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Chair: Mr. John Brassard



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• (1545)

[English]

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

Good afternoon, everyone.

I'm sorry for the delay. We had votes.

Welcome to meeting number 66 of the House of Commons Standing Committee on Access to Information, Privacy and Ethics.

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022. Therefore, members can attend in person in the room and remotely 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.

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 access to information and privacy systems.

I see that we have one witness online.

Madam Clerk, can you confirm that the audio testing has been done? It has. Thank you.

I have committee business to discuss before we get to the witnesses.

First of all, this will be the last meeting on the access to information system, so I'm expecting the drafting submissions. We already have the interim report. We've issued drafting instructions to the clerk and the analysts. If anybody meeting has drafting instructions after this, I would ask that you please submit them by 5 p.m. tomorrow to the clerk.

The other thing I want to discuss is with respect to the motions to summons two witnesses, Mr. Rosenberg and Madame Fournier. I will tell you that those meetings look like they are going to happen in a relatively short time. We had the motion that stated that it had to be prior to May 5, and I know that Madam Clerk has been working to make sure that happens.

The other thing, on the draft report for the ATIP, is that I have scheduled a minimum of three meetings for that to happen. I suspect that it's going to be a fairly substantial report, if the interim report is any indication, so we have three meetings for that.

After today, we have 13 meetings left. I want to keep that in mind, and I want the committee to keep that in mind as we discuss the schedule.

Of course, we have the commissioners, whom we need to invite to discuss the estimates. That will take one meeting.

I wanted to make sure you were aware of that at the beginning of this meeting.

I know we have two witnesses who are prepared to speak, and then we have a significant number of witnesses after this for the second hour.

Mr. Barrett, I'm going to go to you.

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

I have a motion I would like to move. I have just sent it to the clerk, but I want to make sure that colleagues across the way are either all signed on or all here when I put my motion forward.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): I'm sorry. I'm wondering if we've had the proper amount of notice for this motion in order for it to be moved.

The Chair: We're in committee business, so Mr. Barrett is moving the motion in committee business.

Mr. Michael Barrett: I'm going to move the motion, but it appears it might be a short one.

Ms. Iqra Khalid: Are we voting on it today?

Mr. Michael Barrett: Ideally, we will.

I move:

That the committee call the Lobbying Commissioner and the former Interim Ethics Commissioner to appear regarding the appointment of former Liberal minister of industry, Navdeep Bains, as chief corporate affairs officer at Rogers Communications.

To speak very briefly to it, because we have very limited time, my request would be that if the committee saw fit to adopt the motion, the chair find some time on the committee and House calendar when there are available resources, so that it doesn't impact the ongoing work of the committee.

I imagine we could dispense with it in pretty short order. The motion is self-explanatory. It's an item that's been of keen public interest, and just the two officers of Parliament would be able to speak to members' obligations post their employment as parliamentarians.

Thank you.

The Chair: I have Mr. Fergus first.

We're in committee business, so I'm going to rule the motion in order.

I will remind members of the committee that we have Mr. Beeby and Mr. Conacher, who are prepared to go here. I would like to get to the witnesses today, but of course I'll leave it up to the committee.

The motion is on the floor. Mr. Fergus is up on the motion.

Hon. Greg Fergus (Hull—Aylmer, Lib.): Mr. Chair, I was going to suggest that perhaps it's better that we come back and finish this at the tail end of the meeting. It's been introduced. It's in order. You've ruled that it's in order. It should be discussed, but our witnesses are here. There are some aspects of this motion that I know I want to speak to, but I don't want to interrupt the presence of our witnesses here.

Through you, Mr. Chair, I'm just going to ask if Mr. Barrett would be so kind as to delay this until about the last 15 minutes before the end of the meeting.

The Chair: Are you okay with that?

We have the witnesses scheduled until exactly 5:30 in the second hour. Is it the will of the committee to come back in the last 15 minutes, or not? I'm looking for consensus.

Go ahead, Mr. Barrett.

• (1550)

Mr. Michael Barrett: Thanks, Chair.

I want to make sure that everyone has their members at the table, so that if a vote comes to pass we're able to do that. I'd like to satisfy that first. That's important.

I guess if there's an interest in actually voting on the motion, with comments.... If the desire is not to bring it to a vote, and that's going to be the outcome 15 minutes before the end of the meeting or in the next couple of minutes when we move to the witness panel, then I would say let's just get to the voting. However, if there's an intention that this will come to a vote, I hope with the support of all members of the committee....

I guess that would be my question. In the spirit of collaboration, where this occurs on the meeting agenda with the least possible amount of disruption and where all members are at the table, then that would be my preference if I had my druthers. If we're just looking to.... If we're just going to fall off the end of the meeting, then we should dispose of it now, I suppose.

That would be my question back. If we think we can dispose of it at the end of the meeting, then I would support Mr. Fergus's suggestion and we can get to the witness panel.

The Chair: Thank you for that.

With the difficulty of understanding or knowing intentions, my preference would be to dispose of this now, if we can, in the next eight minutes that we have. If not, then perhaps at that point we can move on to the witnesses.

Ms. Khalid, go ahead, please.

Ms. Iqra Khalid: Thanks, Chair.

I just want to reiterate the point made by Mr. Fergus. I think it does need to be at the tail end of the committee meeting. Obviously, we want to have some time to look over the motion. It was table-dropped. We had no negotiations and there was no communication from the opposition parties with respect to their intentions and what they're thinking on this.

I would appreciate it if we could move this to the tail end.

The Chair: Are we good with doing that? I just need direction from the committee here. I'm prepared to move it to the end if we have to.

Are we good?

Some hon. members: Agreed.

The Chair: Okay. We'll take 15 minutes at the end of the meeting, which will shorten up the panel for the next hour but give us more time for the witnesses in this hour.

I have two witnesses here. First, Mr. Beeby is a journalist, and he is here as an individual.

Mr. Beeby, welcome back to the committee.

Mr. Conacher is the co-founder of Democracy Watch. He is here by video conference.

I'll start with Mr. Beeby.

Welcome back, sir. You have five minutes to address the committee. Please go ahead.

Mr. Dean Beeby (Journalist, As an Individual): Thank you, committee members, for inviting me back as a witness as you wrap up your report on access to information.

Almost three years ago, the then Treasury Board president announced a review of access to information. Monsieur Duclos said in June 2020 that the review would focus on three things—the legislative framework, proactive publication and the administration of access to information. The minister said the review would also “seek the views of Indigenous Peoples on aspects of access to information that are important to them”.

I delivered a lengthy brief to the Treasury Board's review team, proposing nine specific amendments to the legislation, because, after all, a review of the legislative framework was the very first thing on the minister's list.

Last week I learned that my brief was a complete waste of time. The new Treasury Board president told the committee, “My current priority is to improve [the] administration of the existing law.” She resisted calls for amendments to the Access to Information Act, claiming that Bill C-58 had already done the job four years ago.

I felt duped. Many others who submitted legislative reforms must also feel duped.

Madame Fortier also said last week that halfway through the three-year review, Treasury Board realized that it needed to engage with indigenous people, and so asked for their input. Apparently, the minister and her officials did not get that June 2020 memo from Monsieur Duclos about the need to seek the views of indigenous people.

Once again, a government with no stomach for transparency has ragged the puck for three years. Now they promise a so-called action plan sometime in year number four.

An activist I know talks about something she calls the “cycle of denial”. She works to stop violence against women. Every police agency and government asks that her group supply evidence about the problem. She diligently puts together briefs and reports. Time passes. Agencies and governments with new leaders then ask for fresh evidence. The cycle of denial starts again. Nothing gets done.

The Treasury Board’s report on access to information last fall is the 17th such review since 1982—not a particularly insightful one, by the way—so we have our own cycle of denial in the transparency world. Nothing is getting done. That’s no accident. Governments always lose their appetite for openness one day after elections are held.

Your committee’s work is an opportunity to push back against foot-dragging by bureaucrats and ministers, to give voice to Canadians who dare ask how government is spending their money, and to help backbenchers get answers to questions that are routinely dismissed in Parliament. I hope your report will put important legislative amendments back on the table. They are as important to reform as administrative changes.

I’ll be glad to take questions. Thank you.

• (1555)

The Chair: Thank you, Mr. Beeby. You’re well under time. I appreciate that. It will allow more time for questions.

Mr. Conacher, on the issue of access to information, you have five minutes to address the committee.

Thank you.

Mr. Duff Conacher (Co-Founder, Democracy Watch): Thank you very much, Chair and committee, for the invitation to appear before you again during your review of access to information.

I’m going to be brief. You have Democracy Watch’s submission, setting out 18 key changes. I won’t go through those changes again. They can be summarized very simply. Apply the law to all publicly funded and public-purpose institutions. Close all the secrecy loopholes. Require a duty to document. Create records of actions and decisions. Strengthen enforcement, including the independence of the commissioner, and empower the commissioner to actually impose penalties for violations of any of the provisions of the act.

The Chair: Mr. Conacher, I’m sorry to interrupt. Can I get you to throw your microphone down just a bit lower, if possible? The interpreters are having a difficult time.

There you go. Thank you.

Go ahead.

Mr. Duff Conacher: Thank you.

The Access to Information Act is misnamed. It really should be called the “Guide to Keeping Information Secret that the Public has a Right to Know Act” because that’s what it is. It is more loopholes than rules. As a result, the enforcement changes made by Bill C-58 can empower the commissioner only so much, because of the number of loopholes, exemptions and exclusions that can be claimed.

Stakeholders have made it very clear, including in the government’s own consultation report released in December 2021, and all stakeholders have called for 10 key changes. I’ve listed 18 more detailed, comprehensive changes in our submission, and they all need to be made in order to have an actual Access to Information Act.

Rather than the committee’s simply issuing a report—and I was happy to hear, in listening to—

[*Translation*]

The Chair: Sorry.

Mr. Garon, I know there’s no interpretation.

[*English*]

Mr. Conacher, I know you have the proper equipment on, but I’m going to ask if you can speak just a little more loudly, because we are having a problem with the interpretation. Maybe just move your microphone up a little, if you don’t mind.

There you go. That might work, and speak just a bit more loudly, sir.

I stopped your time. Go ahead.

Mr. Duff Conacher: That’s fine. Thank you.

As I was saying, instead of the committee’s issuing yet another report—and this committee has issued reports already on the access to information law—Democracy Watch is calling on committee members to take the report and the recommendations that the majority of committee members support and turn them into a co-sponsored private member’s bill.

