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# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Thursday, June 16, 2005**

**Chair**

**Mr. David Chatters**

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## Standing Committee on Access to Information, Privacy and Ethics

Thursday, June 16, 2005

• (0900)

[English]

**The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Good morning, ladies and gentlemen. We'll call the meeting to order.

This is the Standing Committee on Access to Information, Privacy, and Ethics, and the order of the day, pursuant to Standing Order 108(3)(h), is a briefing on the Canadian Newspaper Association study on access to information at the federal level.

We have representatives from the Canadian Newspaper Association. We have the president and chief executive officer, Anne Kothawala, and we have the vice-president of public affairs, David Gollob. Good morning to both of you.

This is a briefing and we do have your paper, for which we thank you. The floor is yours. You will make your presentation and then there will be an opportunity for questions from the committee members.

Welcome, and we await your words of wisdom.

**Mrs. Anne Kothawala (President and Chief Executive Officer, Canadian Newspaper Association):** Thanks very much.

[Translation]

Thank you, Mr. Chairman. I am pleased to have this opportunity to address your committee. The Canadian Newspaper Association shares your commitment to defending the public's right to know.

[English]

My topic today is the national freedom of information audit that CNA recently conducted in collaboration with 45 member newspapers across the country. With me is David Gollob, CNA's vice-president of public affairs. David developed the audit project and was key to its execution, and he will be able to speak to issues of methodology as well as discuss our findings in greater detail.

As you may know, the CNA is a trade association, the voice of Canada's daily newspapers on matters affecting the industry. There are two key areas; we sometimes refer to them as our twin pillars, the business environment in which we operate on the one hand and threats or restrictions to press freedom on the other. Our interest in FOI extends from the second of these.

Information is the raw material of news. Freedom of information and freedom of the press are two freedoms hewn from the same stone. To impede one is to frustrate the other. To deny access is to prevent us from playing the watchdog role citizens tell us is our core

function and also their main expectation from us. We hear this from citizens across the social spectrum, from the people reading their daily newspaper at the bus stop to the bench of the Supreme Court of Canada. It's also a fundamental underpinning of our democratic system. No other industry I know is protected under the Charter of Rights and Freedoms. The drafters of our charter understood that an informed public is part of the DNA of democracy.

[Translation]

The CNA has been pressing for reform of the Access to Information Act since 1997. Our objective has always been to remove the barriers that face journalists who are attempting to obtain information regarding government decisions which the public is, by law, entitled to be informed about.

• (0905)

[English]

In 1998 the CNA commissioned Professor Alasdair Roberts, formerly of the Queen's University School of Policy Studies and now at Syracuse University, to assess the performance of Canada's access to information regimes. Based largely on interviews with information seekers, his research found a deterioration of response times across the country, which he blamed largely on public sector restructuring.

He also underlined complaints about what he called "official adversarialism", which he defined as the attempt by elected and non-elected officials to stretch FOI laws in order to protect departmental or government interests. Adversarialism, he said, manifests itself in the liberal use of exemptions and exclusions, exaggerated fee estimates, or neglect of time limits. Without a strong counterbalance, he said, "adversarialism can completely undermine the principle of openness".

The following year the CNA sponsored another research project by Professor Roberts, this one focusing on federal FOI. His research this time was based largely on a review of data collected by federal departments. Specifically, he found that methods of handling requests had changed significantly over the previous five years, that federal institutions were taking longer to process them, and that fewer requests were likely to result in disclosure. "Evidence of deteriorating compliance", Professor Roberts wrote, "suggests that a reassessment of the methods used to enforce the ATIA is needed."

This work has lost none of its relevance over the years, and I encourage you, if you are not already familiar with these studies, to visit our website, where you may review them.

I mention them today because they are a kind of academic underpinning of our audit exercise. When we sent 89 reporters into the field with eight questions to ask of local, regional, and federal authorities in early 2005, we got results Al Roberts could well have predicted on the basis of his earlier investigations.

