go to the national archives and grab the information on paper to determine whether an injury, for example, was attributed to service.

You also mentioned that it was very expensive and labour intensive. Just how expensive and how labour intensive would that be, and how much of a necessity is it? I'm seeking your guidance on that.

Mr. Michael Wernick: Well, I think there are different aspects of government. There are 300 departments and agencies. You can see them all on GC InfoBase, which I hope you've all bookmarked. It lists all of the federal entities, their budgets, their people, their activities and so on, and is an important transparency tool, by the way.

There are areas like aboriginal affairs and veterans where it's obviously relevant to go back 30 or 40 years in history to deal with adjudication claims, litigation or other issues; in others areas, not so much. If a patent has been awarded, the patent has been awarded, and on we go.

I think it will vary. There are places that generate enormous amounts of records, like the Canada Revenue Agency or the Canada Border Services Agency.

You will remember when you got on an airplane to enter Canada you filled out one of those blue and white paper cards with your customs declaration. What do you think happened to those cards? They had to go somewhere to be read, filtered and so on. It's a wide-ranging area.

I do think that the chief information officer at the Treasury Board should be given a much clearer accountability for records management and should have to do an annual report, which this committee could examine. I do want to make that point. You can have all of the sanctions, deadlines and obligations you want, but you're pushing on a rope if the systems for storage, retrieval and classification of documents and records, which are increasingly in the form of emails and texts, are not invested in. I have yet to work for a government that has invested seriously in records management.

The Chair: Okay.

In terms of the human resources required for digitization across all of these organizations, you mentioned the cost, but you didn't put a value to it. Do you have any idea of how much that would cost?

Mr. Michael Wernick: I would suggest that you ask the archivist of Canada. What happens is that departments store things in filing cabinets and storage rooms.

I remember looking at this during the Harper government's deficit reduction plan. Something like 15% to 20% of government real estate was used to store filing cabinets and records. There was a hope that digitizing them would free up real estate and real property, but there's a labour cost of actually going, retrieving, sorting out, applying the exemptions and sending those up the line. Higher up the line, you're dealing with the scarce time of senior managers who have to sign off on the final release, and so on.

It's certainly a large number in terms of the cost of servicing this function. It's scattered across.... It isn't the ATIP shop. The ATIP shop will coordinate the request and chase people down, ask for them to retrieve things and remind them of their obligations, but it will end up in—I don't know—the Regina office of the department or some line function of Veterans Affairs, and so on. It's incredibly uneven out there because of different budgets, different histories and different capabilities in records management and retrieval.

My understanding of it is that as more and more things are created, there's actually more being created than can be processed by Library and Archives and the people who work in that area.

If you want a cost estimate, I think maybe talk to the national archivist.

The Chair: Thank you, Mr. Wernick.

Here I was thinking that every time I filled out those customs forms they didn't go anywhere, but apparently they do. Thanks again.

• (1650)

Mr. Michael Wernick: I'm not sure they did, but they were collected and sent somewhere, along with a lot of other records.

The Chair: The value of what you have to declare: \$200 every time I came back.

Ms. Khalid, you have five minutes.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thanks, Chair.

I'll start with Mr. Wernick.

You've made some really interesting remarks today. I really appreciate your differentiating the focus on transparency as opposed to request-based ATI.

You also mentioned that political staffers should be opened up to ATI, but you also have said that cabinet confidence is a necessity. Can I ask you to unpack that a little bit?

What kind of communication would a political staffer provide, where a bureaucrat talking specifically on policy or on decision-making would not be sufficient, so that we would need to go further toward having a political staffer also be ATIP-ed?

I would love your thoughts on that.

Mr. Michael Wernick: Sure. Cabinet and its committees are a fairly easy-to-identify zone. There is cabinet and there are committees, which include Treasury Board, and you can know what the agendas, the papers and the deliberations of those cabinet processes are.

Political staff in ministers' offices take part in the whole upstream process of sorting out options and advice. They meet with each other. They meet with public servants. There are plenty of interactions in the process of what they are going to do about this issue or how they are going to respond to that report.

Public servants are involved in the conversations and the advice function and there are political staffers, but the regime only really brings out the part that is public servant to public servant.

Ms. Iqra Khalid: Thanks for that.

I'll turn to Mr. LaPointe. I really want to understand this a little bit better from a person who's had vast experience in the media.