Get things moving.

The Liberal government and cabinet have made it very clear that they’re not going to introduce a bill that will close any of the secrecy loopholes, strengthen enforcement or create penalties for violations, so I call on you, as legislators, to act as legislators and co-sponsor a bill together.

I hope you will also take on the issue of the secret lobbying and whistle-blower protection, which isn’t strong enough to allow whistle-blowers to report secret wrongdoing or secret investments that are allowed by cabinet ministers and top government officials.

Finally, I urge you all to reconsider and reverse your position on the changes to the Lobbyists' Code of Conduct that will allow for secret fundraising and secret campaigning by lobbyists, and secret gifts as well, worth hundreds of dollars, which will lead to secret problems and secret corruption.

Thank you.

• (1600)

The Chair: Thank you, Mr. Conacher.

I just want to keep the focus here. We're on access to information. The questions from committee members are going to be related to that.

We will start now with our first six-minute round. We're going to go to Mr. Kurek for six minutes, please.

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

Thank you, gentlemen, for appearing once again before the committee. I think your reappearance speaks to the fundamental importance of having an access to information regime that actually works and does what it's supposed to, and to the importance that has in our democratic system.

Because I've asked you the questions that I started with on every other witness, I won't get into how fundamental this is to democracy.

Mr. Beeby, I want to take a bit of a different angle here and go on to the human rights implications of having access to information.

I know you've done a fair amount of writing on human rights. Are there connections you would make between the access to information regime being effective, and needing to ensure the human rights of marginalized Canadians and also those around the world? I'm just curious if that is a connection you would make, and if you could expand on it.

Mr. Dean Beeby: People much smarter than I am—lawyers, for example—will tell you that, yes, it should be considered a human right, and there is UN language to promote that.

I am just a more practical person. I just think that citizens in this country need to help hold their governments to account and have to know what their government is up to. There are many avenues for finding out what government is up to, but the unique thing about access to information is that it gives a personalized avenue for individuals to ask questions of their government and to demand accountability of their government. It's a pillar of democracy in that way.

I don't know if you would characterize that as a human right—I think I would—but it's really part of our democracy, and the way we have allowed this dysfunction to develop really undermines our democracy.

Mr. Damien Kurek: I appreciate that.

I'll get to asking you some questions about the minister's appearance, which I'm sure you watched last week.

I'd ask maybe about actionable results. I've spoken with individuals who are involved in the access to information system currently, as we've heard at committee, and some have great concern about what's going on. There seem to be a lack of leadership and a lack of metrics that would define even what "success" is in terms of being able to close files, in terms of accountability, in terms of being able to ensure that the things are even done.

Just to reference a bit of what the minister talked about, when she referenced the number of cases that were closed within a specific period of time, I couldn't help but laugh, because it was not my experience, having filed quite a few ATIPs when trying to look for answers for constituents and on other important issues that face Canadians.

In terms of how the ATIP offices within departments and agencies work, what would you recommend be done so that we can see some actual results?

Mr. Dean Beeby: The statistics that we need to assess the performance of individual departments are collected by Treasury Board and the departments themselves. They're already suspect. It's also a very poor data collection system methodology.

Many of the statistics that we read, such as the one the minister cited last week, are not reliable and are in fact misleading. We need to have metrics that are independent and reliable to assess the performance of individual departments. As it is, it's masked.

The minister said last week that 70% of requests are answered within the legislated timelines. That is very misleading, because legislated timelines include these crazy extensions, which often last for a year or more.

Yes, the system looks somewhat good at 70% until you consider that it includes all those enormously long timelines to answer those requests. The minister gave us a good example of misleading statistics that make it look like the system is working, when in fact it's not.

• (1605)

Mr. Damien Kurek: You kind of answered what was going to be my next question, so maybe I'll take it in a bit of a different direction—technology.

I know that access to information is incredibly complex, because you're dealing with paper documents; you're dealing with, in some cases, cabinet confidences; you're dealing with solicitor-client privilege. There's a whole host of things. One could debate each of those things individually. However, I'm just curious as to whether you would recommend guidance to the committee on how to approach the use of technology in terms of being able to improve access to information for Canadians.

Mr. Dean Beeby: You may be surprised to hear this, but I'm for AI. I think AI has a role in this process.

I mean AI that's responsible, AI that can be audited so that we know what goes on in the black box of AI we use for this system. I don't think we should be shy about looking at that kind of new technology to help streamline the processing of requests. I think it could do a great service, just thinning out these grand volumes of emails, for example. Emails are a frequent target of requests, and I think AI would be one way to use technology.

The Chair: Thank you, Mr. Kurek and Mr. Beeby.

Ms. Khalid, you have six minutes. Go ahead, please.

Ms. Iqra Khalid: Thank you very much, Mr. Chair. I'll start with Mr. Beeby.

Do you believe that Canada is a democratic state?

Mr. Dean Beeby: Do I believe that Canada is a democratic state? Yes.

Ms. Iqra Khalid: Do you think that our access to information system, as it currently stands, does provide access?

In your opening remarks, it sounded a bit like you were of the opinion that nobody had access to any information on what the government is doing right now. Do you think that Canadians have access currently?

Mr. Dean Beeby: Not adequately, no. I've been around since the act came into force in 1983, and it worked relatively well then—

Ms. Iqra Khalid: I'm so sorry, sir. I'm just asking if you think that Canadians have access currently to what government is undertaking right now? Is the government transparent in certain ways right now?

Mr. Dean Beeby: Is the government transparent in certain ways right now? I'd have to have more detail. I don't know what you mean by "in certain ways".

Ms. Iqra Khalid: The current ATIP system.... I know that Mr. Kurek has put in over, I think, 300 requests—was that it, sir? He's put in more than 300 requests for information from the government on various programs. Those are in the works.

Do you think Canadians are able to request information and to receive that information currently with the government right now?

Mr. Dean Beeby: Do you want a yes or a no?

Ms. Iqra Khalid: Yes, sir.

Mr. Dean Beeby: No.

Ms. Iqra Khalid: Why is that?

Mr. Dean Beeby: Well, as I tried to describe to you in my last appearance, the system is broken. It does not do what it was intended to do when Parliament passed it in 1982. It has been getting worse over the years. We are now at a point where journalists, for example, are abandoning it because it's no longer useful.

Ms. Iqra Khalid: You're saying that if a journalist makes a request, they will not receive the information they are requesting.

Mr. Dean Beeby: Well, again, are you asking me for a yes or a no?

Ms. Iqra Khalid: I'm sorry. I'm just trying to differentiate between whether it's, "No, you cannot have access to this information," or, "You can have access to this information, and there's a de-

lay because of some systemic barriers," such as labour issues and such as digitalization.

I'm just trying to differentiate between whether you think this is a deliberate attempt to not provide information to Canadians, or whether it is a systemic issue we can try to resolve with this government. In your opening remarks, you made a reference to corruption, and I just want to clarify whether you think the government is corrupt or the system is broken.

● (1610)

Mr. Dean Beeby: As a point of accuracy, I didn't use the word "corruption" in my opening remarks.

Ms. Iqra Khalid: Okay, well, I'm just trying to understand. You submitted some recommendations that were, in your opinion, not accepted in what the reform process for access to information is going to look like. Perhaps you can give the top recommendation that you think is going to fix this broken system, in your opinion.

Mr. Dean Beeby: Okay, well, last time I was here, I gave you four. If you want the number one that I gave last time, it was to reduce cabinet secrecy. It won't fix the system, but it will go a long way toward that goal.

Ms. Iqra Khalid: Thank you.

Just turning to our other witness, who is here virtually, you used the word "secret" many times. You used the word "secret" to refer to a number of things. You used "secret corruption". Have you raised this issue in previous governments? What has been your track record to ensure that there is transparency within government, and how is "secret" involved in perhaps spreading disinformation as well by members of the Canadian community?

Mr. Duff Conacher: Well, I think this is the seventh or eighth time I have appeared on access to information reforms specifically since 1993. In terms of how that relates to disinformation, other than the secrecy of online posts and who's actually behind them, it is not something we really work on specifically in terms of access to information. Secrecy and misinformation are not really the main concern with the act. The main concern with the act is that the information that's released is the information the government wants released, not the information that the public has a right to know or that the public requests.

Ms. Iqra Khalid: With respect to the information that is released or not released, that is held up or not held up, that is secret or not so secret, I'm wondering who controls the quality of that information. Is it information that you feel is correct or incorrect, accurate or not accurate? What does disinformation have to do with access to information? I ask this because I think it's a really legitimate question in terms of making sure Canadians have access to what is happening in our government. However, when we're dealing with significant amounts of disinformation—

The Chair: Ms. Khalid, we're at six minutes, so if you could—

Ms. Iqra Khalid: Thank you.

If the witness can....

The Chair: Who are you directing your question to?

Ms. Iqra Khalid: Mr. Beeby.

The Chair: Mr. Beeby, please give a very quick answer if you can, sir.

Mr. Dean Beeby: I'm sorry, but I can't do a quick answer.

The Chair: Okay. Thank you.

[*Translation*]

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

Mr. Jean-Denis Garon (Mirabel, BQ): Thank you, Mr. Chair.

Mr. Beeby, do you think that Canada is a democratic state?

[*English*]

Mr. Dean Beeby: Yes.

[*Translation*]

Mr. Jean-Denis Garon: Has it happened in this democratic state that you have had to wait up to seven years in order to gain access to briefing notes that you requested under the Access to Information Act?

[*English*]

Mr. Dean Beeby: I have waited more than seven years, yes.

[*Translation*]

Mr. Jean-Denis Garon: Do you think that a democratic state should be proud of this kind of turnaround time?

Mr. Dean Beeby: No.

Mr. Jean-Denis Garon: As a journalist, do you think it is reasonable to suspect that sometimes obstruction techniques are used intentionally within the state when it comes to journalists accessing information?

[*English*]

Mr. Dean Beeby: There are certainly intentional roadblocks put up. I don't know. I don't think it's common. I think the problem has more to do with administrative failures—let me put it that way.

• (1615)

[*Translation*]

Mr. Jean-Denis Garon: Thank you, Mr. Beeby.

Mr. Conacher, I read your recommendations. One of them is to impose sanctions when obstruction is intentional.

Before we go on to the subject of sanctions, I would like to get some more information and ask you to give the committee some examples of obstruction.