We consider, through activities such as these, that we have been successful in building awareness on the need for reform of federal FOI law. Just recently, in reaction to our audit exercise, the federal justice minister promised to introduce a bill to amend the act this fall if this committee has not already offered its own draft by then.

[Translation]

Last week, Mr. Stephen Harper, leader of the Conservative Party, gave clear support to reforming Access to Information and expressed full agreement with a good part of the CNA's main recommendations.

[English]

But we have learned to be doubting Thomases about such commitments from political leaders. Too often we have seen government approach access reform only to retreat. This has been the story of the last two decades. Time and again we have heard on the Hill that the reason for inaction is that there are no votes on this issue. Ordinary people simply don't get it.

So we decided at the CNA that we would do something that would connect the dots for people and bring the issue of freedom of information into the national discussion. Because issues at a local level have a more direct bearing on people's lives, we decided we would concentrate on the types of questions people might ask when making life decisions.

It's because this is not about journalists; this is about the public. This is not about how hard it is to be a reporter; it's about whether I can get the information I need to help me make up my mind about where to buy a house or what school to send my kids to. This was how we choose to connect the dots.

[Translation]

The very first national audit of Canadian access to information systems was a controlled exercise, held from one end of the country to the other, to see how civil servants from the various levels of governments were complying with this law, whose purpose is to make governments and their agencies more responsible to the public.

[English]

We deliberately set the bar low for this test. We weren't out to prove that a newspaper has the right to controversial information such as a minister's private agenda books. Instead, we put ourselves in the shoes of our readers and focused on news you can use.

Eighty-nine reporters from 45 newspapers in all 10 provinces went in search of answers. Acting as private citizens, they asked federal, provincial, and city hall officials about simple things such as drinking water test results, school class sizes, departmental staffing levels, and so on. A team of senior editorial leaders drawn from

newspapers in different Canadian cities framed the questions. Another team put together a user guide to ensure consistency.

In the first phase we made our requests in person at public information counters. Here, two out of every three requests were refused. When they encountered refusals, reporters filed formal freedom of information requests, using the appropriate federal, provincial, or municipal legislation. Ironically, reporters found it easier to get information when they made it known that they worked for newspapers.

Yet even after going through the process of a formal access request, in a third of cases the information they requested was still not provided. In other cases it depended on how much journalists were willing to spend. In Ottawa, for instance, a reporter was told it could take months and more than \$1,000 in fees to obtain restaurant inspection records. In Toronto such information is not only free, it's posted on a website. And that, I might add, is a result of an exposé the *Toronto Star* conducted on restaurants across the city.

The audit found that the easiest information to obtain was the least controversial. For about half the requests, information on road repairs and class sizes was released informally after one or more visits to the public counter at city halls and school boards. On the other hand, slightly fewer than a quarter of informal requests for a restaurant inspection report got results, and none of the requests for the number of sick days taken by police officers was satisfied through an in-person visit.

No matter what questions we asked, we found that officials routinely discouraged, delayed, obstructed, and denied the free flow of information to the public. However, answers were more forthcoming in some provinces than others. Journalists found a confusing patchwork of policies across the country, improving *grosso modo* as you moved from east to west.

What was apparent to many reporters was that officials seemed confused and didn't quite know how to handle these requests. They were frequently unsure of the rules and sometimes made outlandish statements. For instance, when asked for information about water test results in Peterborough, an employee of the district health unit responded by saying "I'm not interested in giving that up" and that "it's not the health unit's responsibility to release that information".

● (0910)

[Translation]

Eight requests were submitted under the Access to Information Act, but only two were answered within the time set out for an response, 30 days. The other six simply didn't receive an answer within the prescribed time.

Here are the names of the eight agencies and departments in question: the Canada Revenue Service Agency, Canadian Heritage, Department of Finance Canada, Fisheries and Oceans Canada, Health Canada, Citizenship and Immigration Canada, Public Safety and Emergency Preparedness Canada, and Transport Canada.