With the changing role of media and what journalism looks like in today's day and age with blogs and so much information out there, does ATI hinder true journalism or is it a proponent of true journalism? Where do subjectivity or vexatious or frivolous claims fall within that whole category?

You mentioned subjectivity and interpretation of documents. I'm sure you've sometimes received thousands of documents on an issue and you could shape a story whichever way you'd like it to be shaped based on what's in the documents and what's not in the documents you've received.

I'd love you to unpack that a little bit. My apologies for that really loaded question, but I would appreciate anything you can provide as insight.

Mr. Kirk LaPointe: Yes, let's spend the next four or five hours here.

First of all, there is no such thing as objectivity, right? It's a bit of a myth about journalism. However, there are objective methods. We teach objective methods in order to do research. One of them has to do with primary sources, which come through documents and interviews with particular people, and some of them are secondary sources that involve interpretation.

In terms of ATIP's contribution to journalism, as I said earlier, we cover too much and uncover too little. I think we do ourselves a disservice with the public by having so many voices on somewhat the same announcement, the same issue. We don't diversify our report. We don't see it as a necessity every day to provide people with things they didn't know, things that weren't shaped or provided to them. I think that ATIP can serve an extremely useful role in that.

However, given the resourcing of most newsrooms today, which are much smaller than they were 10 or 20 years ago, it is that much more onerous to break through that. Given the fact that governments have done, I think, an excellent job of staffing themselves up, of finding sophisticated communications people in order to present the image they wish, the information that they wish to de-emphasize, or even to exclude the information they don't want disclosed, we're losing the battle.

I think we're losing the battle in journalism against governments or any institution that wishes to provide information. ATIP is one of our potential assets in this battle to have disclosure. I just wish that there were a freer system of disclosure, something that is more easily accessible and that we are able to provide more of to the public, because the public is increasingly cynical and distrustful of media because of bad information that gets provided, and often on the basis of rumours and second-hand information.

These kinds of documents and records are in fact far more empirical and far more persuasive in their fashioning, in terms of helping to understand how decisions are made and how policies are formed. I just wish that we had more access to it, that it was far more facilitated and with a greater investment behind it, to make sure that happened in a timely way.

• (1655)

Ms. Iqra Khalid: Thank you.

[*Translation*]

The Chair: Thank you Mr. LaPointe and Ms. Khalid.

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

Mr. Mario Simard: Thank you very much.

Mr. LaPointe, you said something earlier that got me wondering. Over the past 12 years, in connection with your teaching, you assigned an exercise for your students, which was to submit applications, none of which ever received an answer within the specified 90 days

Is that right?

[*English*]

Mr. Kirk LaPointe: Yes. With the students I teach, we have an exercise where we provide about three or four of those requests in the course of the three hours that I'll teach them.

[*Translation*]

Mr. Mario Simard: I find the government's success rate over 12 years to be pretty slim. It's unbelievable.

Have you found that it's more difficult to get information from some departments than others? I don't want to put words in your mouth, but, to use the example of the fight against climate change, have you found that it's difficult to get information from the Department of Natural Resources on oil, for example? I could ask similar questions about immigration.

Based on your experience, are some departments more impenetrable than others?

[*English*]

Mr. Kirk LaPointe: Well, in my experience, the people who are in ATIP branches are there for one of two reasons. They're tremendous advocates for the public and disclosure, or the other side is that it's a bit of a weigh station for them to move on to something else.

The changeover in those branches is often very high, and as a result the continuity in those organizations can be lacking. I don't have any specific ones. Because I've dealt with a variety of agencies over a 30-year period, I can't attest to one being so well and one being so poor. I would say that one of the challenges we face is that we're often dealing six months later with a whole other batch of people than we were earlier when we were doing some research at my organization.

Mr. Michael Wernick: I don't know if the practice has changed, but I certainly remember the commissioner used to issue report cards giving people an A, B or F.

Mr. Kirk LaPointe: That's right.

Mr. Michael Wernick: That certainly created feedback. You did not want to get an F. You wanted to get a gentleman's C, at least, or something like that.

I think that is a role the commissioner can play—giving them that kind of evaluation and feedback. That would put pressure on agencies to perform better.

[*Translation*]

Mr. Mario Simard: I have a brief final question, Mr. LaPointe. I don't want to lead you into a polarizing area, but you mentioned the objective method you had tried to develop with your students. I would agree with you that it's impossible to be completely objective.

I am increasingly noticing a nascent confrontational approach between journalism and activism. I don't know whether you've been monitoring that, particularly on the CBC. I'd like to hear what you have to say about the kind of links that are being established between journalism and activism.