[*English*]

Mr. Duff Conacher: Thank you.

[*Translation*]

With your permission, I will answer the question in English because my French is rusty.

[*English*]

As I just said, the public gets access to the information that the government wants the public to get access to. This government has been focused on that in saying that open government is the same as open data. It has been making lots of changes to the open data system, but that system is to make public the information that the government wants the public to see.

Open government means the public has access to information that the government doesn't want the public to see. That system is broken, as has been documented in detail. There are deliberate obstructions. I can give you one example. I requested information and communications concerning the appointment of the current Commissioner of Lobbying, and two and a half years later the Privy Council Office, which was involved in the appointment, said there were no records. No one communicated with anyone within government, but somehow they appointed the Commissioner of Lobbying. After two and a half years they denied that there were any records they could find.

They don't want the public to see those records, because it would probably show something wrong with how that commissioner was appointed. I can't get access to those documents at all. Apparently they do not exist. The investigation took two and a half years, and the Privy Council Office delayed and delayed through that entire process, and finally said there were no documents at all. That's not a system that's working in any democratic way.

[*Translation*]

Mr. Jean-Denis Garon: In your recommendations, you propose sanctions that could be imposed when the obstruction is intentional.

On a practical basis, the committee is wondering if it is easy enough to prove obstruction. I would like to know what kinds of sanctions you have in mind and how harsh they would be.

[*English*]

Mr. Duff Conacher: If you close all the excessive secrecy loopholes and you empower the commissioner and give the resources to the commissioner so they can be doing timely investigations, then the abuse of the loopholes will be much more difficult, because they'll be much more restricted. Delays will not be tolerated, because the commissioner will be right on top of them. In terms of the penalties, they are generally called administrative monetary penalties, AMPs, and the lobbying commissioner is called to impose them on lobbyists, as well. They are a common method of having fines, on a sliding scale depending on the significance of the violation, that are imposed on people who are committing the violation.

It is always determinable who has decided something in terms of refusing to disclose a document. The commissioner would investigate, find who was responsible, and then fine them with an AMP.

[Translation]

Mr. Jean-Denis Garon: Mr. Beeby, a little while ago you spoke of seemingly misleading statistics that had been provided by the department, the same department that told us that most requests are dealt within the time frames set out in the act. Obviously, we are able to see for ourselves if those time frames are indeed the ones that have been met and if they are acceptable or not.

Do you think it would be useful to have a public registry of access to information requests and of the turnaround times for those requests? This is information that should be made public, regardless.

Would that be a good idea and should we look at that possibility?

[English]

Mr. Dean Beeby: Yes, I do. I think the system could be digitized and made more available for statistical analysis.

If every department had to record every step of the progress of an access to information request in a system that could be accessed by statisticians, I think we would have a much clearer picture and a much more accurate picture of what's going on. Right now, it's balkanized, and each department is responsible for its own stats.

• (1620)

[Translation]

The Chair: Thank you, Mr. Garon and Mr. Beeby.

[English]

Mr. Green, you have six minutes. Go ahead.

Mr. Matthew Green (Hamilton Centre, NDP): Thank you very much.

Thank you to the witnesses. You've been here on many occasions on this particular topic. We're grateful to have you back today.

My opening round is for Mr. Beeby.

In an article entitled “FOI's Whack-a-Mole”, you stated that the Information Commissioner's “new order-making power is bogus”. Can you expand on that?

Mr. Dean Beeby: Yes, I'd love to.

She was given so-called order-making power in Bill C-58 in 2019, but it wasn't what she had argued for. It was a watered-down version, so her orders do not have the same effect as a Federal Court judge's order.

A Federal Court judge's order cannot be ignored. There are sanctions that will be applied to people who ignore that order. In her case, there are no sanctions. It's simply that her order goes out, and it can be ignored or the institution can go to court. It has no power, impact or authority.

She argued against this watered-down power when Bill C-58 was being debated, but she didn't get it, so we now have this really weak system.

Mr. Matthew Green: Is it your recommendation that the Information Commissioner have more stringent order-making abilities, on par with a judicial equivalent?

Mr. Dean Beeby: They should be on par with those of a Federal Court judge, yes. That will bring into play sanctions.

Mr. Matthew Green: What would you contemplate as sanctions?

Mr. Dean Beeby: To ignore a Federal Court order is to risk being thrown in jail. There is a range of sanctions—fines, whatever—but the thing is that they're taken seriously, whereas the Information Commissioner's orders can be ignored without consequence.

Mr. Matthew Green: In the same article, you describe the ongoing case in which PSPC was ordered to release a file requested under access to information and where the department argued that it did not have control of the file because it pertained to a subcontractor. The Information Commissioner ordered PSPC to deliver the file. PSPC told her they would not be implementing the order and went to a Federal Court with an application asking the judge to overturn it.

Can you describe the impact of departments declining to abide by an order and requesting that a Federal Court judge review the matter?

Mr. Dean Beeby: Well, it undermines the authority of the Information Commissioner absolutely, and when they go to court to challenge her order, that judge can hear the case from the very beginning. The judge isn't looking specifically at her decision-making. The judge is looking at the whole case *de novo*—that's the legal term.

That's not order-making power. That's some reduced version of order-making power. It gives departments free rein to snub their nose.

Mr. Matthew Green: That's a problem, you would agree—a considerable problem.

Mr. Dean Beeby: Absolutely.

Mr. Matthew Green: Do you believe that the Office of the Information Commissioner should be tracking non-compliance and reporting back to Parliament in regard to the commissioner's orders?

Mr. Dean Beeby: It should. The commissioner does not have that power in the act as it stands now, but she should be empowered to collect statistics and report to Parliament on the recalcitrant departments that are ignoring her orders.

Mr. Matthew Green: Do you have any other recommendations regarding the Information Commissioner's order-making power, to improve compliance?

Mr. Dean Beeby: No, nothing significant. It would be a major leap forward if she got the power that a Federal Court judge has.

Mr. Matthew Green: In your blog post regarding the Treasury Board's review of access to information, you stated that the Treasury Board is not even trying to connect with ordinary citizens, especially not those who are the access to information users they claim they want to “engage”. Can you expand on this?

Mr. Dean Beeby: Well, I don't know if you've read the report that came out last December from Treasury Board, but it's almost indecipherable. It's written in a bureaucratese that's not meant to connect with ordinary Canadians. I think it's full of obfuscation and dodges.

Mr. Matthew Green: I believe you said that it dodges any hint of concrete reform and calls for more study. This is pertaining to the report, I believe. You wrote about that in December. What was your takeaway from that report?

Mr. Dean Beeby: It was that they had not lived up to their responsibilities to listen to users and others who are telling them what's wrong with the system and to use the solutions that were offered to them.

The minister said last week that it was all a misunderstanding, that they had never intended to put solutions in place in that report. I didn't understand that until she said that last week.

● (1625)

Mr. Matthew Green: I think that might have been in my line of questioning when I was quite adamant that the application of amendments to the legislation be used to help actually support the course of the work.

In your opinion, you would have heard her, then, referring to the previous legislation as being the solution. Just so that we're 100% clear here today, you did not agree that the last iteration of this solved the problems we were setting out to solve.

Mr. Dean Beeby: Yes, she seemed to say Bill C-58 was the big improvement. Bill C-58 had some improvements. Order-making power was a half improvement. It also had some restrictions. It introduced for the first time the problem of frivolous and vexatious requests. Certain requests can be ignored. It wasn't all in favour of the user. Some of it was actually against the user.

Mr. Matthew Green: In your opinion, it went—

The Chair: I'm sorry, Mr. Green.

In doing the math here, I think we have time for a second round of five, five, two and a half, two and a half.

[Translation]

We will start with Mr. Gourde.

[English]

Also, we started 15 minutes late, but I've been assured by the clerk that we are able to make that time up with an extra 15 minutes.

[Translation]

Mr. Gourde, over to you.

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

I would like to thank our two witnesses. I will quite probably ask them the same question, starting with Mr. Beeby.

Canadians are concerned about access to information. All the witnesses that we have heard have spoken at length about the issue. They also have concerns about what will come out of the work that our committee is doing today to improve access to information.

Mr. Beeby, what is your greatest concern, and what would be your best recommendations so that Canadians can once again have confidence in access to information?

[English]

Mr. Dean Beeby: Well, as I said before, we need to reduce the brick wall around cabinet secrecy.

We need to reduce delays. There are things you can do legislatively that would help reduce delays. Delays are probably the biggest problem.

There's a section in the act, section 21, that refers to advice. It's a grand loophole. It's a Mack truck-sized loophole for government to withhold anything that it construes as advice. That needs to be narrowed quite a lot.

I also think we need to put a time limit on the Information Commissioner's investigations. They take too long. They don't allow users to go to court if she's taking years to solve cases. I've had personal experience of her taking years to resolve my request.

Those are four things that I think would go a long way to solving problems.

[Translation]

Mr. Jacques Gourde: And what is your take, Mr. Conacher?

[English]

Mr. Duff Conacher: Well, I mentioned them before.

Require a duty to document all actions and decisions. Close all of the secrecy loopholes that allow for excessive secrecy. I agree with Mr. Beeby with regard to the advice and cabinet confidence. That is one of the most abused.

In terms of the commissioner's powers, I mentioned penalties, but also, the commissioner should have the power to audit the information management system of a government institution and make recommendations in terms of cleaning it up so that records are kept in a way that can be accessed easily. That would help a lot with the delays and would spur changes in a lot of institutions that simply are not managing records in ways that can be retrieved so that requests can be fulfilled in any timely manner.

I would emphasize those—but again, there are the penalties. People will react in government when there's a possibility that they could be personally penalized for failing to comply with this act, as with any other law. There are lots of penalties in place for parking illegally, for speeding. You actually have a better chance of paying a higher fine for parking illegally anywhere in Canada than the penalty that would be paid by any public servant for denying the public's right to know. It is a quasi-constitutional right, so the penalty should be quite high for violating that right.

[Translation]

Mr. Jacques Gourde: Thank you for your answers.

I have no further questions, Mr. Chair.

● (1630)

The Chair: Thank you, Mr. Gourde.

We now go over to Mr. Bains.

[English]

Mr. Bains, you have five minutes, sir. Go ahead, please.

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

My first question is for Mr. Beeby. The President of the Treasury Board and officials have said that their focus is on administrative reform. The Information Commissioner has stated that legislative reform would increase the strain on the system at this time. Do you agree that administrative reform is the appropriate avenue at this time to improve the system?

Mr. Dean Beeby: Yes.

I don't agree with the commissioner. I think legislative reform would reduce the strain on the system and would add clarity.

Mr. Parm Bains: Okay. A recent report by The Globe and Mail found that B.C.'s access to information requests from media have dropped dramatically, by up to 80%, after they introduced their \$10 fee per request. Do you believe that the \$5 flat fee for requests introduced by C-58 is a step in the right direction?

Mr. Dean Beeby: The \$5 fee was there all along. It was there from 1983, so the application fee did not change.

Mr. Parm Bains: Okay. Officials last week discussed the complexity of declassification in government, inviting the committee to provide direction on declassification by looking at international peers. Are there any particular countries that you believe it would be helpful for Canada to review?

Mr. Dean Beeby: Is that for me?

Mr. Parm Bains: Yes.

Mr. Dean Beeby: I think we have to keep an eye on Britain, New Zealand and Australia. They are the ones that are directly comparable, but I don't like to get into comparisons, because it's just a rabbit hole.

We know the problems that exist in Canada, and we have heard solutions for more than 40 years now. I don't think we need to go abroad to find out what's wrong and how to fix it. It's always good to keep an eye on your neighbours, but we don't have to do that. That's just another long study that we don't need.

Mr. Parm Bains: Okay. Again to you, you've just said that much of the government's information is balkanized. In other words, the government has no way of tracking what has already been released by a different department. What suggestions would you offer to streamline the process?

Mr. Dean Beeby: I think of a central information system. To be fair, this government is working on such a system, so that you can file at one portal online, but I think that portal needs to be enhanced so that it can also produce reliable statistics. That will go a long way towards giving us a clearer picture, a true picture of how the system is breaking down.

Mr. Parm Bains: Finally, during his appearance on this study, former clerk Michael Wernick stated, “[A] duty to document is one of those things that sound good if you say them fast enough, but

would not work in practice.” He said, “It could have harmful and unintended consequences.”

What are your thoughts on this?

Mr. Dean Beeby: Are you asking me again?

Mr. Parm Bains: Yes, that's for you again.

Mr. Dean Beeby: With respect, I think that's better asked of Mr. Conacher. I don't know Mr. Wernick's thinking on that, and it's not one of my recommendations.

Mr. Parm Bains: Mr. Conacher, do you want to add?

Mr. Duff Conacher: I don't see any problem at all with documenting decisions and actions. I don't see the danger either. There will always be exemptions for certain records to protect national security, police investigations, truly proprietary information of businesses and relations with other governments. Those exemptions will apply to the release of those records. However, in terms of actually documenting how decisions and actions occur in government, the public simply has a right to know how actions and decisions are made. It's the only way to determine whether decisions and actions were made to protect the public interest or to protect a private interest because of some unethical—let alone corrupt—reason.

Mr. Parm Bains: Thank you.

Thank you, Mr. Chair. Those are all the questions I have.

The Chair: Thank you, Mr. Bains.

[Translation]

Mr. Garon, you have two and a half minutes to ask your questions.

Mr. Jean-Denis Garon: Thank you.

Mr. Beeby, it is obvious that changes have to be made to our legislation. However, it seems that the message we are getting from the government is that any problem with access to information and turnaround times is always due to a lack of resources.

Over the past few years, have you seen any real efforts on the government's part to increase the resources given to the Information Commissioner of Canada in order to solve the issues?

• (1635)

[English]

Mr. Dean Beeby: No, I haven't. The commissioner in particular has to go cap in hand every year, begging for more money because of the massive avalanche of complaints she gets each year.

The government is not being proactive about that by any stretch, and the Information Commissioner continually pleads poverty. She comes here before this committee and says the same thing every time: She just doesn't have the resources.

[Translation]

Mr. Jean-Denis Garon: When we look at Bill C-58, which was tabled in 2017, we can see that the issue of lack of resources was already highlighted back then. That continues to this day.

When a government fails year after year to provide sufficient resources to the organization that should allow Canadians access to information, should well-informed citizens be interpreting that as proof of intent?

[English]

Mr. Dean Beeby: Well, it's hard to provide hard evidence for motivation, but it's not difficult to understand why a government would think it has more important things to do than answer access to information requests.

I just don't see how the incentive would be there for resources to be provided. The government that provides those resources is only going to get a lot more access to information requests, and it's going to get a lot more embarrassing stories about itself, so the system is self-sabotaging, almost.

[Translation]

Mr. Jean-Denis Garon: Very quickly, Mr. Beeby.

The government has awarded hundreds of millions of dollars' worth in contracts to certain firms, oftentimes through irregular calls for tender. The McKinsey firm and others come to mind.

Do you know of any such initiatives that sought to help improve access to information?

Were these consultants used to improve access to information?

[English]

Mr. Dean Beeby: The Treasury Board has initiatives of some kind to improve the system. I'm not the best to tell you about them.

My experience over many years is that there's a lot of heat and not much light coming out of Treasury Board. I think there are people of goodwill in Treasury Board who are looking for ways to make things work, but without the support of their bosses, I don't think things are going to get better.

The Chair: Thank you, Mr. Beeby.

Merci, Mr. Garon.

Mr. Green, you have the final intervention on this round for two and a half minutes, sir. Go ahead, please.

Mr. Matthew Green: The Treasury Board also published the results of the "Evaluation of Proactive Publication under the Access to Information Act". It indicated:

Currently there is no data on the public's use of proactive publications, so the degree to which proactively published information meets user needs or whether government accountability is strengthened by proactive publication is unclear.

That's what they've stated.

In your view, what measures should be put in place to better monitor proactive disclosure under part 2 of the Access to Information Act?

Mr. Dean Beeby: I should say first of all that I think proactive publication is a red herring. I think it distracts our attention from the real problem, which is that the first part of the act empowers citizens to pull information from government and the second part talks about government pushing information at citizens. I think those are two very different things.

However, if you're going to do proactive publication, yes, you should ask the question: Is anybody looking at this stuff? There are mountains of proactive material out there that I am convinced no one is looking at. Can you imagine the amount of resources and the bureaucracy dedicated to this proactive—

Mr. Matthew Green: Is it a difference between open government and open data?

Mr. Dean Beeby: Those are terms I don't...

Mr. Matthew Green: That's fair. I'll go on to my next thing.

Given that the report has been released.... I believe you had in your initial engagement 11 points with solutions that didn't seem to be reflected at all in any of the documents, and we'll get to that in a second, but following the release of the review, do you have any new recommendations, given what you've seen of where they are now?

Mr. Dean Beeby: Yes. I probably have about 200 of them, if we can spare the time.

• (1640)

Mr. Matthew Green: I don't want to get you caught in the cycle of silence, as you've talked about, but for the interest of this committee, as you know, your recommendations can become part of our report back. Notwithstanding this notion of doing a PMB, which in my opinion would go absolutely nowhere in terms of the legislative timelines, we can provide recommendations.

Would you be willing, upon reflection on that review, given your 11 solutions, to add any more that you might see fit, in writing?

Mr. Dean Beeby: Yes, I would.

Mr. Matthew Green: Okay.

Mr. Conacher, would you provide any new information, in writing, subsequent to the report? Would you be willing to do that?

Mr. Duff Conacher: The 18 recommendations are the 18 recommendations. If one party leader gave a PMB slot to this PMB, it would be right at the top of the agenda. In a minority Parliament, all the opposition parties could pass it. The Senate would presumably—

Mr. Matthew Green: I would love those ideal circumstances. It's just not, unfortunately, how it works.

Thank you for being here today. I appreciate you all for taking the time.

Thanks.

The Chair: Thank you, Mr. Green.

To the witnesses, thank you for being here. Just as a reminder, if you do want to provide documents to the committee, I would recommend that you do that probably no later than this week. The analysts are preparing the final report, which we will be dealing with probably in the next couple of weeks or so. If you can get something in by this week, I would appreciate that.

On behalf of the committee, Mr. Beeby and Mr. Conacher, I want to thank you for coming back. Both interventions that you've made at this committee on this particular study have been extremely valuable to the committee. I want to say thank you on behalf of the committee and on behalf of Canadians as well. Thank you.

We'll take roughly three minutes in order to get the next witnesses ready. By my math, presuming the four witnesses go the full 20 minutes on their opening statements, we may be able to get one full round in before we get to those last 15 minutes. I'm just advising the committee of that right now.

We'll suspend for a couple of minutes.

Thank you.

• (1640) _____ (Pause) _____

• (1645)

The Chair: Okay, I'm going to start the second hour of today's meeting.

I want to welcome, from the Canadian Security Intelligence Service, Dr. Nicole Giles, deputy director and senior assistant deputy minister, policy and strategic partnerships; and from the Department of Citizenship and Immigration, Sylvain Beauchamp, director general, client experience; and Tracy Perry, acting director general, integrated corporate business, corporate services.

Anne Bank from the Department of National Defence is here. She's the executive director, director access to information and privacy. From Library and Archives of Canada, we have Kristina Lillico, director general, access to information and privacy.

As I mentioned to the committee, hopefully our witnesses can keep it below five minutes—they have up to five minutes—and then we're going to get through one round of questioning and continue on with the business we started this meeting with.

I'm going to go first to Dr. Giles.

Please go ahead.

Dr. Nicole Giles (Deputy Director and Senior Assistant Deputy Minister, Policy and Strategic Partnerships, Canadian Security Intelligence Service): Thank you very much, Mr. Chair.

Good afternoon, Mr. Chair and members of the committee. My name is Nicole Giles, and I am deputy director and senior assistant deputy minister for policy and strategic partnerships at the Canadian Security Intelligence Service. Responsibility for disclosure, access to information and privacy requests falls within my portfolio.

I'd first of all like to thank the committee for inviting CSIS to be part of this important study. Transparency and accountability are core values for CSIS, and we view strong access to information and privacy systems as absolutely foundational.

[*Translation*]

I'll begin with a brief word on the mandate of CSIS to help situate our activities. Our mandate and authorities are set out in the Canadian Security Intelligence Service Act, which guides everything we do.

First and foremost, we investigate threats to the security of Canada, which are: espionage and sabotage, foreign interference, terrorism and extremism, and subversion.

[*English*]

We provide information and advice to the Government of Canada on these threats and may take measures to reduce threats to the security of Canada.