[English]

Mr. Kirk LaPointe: Again, it's a long answer, but I'll shorten it as much as I can, here.

The academy, in particular, now speaks of the activist journalist as an element of information provision. As long as you declare conflicts and let the audience know where you're coming from on a particular issue, you can, in fact, have a more activist role in society than the traditional journalist might have had. It's not my favourite ilk of the business, but I recognize it exists.

• (1700)

[Translation]

The Chair: Thank you, Mr. Simard.

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

Mr. Peter Julian: Thank you very much, Mr. Chair.

[English]

I'd like to come back to both of you. You're very compelling witnesses.

The United Kingdom's Freedom of Information Act identifies the proceedings of cabinet and its committees as falling under qualified exemptions. The public interest has to be considered in each case.

Should Canada follow a similar model, one that would allow for information to be disclosed if there is a public interest in having the proceedings of cabinet or committees publicized? How do you each feel about that?

Mr. Michael Wernick: I think it raises the question as to who decides what's in the public interest.

Mr. Kirk LaPointe: I would agree with that.

I think the only onus I would put... Legislation has, in the past, at least at the provincial level, compelled disclosure of matters that are a threat to public safety. In certain environmental cases and other cases, that becomes the default position. However, I agree with Mr. Wernick. That is one of the great quandaries of all time: Who decides?

Mr. Michael Wernick: Ultimately, in our system of government, you have to rely on the courts. If matters are arbitrated, the Federal Court can decide whether withholding a redaction was unreasonable. The Federal Court can weigh the various interests, including national security, and so on.

What's in the public interest is very subjective. There are other mechanisms for feedback on government, such as the judicial inquiry unfolding before our eyes this week, or people litigating and taking the government to court. All those officers of Parliament—Auditor General, Privacy Commissioner, Commissioner of Lobbying, accessibility commissioner, Integrity Commissioner—get access to various forms of government information and provide valuable feedback on how government is serving Canadians.

Mr. Peter Julian: I have a follow-up question for both of you. It's around the issue of records management.

Putting aside the issue of funding, what are other recommendations you might have in regard to records management and institu-

tional oversight of the whole access to information regime, so we can improve access to information for Canadians?

Mr. Michael Wernick: My whole argument is not to put aside the issue of funding, not to put aside the issue of training, not to put aside the issue of managing information in the digital age. How would we apply artificial intelligence and learning software to do document retrieval, and so on? It requires a considerable investment, not just in information technology, but also in people and training. I think it requires a feedback loop, so it doesn't automatically drift down towards the bottom of the priority pile of government or Parliament.

Mr. Kirk LaPointe: My concern is that too many horses have left too many stables when it comes to the way that information can now be transmitted.

I would say again that I don't think it's in the remit of this committee to take a look at wider public service and political aide behaviour, but I believe that there has to be some teeth put in somehow in order to make sure that the provision of information and the record-keeping of the important footprints of our history are not in the smart phones of political aides and public servants.

Mr. Michael Wernick: I think that is possible. You saw the U.K. example of Suella Braverman and using unauthorized software and so on.

You could hardwire into legislation a power by the chief information officer to sign off on the choice of software and devices used for government business. You could put in sanctions for communicating government business on unapproved software and devices. That's something the Americans do. You may recall the Hillary Clinton affair. That could be imported into Canadian law so that, if you are communicating off book on apps like Signal, WhatsApp, and so on, you would know that you were breaking the law.

• (1705)

The Chair: Thank you, Mr. Wernick.

Thank you, Mr. Julian.

Just ahead of our concluding here today, I've been advised by the clerk that the document Mr. Wernick sent in has been translated, and I believe it has been shared with the committee.

I want to thank you for that, Mr. Wernick.

Seeing no other discussion or questions, I just want to say thank you to both of our witnesses today, Mr. Wernick and Mr. LaPointe, for providing the committee with valuable information.

I want to thank committee members for their questions.

We are going to resume study of this issue on Wednesday of this week. We're just confirming our witnesses, but I want to say thank you to all of our committee members and particularly our witnesses for being here today.

Thank you, gentlemen, for being in front of the access to information, privacy and ethics committee.

Mr. Michael Wernick: Thank you for the invitation and for the flexibility of doing it online.

Thank you so much.

The Chair: Thank you.

Mr. Kirk LaPointe: It's been a real privilege.

The meeting is now adjourned.

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