CSIS also provides security assessments on individuals who require access to classified information or sensitive files within the Government of Canada, as well as security advice relevant to the exercise of the Citizenship Act and the Immigration and Refugee Protection Act.

Despite being an organization that must keep secrets, we are not a secret organization. As a national security agency, many of our activities do need to be protected from disclosure. The release of classified information can reveal sensitive sources, methodologies and techniques, which can be detrimental and even work counter to CSIS's efforts to protect Canada and Canadians from national security threats. It can jeopardize the integrity of our operations, pose risks to the physical safety and security of our human sources and our employees, and hinder our ability to protect Canadians.

That is why CSIS maintains robust mechanisms such as oversight and review, and has policies and procedures to safeguard information. This includes necessary segregation, safe handling, retention and destruction practices. CSIS's stringent policies are supported by regular training as well as regular review and compliance.

While we need to keep secrets and protect information, we also need to be transparent. This poses a special challenge for CSIS. The public's right to access information is balanced against the legitimate need to protect sensitive information and to maintain the effective functioning of government. In administering access to information and privacy requests, CSIS therefore must conduct line-by-line reviews to ensure that we release as much information as possible, while protecting information that could be detrimental if disclosed.

As you can imagine, line-by-line reviews take time. Despite this, CSIS has a strong history of providing high-quality and timely responses to requests. For example, in 2021-22, CSIS's on-time compliance rates for Privacy Act and access to information requests was 94%. Our access to information on-time compliance rate has stood in the mid to high nineties over the past decade, with the exception of 2020-21, when it dropped to 81% due to COVID restrictions.

For this and other reasons, in 2019, CSIS received the Information Commissioner's award for excellence in ATIP administration.

In addition, CSIS regularly and proactively publishes information, including summaries of recent access to information releases, to allow the public to access previously released records.

Access to information and privacy requests are just one way that CSIS communicates information to Canadians. Over the past several years, we have taken concrete steps to increase our transparency and engagement with Canadians through various resources, including our annual public report; threat publications in over seven languages; speeches; briefings to engage with provinces and territories, indigenous groups, the business sector and academic and community organizations; and a budding social media presence.

● (1650)

[Translation]

All these transparency efforts aim to better inform our population, recognizing that all Canadians have a role to play in protecting our national security.

[English]

CSIS constantly seeks to strike the right balance between the promotion of transparency and accountability in government institutions and the protection of national security interests. As an intelligence agency, CSIS faces unique disclosure challenges, which we strive to meet in the very best interests of Canadians.

[Translation]

I would now be happy to take your questions.

Thank you.

[English]

The Chair: Thank you, Dr. Giles.

Next we are going to Ms. Perry for up to five minutes.

Go ahead, please.

Ms. Tracy Perry (Acting Director General, Integrated Corporate Business, Corporate Services, Department of Citizenship and Immigration): Good afternoon, Mr. Chair and honourable members of the committee.

[Translation]

I would like to thank you for the invitation today and begin by acknowledging that we are gathered on traditional unceded Algonquin Anishinaabe territory.

I am the acting director general of the integrated corporate business branch, and I oversee the team responsible for the access to in-

formation and privacy, or ATIP, program within IRCC. I'm joined today by my colleague, Sylvain Beauchamp, the director general for the client experience branch.

[English]

With over 204,000 ATIP requests received in 2021-22, IRCC is markedly the most accessed federal government institution. That year, IRCC received nearly 80% of all access to information requests and 28% of all privacy requests submitted to federal government institutions.

IRCC's ATIP volumes have been steadily increasing year over year, with daily requests now averaging more than 800 per day. This poses unique processing challenges that, in turn, affect the department's compliance rates.

[Translation]

In February 2020, Canada's Information Commissioner, Caroline Maynard, initiated a systemic investigation to better understand and address the surge of access for information requests and complaints lodged against IRCC. She also examined departmental strategies employed to address the root cause of the issue, namely the need for timely, improved communication with clients on their immigration applications.

[English]

The Information Commissioner called on IRCC to be bold and ambitious in its plans to transform the way it delivers information to its clients, saying the department could become a leader in providing relevant information to clients.

In response, IRCC has undertaken multiple initiatives to modernize its ATIP program and to address the Information Commissioner's recommendations. Specifically, we have been focusing on creating initiatives that improve the client experience through the availability of client immigration information, creating a comprehensive workforce management strategy whereby employees have access to enhanced training and development opportunities, and implementing new tools, technologies and processes.

As the committee has heard in previous appearances, IRCC is facing similar challenges to other government departments with respect to finding qualified ATIP senior staff.

The ATIP program is focusing on its people by working to stabilize senior staff, to train and promote staff from within to retain expertise within the competitive ATIP community, and to participate with the TBS ATIP community development office initiative.

• (1655)

[Translation]

And we are on a positive path forward. Within the past two years, we have moved from an ATIP program led by a single director and three managers to an organization that now has three directors supported by nine managers. ATIP is also a regular topic of conversation at departmental management committees, because IRCC believes access to information and privacy is a fundamental pillar of our democracy.

[English]

As we focus on our tools and technologies, we recognize that we can no longer rely on an antiquated system to process ATIP requests. We are incorporating new tools to create efficiencies in the processing of ATIP requests, including the use of robotic process automation in various ATIP processes.

RPA frees up staff from doing repetitive data entry tasks and allows them to instead complete decision-based work. We are also working collaboratively with the Treasury Board Secretariat to onboard to the TBS ATIP online request service portal, and we are actively working to acquire a new software for processing our ATIP requests.

Gains from these initiatives will take time before they can be measurably felt. However, by addressing the root causes driving request volumes and by streamlining our processes, IRCC will be in a better position to meet legislative timelines and to uphold the values of client service excellence, transparency and privacy protection.

[Translation]

Mr. Chair, we would like to thank you again for the invitation to provide IRCC's view on this important subject and for welcoming us here today. My colleague and I look forward to any questions the members of the committee may have.

Thank you.

The Chair: Thank you, Ms. Perry. You did not use all your speaking time.

[English]

We like that, being under time.

Next we have Anne Bank, who is from the Department of National Defence.

Ms. Bank, you have up to five minutes to address the committee. Thank you.

Ms. Anne Bank (Executive Director, Directorate Access to Information and Privacy, Department of National Defence): Good afternoon, Mr. Chair and honourable members of the committee. My name is Anne Bank. I'm the executive director of access to information and privacy at the Department of National Defence.

[Translation]

I am responsible for the implementation of the Access to Information and Privacy Acts within the defence team, which includes

the Department of National Defence and the Canadian Armed Forces.

[English]

My responsibilities include overseeing the teams that coordinate, review and release responses to ATIP requests, as well as providing advice, guidance and training to the defence team in the application of the acts. I am also responsible for the team that establishes policies and processes related to privacy management and privacy compliance within National Defence.

[Translation]

National Defence is committed to openness, transparency and respect for the rights granted under the Access to Information and Privacy Acts.

[English]

As a result of reviews and investigations in recent years, we have made changes to our practices to streamline processes and promote transparency, and to stress the importance of our legislated obligations. Additionally, there is a close collaboration with the defence chief information officer and the defence chief data officer to ensure that both transparency and the protection of personal information are considered in the implementation of the defence data strategy.

[Translation]

I am happy to provide any evidence the committee may require and am eager to see the results of your study to further help us better serve Canadians.

[English]

I look forward to your questions.

Thank you.

The Chair: Oh, Ms. Bank, that is a record. Thank you. We appreciate that.

Next we're going to go to Ms. Lillico.

Ms. Lillico, you have up to five minutes, or one minutes and 40 seconds, if you can match that.

Go ahead, Ms. Lillico. Thank you.

Ms. Kristina Lillico (Director General, Access to Information and Privacy, Library and Archives of Canada): Mr. Chair and members of the committee, thank you very much for the invitation to speak today.

Let me recognize and honour the peoples and land of the Anishinabe Algonquin nation where we're meeting.

My name is Kristina Lillico. I'm the director general of access to information and privacy at Library and Archives Canada.

Ensuring access to the records of government is a cornerstone of a modern and functioning democracy, and it's embedded in Library and Archives Canada's mandate.

Here is why access to historical records is important today.

Imagine you are a veteran needing an urgent surgery and needing access to your service file, or a survivor from an Indian day school seeking justice for yourself and your family. Imagine when the Government of Canada takes legal action on behalf of Canadians, such as it did with big tobacco. All of this evidence is within LAC's historical records.

I'm here today to speak to the unique challenges of providing access to historical records.

I'd like to give you all a number: three million—three million pages. This is just one of the thousands of access to information requests that we're dealing with today at Library and Archives Canada.

Now picture this task. It would mean for one of our expert employees to read all seven Harry Potter books—4,100 pages—more than 730 times in 30 calendar days. Before that can be done, our experts help requesters to identify the material they want using both digital and analog lists of our collections. This is not a Google search.

Some of these lists have few details, and the way things are described has changed over time. We need to then locate these records. In the archival world, we may have one description for hundreds of boxes. Our experts have to go through all the boxes to find the records.

We have more than 200 linear kilometres of Government of Canada records dating back to 1867. That distance is equivalent to the two-hour drive between Montreal and Quebec City.

To add to this already complex situation, historical records are typically paper and would need to be digitized before an ATIP analyst can even begin their review work.

Now, while LAC shares many of the issues other departments face—labour shortages, employee retention and technology challenges—LAC has a distinct role in that it preserves and makes accessible the historical records of over 300 federal organizations, some of which no longer exist today.

Government records are either open to the public or they are closed, because they may contain information that's deemed sensitive. When they are closed, you need to submit an ATIP request.

The ATIP team at LAC, which I have the pleasure of leading, is de facto the main channel to provide access to the billions of pages of government records we preserve. It can take a significant amount of time to process an ATIP request for historical records, because historical records are old. To decide what needs to be redacted, you have to project yourself into the past and understand the context. This is no simple task. It requires an expertise that few departments have immediately on hand.

In addition, every redaction our ATIP analysts make must be documented to explain it to the requester, the Information Commissioner or the courts. This is how the ATI and privacy acts are implemented in Canada. In other nations, many elements are much more prescribed in access legislation or in the way information management is governed. A proactive declassification approach would

align Canada with the Five Eyes, all of whom have declassification programs, and would manage information at the appropriate level, decreasing costs and effort and reducing the burden on the ATIP system.

Defined sunset clauses would recognize the decreased sensitivity of most information over time and ensure that historical records are open consistently and predictably.

In recent years we proactively opened over 45 million pages of records through a risk-based approach. These records no longer require an ATIP request. While this number may sound impressive, there are billions more waiting to be discovered.

ATIP really should be the last resort to access the historical records of the Government of Canada. This is the future that LAC is building towards, one where we proactively open government records while respecting privacy and the security of sensitive information.

We thank the Information Commissioner for her recent investigative reports, which bring to light LAC's ATIP challenges. We now have an action plan to guide our improvements, including working hand in hand with our colleagues at the Treasury Board Secretariat and across the Government of Canada.

Mr. Chair, members of the committee, we are eager to make the ATIP system work better for all.

Thank you.

● (1700)

The Chair: Thank you so much, Ms. Lillico.

For those of you who have been to committee before, we are a little old school here. I'm not interested in going through the chair, so if a member is asking a you question, you can go to them directly. I'll just make that clear.

We're going to start with Mr. Kurek for six minutes.

[*Translation*]

I just want to say that Mr. Kurek will share his speaking time with Mr. Gourde.

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

[*English*]

Mr. Damien Kurek: Thank you, Chair. Yes, I will be splitting my time.

Thanks. I appreciate you all for coming.

I've asked every witness who has come before the committee two foundational questions, and those are whether ATIPs and an ATIP system that works are essential for a modern, functioning democracy, and whether they're satisfied with where Canada's ATIP system is.

Virtually all—with the exception of the minister, interestingly—have said that our system wasn't where it needed to be, but everyone said that it was incredibly important.

I would just note, that's important in terms of the foundation.

Specifically, Ms. Giles, you're from a spy agency, reconciling secrecy with access to information. Can you just share practically what that looks like, so that Canadians can trust what is going on there, in about 30 seconds or so?

• (1705)

Dr. Nicole Giles: That's a great and very reasonable question.

We have highly qualified ATIP analysts, many of whom have served as intelligence officers, and so they are very well placed to do a line-by-line analysis of whether any of the exemptions apply. That is reviewed by supervisors to make sure the maximum amount of information has been revealed. That's our default. A very high number of exemptions are applied, primarily as relates to lawful investigations but also as relates to information that would be injurious to national security.

Mr. Damien Kurek: There have been stories in the media. For example, Pierre Elliott Trudeau's file at CSIS and other prime ministers' files at CSIS have been destroyed because they didn't meet the threshold for preservation. I'm just curious. In 30 seconds or so, perhaps you can comment on how, when that's been some of the public's experience or exposure to the CSIS ATIP system, we can reconcile that with a system that is so fundamentally important.

Dr. Nicole Giles: One of the things we've been working really hard on is trying to increase and build trust with Canadians, because that social contract is absolutely essential to our ability to do our business. One of the ways we've been doing that is by increasing the communication we have with Canadians, as I outlined, as well as making sure our delivery of responses to requests is timely. We see that as a cornerstone.

Mr. Damien Kurek: Thank you very much, Dr. Giles. I'm sorry I didn't address you that way the first time.

Ms. Lillico, in about 30 seconds or so.... I know this is really quick. We have a limited amount of time here. Technology is, I think, key to giving Canadians access to their documentation. I'm wondering if you could, in 20 or 30 seconds, outline some of the advancements we're seeing in technology that could help improve this process. As you know, according to the Treasury Board, the department is one of the worst offenders. Perhaps you could just touch on that technology, and then I'll hand it over to Mr. Gourde.

Ms. Kristina Lillico: Certainly.

Library and Archives Canada, like others, is working to improve all of the technology we're able to leverage, including onboarding and using the secure technology systems that the Government of Canada uses. We recently onboarded the ATIP online portal so that people can make their requests more easily.

You heard me say that we have to do a lot of digitization. Digitization costs money. It's a big endeavour. You have to have the right storage to manage, hold and migrate those things.

Mr. Damien Kurek: I apologize, but I want to make sure my colleague has time.

Go ahead.

Thank you.

[*Translation*]

Mr. Jacques Gourde: Thank you. I will get down to brass tacks.

I am interested in two organizations, i.e., the Department of Immigration and the Canadian Security Intelligence Service. I was wondering if the two cooperate.

In the interest of Canadians' security, are you able to help the Department of Immigration do background checks on certain people who have an immigration file?

[*English*]

Dr. Nicole Giles: We have a very important role to play in the national security screening process, which is a joint responsibility of IRCC, CBSA and CSIS. Certain files will be referred to CSIS for analysis, and we analyze them in the context of national security admissibility concerns under IRPA, which is the governing legislation.

[*Translation*]

Mr. Jacques Gourde: Ms. Perry, are these requests made systematically to the Canadian Security Intelligence Service? Or is it rather a committee that decides which files should be submitted?

[*English*]

Dr. Nicole Giles: The immigration officer makes the decision as to whether certain indicators have been triggered, thereby requiring that the application be referred to CBSA. CBSA, if they believe there's a national security admissibility issue, will then refer the file to CSIS. Then CSIS undertakes the analysis as quickly as possible.

We will frequently make a recommendation in terms of whether that individual would be inadmissible to Canada on national security grounds, but ultimately the decision about admissibility is made by IRCC.

[*Translation*]

Mr. Jacques Gourde: My last question is for Ms. Perry.

As you know, MPs' offices have practically become Immigration Canada outposts. We receive so many requests for help that it's a little overwhelming.

However, your people give us very little time to ask questions. We have to cobble together a lot of very personal information that also has to be protected.

Would it be possible for the Department of Immigration to be more cooperative and give us more time with its officers in order to be able to help people as quickly as possible?

• (1710)

The Chair: Please be brief in your answer.

Mr. Sylvain Beauchamp (Director General, Client Experience, Department of Citizenship and Immigration): Thank you for the question.

In my day-to-day role, I am in charge of the department's call centre as well as the ministerial centre for members of Parliament and senators.

We've updated our business model, as you know, and we are working each day to ensure that we have the capacity to deal with all requests, which are growing in number, from what we see. We are working in cooperation with members of Parliament to make sure that our business model meets all of our clients' needs.

The Chair: Thank you, Mr. Beauchamp and Mr. Gourde.

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

[*English*]

Ms. Lisa Hepfner (Hamilton Mountain, Lib.): Thank you, Chair, and thank you to our witnesses for being with us today.

We heard last week, I think, from the Treasury Board president that there's a lot of work being done on declassifying documents, but that there are also some challenges. I understand that at the Department of National Defence there is a declassification pilot project.

Ms. Bank, I was hoping you could give us an update on that project.

Ms. Anne Bank: I'm sorry. I'm not able to speak to that today, because that's not under my purview. That's under the responsibility of the director general of defence security.

Ms. Lisa Hepfner: Okay.

Ms. Lilloco, perhaps from your perspective in Library and Archives, are there any challenges around declassifying documents so that they can be accessible to the public?

Ms. Kristina Lilloco: Yes, as I mentioned in my remarks, we're fully supportive of putting in place a better solution for GC-wide declassification. We participated actively in the pilot project that was undertaken by the Treasury Board Secretariat and Public Safety to help inform how declassification could work across the Government of Canada in a more efficient way.

We'll continue to work to support these kinds of initiatives. Ultimately, this will be important for us in the long term.

Ms. Lisa Hepfner: As you say, the ideal is that the information is there and the ATIP system is a last resort for extra information that people are looking for. The ideal is that people can go to the Internet and find information that's not sensitive.

Ms. Perry, you talked about the unique challenges in IRCC with the volume of requests. We've also heard, I think from the Information Commissioner, that you're working on some new digital processes that will make it easier, so that a lot of those requests will go

away. People will be able to go online and get an update on their immigration process. They won't have to file an access to information request.

Can you give us an update and tell us about the new digital products you're using? How is it going with that project?

Ms. Tracy Perry: I'm going to turn it over to Sylvain.

Mr. Sylvain Beauchamp: The department launched, as recently as March 2023, application status trackers for a few select lines of business, including permanent resident and temporary resident lines of business. Clients can self-serve and have access to information at their fingertips to reduce their reliance on getting that information through an access to information and privacy request.

That is what we're doing from an investment perspective now as we're building the digital platform of the future, where that will be a concept that will be embedded in the new immigration system going forward.

Ms. Lisa Hepfner: I'm sorry to pressure you, but is there a timeline for that project rolling out?

Mr. Sylvain Beauchamp: Yes. We've launched, as we've said, I think upwards of nine application status trackers for nine different lines of business. The first phase of the digital platform modernization is planned for this fiscal year, 2023-24.

We're actually in the midst of developing the requirements to build that platform for the future. We should be seeing some of those early wins as early as the fall.

Ms. Lisa Hepfner: What sort of impact do you think that will have on your access to information record and the number of requests you get?

Ms. Tracy Perry: Our hope, as Sylvain has said, is that the clients will be able to self-serve. They'll be able to access their information directly on their own as opposed to coming through the access to information system for that information.

• (1715)

Ms. Lisa Hepfner: You don't really know yet until it's in place, basically, is what I'm hearing from you. That's perfect. Thank you very much.

Dr. Giles, you talked about the difficulty of being the security intelligence agency and having to go through everything to make sure you're not releasing anything that could compromise your operations.

We've also heard during this committee a call to change some of the exclusions in the act so that more things would be accessible to the public. Would you tell us how that would affect CSIS and ongoing investigations?

[*Translation*]

Dr. Nicole Giles: That is a very good question.

It would depend on what is being excluded.

[*English*]

Obviously, having anything that could be accessed relating to lawful investigations could jeopardize ongoing judicial proceedings. As well, we would be very concerned about anything that would limit our ability to ensure that no information is released that could be injurious to the defence of Canada or to the detection, prevention or suppression of subversive and hostile activities.

I would say that a significant proportion of the ATIP and privacy information requests we receive are related to immigration applications, so we also do expect to see some successes stemming from the modernization undertaken by IRCC.

Ms. Lisa Hepfner: That's really good to know.

I'm not sure who I should direct this question to. Maybe whoever wants to answer this question can put their hand up.

Occasionally, you'll get an access to information request that involves more than one federal department. Are there any challenges in dealing interdepartmentally when you have a request that crosses those lines?

The Chair: Give a very quick response, please.

Dr. Nicole Giles: One of the challenges we face is that a lot of departments do not have ready access to secret and top secret systems. That impedes their ability to consult with us on requests that come in.

The Chair: Thank you, Ms. Hepfner, and thank you, Dr. Giles.

[*Translation*]

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

Mr. Jean-Denis Garon: Thank you, Mr. Chair.

I would like to start off by thanking the witnesses for being with us today.

We all know that access to information is extremely important. I remember a committee meeting that took place barely a year ago, when a superintendent from the RCMP lied to the committee. He misled us. This serves as a reminder that there is still progress to be made in this field.

I would like to start with the representative from the Canadian Security Intelligence Service. I'm interested in requests for permission to undertake an historical study. Witnesses, such as Mr. Andrea Conte, who was interested in the COINTELPRO file, have told us that the Canadian Security Intelligence Service still considers this to be an operational threat in Canada. Ms. Conte had to go to the United States and visit the National Archives in Washington to gain access to the very same file.

The United States seems to have an automatic declassification policy that kicks in after 25 years. Wouldn't it be a good idea to have a similar policy here, so that we would have some consistency? I presume that the fact that the Americans have declassified the documents does not constitute a threat to our national security.

Do you have an opinion on this?

[*English*]

Dr. Nicole Giles: Each of our Five Eyes intelligence partners has different legislative systems that we operate under. Obviously, ours is different from that of the United States. When we get the access to information request, as I mentioned, we do everything we can to declassify as much information as possible, but under our legislation there are often legacy national security concerns. We are prohibited from revealing information related to source or family names, for example. Other Five Eyes countries operate under different legislation.

[*Translation*]

Mr. Jean-Denis Garon: That is precisely what my question is about, i.e., the fact that depending on a country's legislation, the very same document can be declassified, something which was refused in Canada. Is it because we have a different view here on the level of risk that is associated with the early declassification of a document?

I'm just trying to understand why our legislation is perhaps stricter than that of the United States when it's the same document.

Dr. Nicole Giles: That is another very good question.

One of the factors is that the Government of Canada does not have a policy or system for declassification.

[*English*]

In the absence of that, CSIS administers the release of information under the access to information and privacy acts.

• (1720)

[*Translation*]

Mr. Jean-Denis Garon: Should we be thinking that a declassification policy could be a good thing for Canada?

[*English*]

Dr. Nicole Giles: I think it would be outside my remit as an official of CSIS to provide an opinion on whether that regime would be appropriate.

[*Translation*]

Mr. Jean-Denis Garon: Thank you.

I have a question for the representative from the Department of National Defence.

In July 2020, the report entitled "Access at issue: Nine recommendations regarding the processing of access requests at National Defence" was tabled by the Office of the Information Commissioner of Canada. It contained recommendations for dealing with requests for access at National Defence.

What concrete measures have been taken by your organization to improve access to information since that report was published?

Ms. Anne Bank: Thank you for the question.

[English]

Some recent improvements that we've made as a result of the Information Commissioner's systemic investigation of National Defence have really focused on our practices. We are governed by the Access to Information Act and the Privacy Act, but we are following policy direction with Treasury Board Secretariat.

We've put some specific initiatives in place. We've established letters of agreement, which are signed between each senior official and the deputy minister of defence, committing to uphold their obligations under both of those acts. We've updated our reference tools to support the tasking liaison officers. Those are the ones who are out searching for the documents. We've incorporated access to information objectives into performance agreements for those who have primary or secondary access to information or privacy responsibilities. We've established processes to enhance the rigour around the retrieval process. We've improved our ability to receive electronic records to speed up the process, so that we're not dealing with the mail. We've emphasized the duty to assist principles across the government and undertook a comprehensive review of our ATIP training curriculum. We've also updated the departmental policies.

[Translation]

Mr. Jean-Denis Garon: I have a quick question.

Our committee heard the testimony of Mr. Patrick White, who is a professor at the UQAM's school of journalism. He told us that in certain cases, the statute of limitations for lodging a complaint about the access to information system could actually be shorter than the turnaround time for receiving a response to an access to information request. He stressed that in these circumstances, it might be better to suspend the statute of limitations as long as the access to information request has not been processed.

Has National Defence come across this issue?

[English]

Ms. Anne Bank: Could you please repeat the question?

[Translation]

Mr. Jean-Denis Garon: There are cases where someone who has made an access to information request can also lodge a complaint because of the way that request was dealt with. However, given the statute of limitations, in certain cases, it is not possible to lodge a complaint before having received an answer to the access to information request. This means that the way that the statute of limitations is applied is not reasonable. I was wondering if the statute of limitations has raised questions within National Defence.

I understand that it might not be the case, but please feel free to tell us anything that you may wish to on the subject.

[English]

Ms. Anne Bank: I don't have an opinion on the length of time you have to submit a complaint to the Information Commissioner. The time is prescribed under the act. You would not have to submit your complaint prior to receiving the response from the Department of National Defence.

[Translation]

Mr. Jean-Denis Garon: Whatever the case may be, it seems that such cases do crop up, according to what witnesses have told us. We would be most grateful if you would provide a written answer to the committee.

Thank you.

The Chair: Thank you, Mr. Garon.

[English]

Mr. Green, you have six minutes. Go ahead, please.

Mr. Matthew Green: Thank you very much.

Dr. Giles, I'm going to come back to you on COINTELPRO. The author who was referenced, Andrea Conte, mentioned, for example, that the COINTELPRO file was considered still an operational threat by CSIS, which prevented him from accessing the archives related to this program at LAC. In the end, he had to go down to the National Archives in Washington, D.C., to obtain the documents.

Is it your testimony that the COINTELPRO file is still an operational threat and that legislatively you are not permitted to disclose it even though it's being disclosed in the States?

Dr. Nicole Giles: I don't have the specifics, and I'm not in a position to be able to assess whether the specific information in the file poses a threat to national security at this point. What I can say is that we often experience legacy national security concerns in files, especially as it might relate to, for example, counter-intelligence targets where the location or tradecraft could still be something that we employ today.

I can't speak for the U.S. system and what they perceive to be a threat.

Mr. Matthew Green: How do you explain that documents are still classified as secret in Canada when two weeks from now, when I go down to Washington, D.C., they're being disclosed there to the general public and researchers in the United States? That seems to defy logic. Would you not agree that it defies logic?

● (1725)

Dr. Nicole Giles: I think what happens is that when countries are operating under different legislative systems, there are different legislative restraints that we must operate under. For this specific case, I can't speak to what exactly are the differences in the legislation, except that we do not have the policies or declassification regime that the U.S. does.

Mr. Matthew Green: Okay.

Dr. Nicole Giles: For example, the U.S. has automatic declassification after a certain number of years. We do not.

Mr. Matthew Green: Do you think automatic declassification systems after a number of years could help reduce the number of access to information cases that CSIS has, and would therefore help relieve you of that burden?

Dr. Nicole Giles: I think that in general it would be rational to assume that if there was automatic declassification across the government, we would see a reduction in access to information requests.

Mr. Matthew Green: Specific to CSIS, though, you're an organization of secrets, but you're not a secret organization. I've heard that in other instances myself.

What would be the risks of declassifying this information?

Dr. Nicole Giles: Again, it pertains to the specific file. From a CSIS perspective, I think automatic declassification is not something that would be in the best interests of Canadians. We would still need to do a line-by-line review to ascertain whether exemptions applied.

Mr. Matthew Green: I'm going to deal with specificity, if I may, because you're obviously very well trained at this type of discourse.

If it's already publicly available with our partners, what is the logic of keeping it classified in Canada?

Dr. Nicole Giles: Again, I think it stems from the legislation that we're operating under.

Sir, I know I'm not exactly answering your question, but—

Mr. Matthew Green: I appreciate that's being put on the record.

I'm sorry, but I will ask one more question. It's a personal one.

Tommy Douglas was the subject of much attention to the RCMP over the years. That resulted in a case...I believe Bronskill had to sue, go all the way to the Supreme Court.

Are there still redacted files on Tommy Douglas? Do you still consider Tommy Douglas a threat to national security?

Dr. Nicole Giles: I don't have specific knowledge on Tommy Douglas's files.

Mr. Matthew Green: Okay.

Maybe I'll have to FOI it. Is that what I'm hearing?

Dr. Nicole Giles: That would be the U.S.

Mr. Matthew Green: Right, it's ATIP.

An hon. member: You could probably just get it from the U.S.

Mr. Matthew Green: Yes, I probably could get it from the U.S. You're absolutely right.

Okay, as a part of its information review, the Treasury Board published a list of key access to information measures that were being implemented and planned and are under way. Among these, it was noted that Public Safety Canada, in collaboration with the national security intelligence community, Library and Archives of Canada and the Treasury Board Secretariat, is leading a declassification initiative.

Does CSIS participate in this?

Dr. Nicole Giles: We are not involved in the pilot at this point. I'm not privy to whether we have been participating in any discussions, nor whether those conversations are currently active.

Mr. Matthew Green: Again, and I'm not trying to be rude, but what exactly is your title with CSIS?

Dr. Nicole Giles: It is deputy director and senior assistant deputy minister for policy and for strategic partnerships.

Mr. Matthew Green: You wouldn't be involved in these conversations?

Dr. Nicole Giles: There are hundreds of conversations that are happening at any given point at working levels throughout our organizations.

Mr. Matthew Green: You wouldn't be briefed on those conversations coming to this committee today?

Dr. Nicole Giles: I would be briefed on conversations. What I'm not privy to is whether there are active conversations happening at this moment on declassification. There are several initiatives that ebb and flow with time and based on the priorities of the government.

Mr. Matthew Green: Okay.

What initiatives is CSIS currently taking to improve access to information?

Dr. Nicole Giles: We have several measures that we're undertaking. We constantly review our training programs. We are also putting in place—

Mr. Matthew Green: I'm going to interject on the training program.

There was a list...that members within your department were not actually accessing the online training regime. I'm just wondering, in which ways do you train your...? For instance, an annual report stated that there wasn't any formal training on ATIP for CSIS in 2020-21 and that there were "ATIP e-learning narrated slides" that were available and mandatory for all employees. However, "during the 2020-21 fiscal year, 241 service employees viewed the ATIP online module".

A 2022 "People of CSIS" infographic states that there are 3,367 employees. How do you provide ATIP training to the other 93% who are not accessing the e-learning modules outside of their orientation?

• (1730)

The Chair: Mr. Green, we're 30 seconds over the six-minute intervention.

Mr. Matthew Green: I have two coming later on, so you can jot that down and then come back to me.

The Chair: This is actually the last round.

Mr. Matthew Green: Ah, you guys and your—

The Chair: Perhaps Dr. Giles could provide a written response to your question.

I want to thank our witnesses for being here today. On behalf of the committee and on behalf of Canadians, thank you for your work.

I'm going to dismiss our witnesses, and we will continue on.

We have 15 minutes to conclude this. We can't continue past 5:45. At that point, I will be moving to adjourn the meeting.

I'm glad that the analyst is listening to me at this point.

If we're going to deal with the business where we left off, we can thank the witnesses, and we need to get back at it because we have only 13 minutes now to deal with this.

Are there any hands up for discussion?

I'm going to go to Ms. Khalid first and Mr. Fergus right after.

Ms. Khalid, go ahead, please.

Ms. Iqra Khalid: I'm actually going to let Mr. Fergus go first.

The Chair: Mr. Fergus, go ahead, please.

Hon. Greg Fergus: Thank you, Mr. Chair.

I'd like to thank my colleague Mr. Barrett for bringing this motion forward. There were some discussions that we had outside of this table that I would just like to confirm with Mr. Barrett.

My concern of course, if you will forgive me, is that this is an attempt, through the back door, to get to the issue we were dealing with last week before the interim Ethics Commissioner resigned. She has resigned.

I just want to get reassurance that she's being invited to come here only to talk about the situation that is referenced in the motion by Mr. Barrett regarding "the appointment of the former Liberal minister of industry, Navdeep Bains, as chief corporate affairs officer at Rogers Communications."

I'm wondering if my honourable colleague could confirm that.

Mr. Michael Barrett: Chair, if I may...

The Chair: Yes, go ahead, Mr. Barrett, and then I will have something to add after you have finished.

Mr. Michael Barrett: Thank you, and thank you to Mr. Fergus.

There is no permanent Ethics Commissioner who has been appointed at this time, and there is no interim Ethics Commissioner. Therefore, the most senior person, we understand, is the now former interim Ethics Commissioner, based on the position that she was in prior to her appointment.

Looking for someone to speak to the issue—this issue—is why the former interim Ethics Commissioner is named by position to be invited to the committee. The intent is to exclusively address the matter at hand in the motion—the appointment of a former minister to work at one of the entities they were responsible for regulating, specifically, Mr. Bains at Rogers—and not to deal with any other matter.

If this motion receives the support of the committee, and should the former interim Ethics Commissioner accept the invitation, the official opposition's questions would be confined to this issue.

The Chair: I would add this. One of the things that I've been dealing with—and it's been difficult to deal with as chair—is the lack of specifics in some of the motions that are coming forward. It leaves a lot of ambiguity and openness.

I'm going to suggest, before I go to you, Mr. Fergus, that we add the name of Ms. Richard, whom I assume we are dealing with here, to this motion, so that there is clarity. "Former interim Ethics Commissioner" could date back to 1980, if there was one.

I need that as part of this motion in order to deal with some clarity here.

Go ahead, Mr. Barrett.

• (1735)

Mr. Michael Barrett: Thank you, Chair.

The reason Ms. Richard's name was not in the motion was so that the perception wasn't that she was the focus. I would accept that as a friendly amendment, or support it if it was moved as an amendment, but my comments stand with respect to our questions being confined to the matter at hand.

The Chair: I have Mr. Fergus and then Mr. Green.

Go ahead.

Hon. Greg Fergus: Just as a matter of debate—and I'm not going to drag this out—would it be better...? I'm not certain if the Ethics Commissioner's office has a role in this at all. It sounds like it's more of a lobbying commissioner issue. Would it be better to amend the motion to call the lobbying commissioner to find out what the limitations are on former members of Parliament and former cabinet ministers in terms of their activities post politics?

The Chair: We'll have Mr. Barrett, only to answer Mr. Fergus's question, and then we're going to Mr. Green right after that.

Go ahead, Mr. Barrett.

Mr. Michael Barrett: The rationale for having the Ethics Commissioner and the Commissioner of Lobbying come to committee to speak to this issue is that members have obligations to satisfy that are overseen by both commissioners. It would be unfortunate if we were to find ourselves in a position where questions are raised with the lobbying commissioner and the lobbying commissioner says, "Well, that should be taken up by the Ethics Commissioner." Then we'd need to add another meeting.

I would again offer, in the spirit of my previous comments, that if the Ethics Commissioner... If Ms. Richard accepts the invitation, appears at the committee, makes her opening remarks, is asked a question and has nothing further to add, I don't see any utility in continuing questions to that effect.

In the interest of brevity—and of time, which we don't have a lot of—by having the commissioners appear on one day, we could dispense with this matter and provide for Canadians the accountability function that we are charged with. Then we don't need to redebate over multiple days. The committee does not have the resources to do that, and we don't have a lot of weeks left in the parliamentary calendar.

The Chair: Thank you, Mr. Barrett.

Because you had a question, Mr. Fergus, you still have the floor.

Hon. Greg Fergus: Thank you.

I have just one last change, and again, I'd like to see if members could see this as a friendly amendment.

It's similar to yours, John, but it actually runs in a different way.

Rather than saying after the word “and”—after your “Lobbying Commissioner and”—replace the words “the former Interim Ethics Commissioner” with “a representative from the Office of the Conflict of Interest and Ethics Commissioner”.

Would that be the right thing? I'm trying to run this up the flagpole to see if anyone salutes.

The Chair: From my perspective, I made the argument of being specific: If we're not specific, we could end up with somebody who knows nothing or has nothing to say about this particular issue. As chair, that's where my concern is, and charging the clerk with getting somebody in front of the committee if the motion does pass is difficult in that regard.

Go ahead, Matt.

Mr. Matthew Green: Thank you.

First of all I'll say that on the face of this, the optics of what transpired are outrageous. It's really outrageous to see where we're at with that merger, that minister and the appointment, which, in a way, looks like a patronage appointment.

I've come to my conclusions, and I think that in fairness to the individuals involved, this committee can present a way for facts to be presented to the committee in order to hold accountability in this space.

What I would suggest, in fact, even though I know time is of the essence, is that we consider perhaps sending an official letter from this committee to the former interim Ethics Commissioner, asking her if she's had any involvement, any communications, any advice, not just now but in the past. I would be keenly interested in knowing what type of advice might have been granted when Navdeep Bains was a minister. Did he receive any advice from the Ethics Commissioner related to his position as a minister and this particular company? I want all that information. I think this committee deserves to have all that information.

I am not clear about having the former interim Ethics Commissioner, given our past conversations and given her very linear relationship with Dominic LeBlanc. I don't want this committee to turn into that.

I would suggest, if the committee is open to it, that we direct the chair to write a letter to both, because I don't want to waste time

having them come here and sit down and say in their opening remarks, “I know nothing.” Quite frankly, that's a waste of time and a bit theatrical. I am not naive to the way fundraising happens. All intentions could be good, but I don't want to see somebody impugned just because there is an insinuation that they may have been involved in some of this, because, quite frankly, at this committee it's never the crime; it's the cover-up, and I feel that we would put that particular person in a very difficult situation by bringing them here.

Mr. Chair, I'm going to put it to the committee that we look at a way of first verifying whether they had any involvement at all, even as senior legal counsel, quite frankly, between those two parties on that issue. I know they can't disclose it to us, but if they have, then they can come to committee. If they haven't, then I would say that we spare them the theatrics.

That would be my suggestion.

● (1740)

The Chair: Thank you, Mr. Green.

The other thing I think the committee needs to consider here, too, is that the appointment process is a process. It does take time, so it perhaps wasn't the former interim Ethics Commissioner who was involved. It was perhaps the former Ethics Commissioner. I think it would be incumbent upon us to find out whether Mr. Dion was involved in this process as well, just to add to your point.

I didn't hear anything in terms—

Mr. Matthew Green: I will move that as a direction, that we send a letter from this committee, and we would direct you, Mr. Chair, to send a letter to the office of the Ethics Commissioner to determine who within that department had any contact with the former minister while they were the minister or after they were the minister, whether it was the commissioner or any senior legal counsel, bearing in mind that they can't disclose the nature of it, just to confirm whether they had any contact with them.

If they didn't, then, to me, bringing them to committee is moot.

The Chair: One of the things that have also come to my attention is that there were newspaper reports saying that Mr. Bains did, in fact, proactively reach out to the Ethics Commissioner, so that also goes to your point, Mr. Green.

Mr. Green is proposing that we give direction to the committee. First of all, we have the motion on the floor, so we have to deal with the motion and dispose of it at this point.

Mr. Matthew Green: Chair, just so I'm clear, I am happy to move an amendment to the motion. I am all for having the lobbying commissioner come before this committee on the matter, because I do think that's germane, current and well within our mandate.

The Chair: Okay.

You're proposing an amendment to the motion that directs the chair to write to the Ethics Commissioner on behalf of the committee to determine specifically what involvement the commissioner had with respect to the appointment process. Is that correct? Is that what I'm hearing you say?

Mr. Matthew Green: I would go beyond just the appointment process and even ask if there had been any advice regarding Rogers even while they were sitting, quite frankly, because I think this story goes back longer than the appointment, but that's just my own opinion.

The Chair: Thank you, Mr. Green.

We have literally less than a minute here. We have an amendment on the floor. Is there any discussion on the amendment?

• (1745)

Mr. Michael Barrett: The amendment, Chair, is for direction. It was in addition to, but it didn't remove anything else—

Mr. Matthew Green: It would remove the former interim commissioner to ascertain who was involved.

The Chair: To be clear for the clerk as well, this is an amendment to the motion that would add to the motion but would not replace the motion. Is that correct?

Mr. Matthew Green: It would not replace it, but it would.... I'm saying that we would do this. We would strike the appearance of

the former interim commissioner, and the letter would be sent to ascertain who the appropriate person is to come before the committee.

The Chair: That clears it up.

Go ahead, Mr. Barrett, quickly, please.

Mr. Michael Barrett: And the lobbying commissioner would still attend.

Mr. Matthew Green: Absolutely.

The Chair: I think that's clear. On the amendment, I don't see any further discussion. Do we have consensus on Mr. Green's amendment?

(Amendment agreed to)

The Chair: Does the main motion as amended carry?

(Motion as amended agreed to on division [*See Minutes of Proceedings*])

The Chair: Thank you, everyone.

Thank you, analysts.

Thank you, Clerk and technicians. I appreciate all your help.

We'll see everybody on Friday.

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