● (0915)

[English]

All reporters asked the identical question: "How much did your department spend in the last budget year, ending Mar 31 2004, on sick leave and on temporary personnel? Please also state the total number of departmental employees and total payroll".

Here are some accounts of the auditing experience at the federal level.

On February 17 a reporter from the *National Post* went to Health Canada's Ontario regional headquarters with the set question. A secretary told him no one had ever come in with such a request. She immediately said he would have to file an access to information request, but despite a 10-minute search, she could not find a name or a phone number to contact at the ATIP office. He filed a formal request on the same day but heard nothing until March 3, when he was asked to define what he meant by "temporary" worker. That was the last he heard. He has had no response since.

On February 21 a reporter from *The Globe and Mail* went to Transport Canada offices in Toronto. A human resources adviser said she would check into the matter and asked the reporter to return in a week. When she did, she was told she would have to submit a formal request. She sent in the paperwork, along with her \$5 fee, by mail on March 9. Thirty days later the response had not been received, and it was still outstanding two months later.

It was much the same story for another *Globe and Mail* reporter from the paper's Ottawa bureau. When she went to the Ottawa offices of Finance Canada on March 2, security staff at the front desk were confused by the request and eventually sent her to the ATIP section of Treasury Board, which shares the same building. She paid \$5 and filed a formal request that same day. She paid a second follow-up visit to the department on March 17, only to find that the department had revised the request, splitting it into three parts. It promised to provide the documents by April 18. Those files were still outstanding on May 28.

The reporter had a similar experience when she visited the Canada Revenue Agency in Ottawa, again, on March 2. In that case, confused security staff eventually summoned someone from ATIP, who provided a form to be filled out, which she completed on the spot. She paid a \$5 fee and was promised a response within five days and records within 30. As of May 28, she was still waiting.

Another reporter visited Fisheries and Oceans Canada on February 17. It wasn't even possible to speak to a receptionist to make an initial request; the reporter couldn't get past the security guards. One of them provided a number to call. Three hours later that led to yet another number to call, by which time the office was closed for the day and the weekend. Eventually, on March 4 the reporter connected with a departmental official, who wanted a letter of clarification: was the question about how much money DFO spent for people on long-term disability, which required replacement workers, or did the reporter want to know how many days of sick leave DFO had registered for its employees over that year? After paying a \$5 fee and providing the required detail in a letter, there was no response to the request for information as of May 28, which was the day, by the way, we released the audit, which is why you keep hearing "May 28".

[Translation]

On February 17, a journalist submitted an access request with Citizenship and Immigration Canada asking to see the records showing the amount of money spent in the previous budgetary year on sick leave and temporary personnel. As of May 18, he had still not received a response.

[English]

In the end, only two departments disclosed the information our reporters sought.

A reporter went to Public Safety and Emergency Preparedness Canada to find out how much money was spent on sick leave and temporary personnel in that department. After being told by security guards it would be impossible to enter the building without an appointment, the journalist was referred to Finance Canada. The journalist filed an ATIP request on February 17. Five dollars and 43 days later, on March 31, there was full disclosure of the information requested. This was the only department that fully complied.

In the other case, a *Globe and Mail* reporter had partial success at Canadian Heritage. On March 8 she received correspondence acknowledging her request and asking her to drop the formal request for records because it would produce reams of documents. In the end, the information was provided in a brief letter dated April 1, which she received on April 5.

By any measure, this was a deplorable result, yet we repeatedly hear from government that the Access to Information Act is working well. When we ask how they know that, they say because there are so few complaints or that complaints are going down. In other words, if you don't complain, you're a happy customer. That's the equivalent of saying, well, if the food in the restaurant didn't poison you, boy, was it ever good.

I mean, only a government could dream of using such criteria for performance measurement. If taxes were collected from only one-quarter of the population, this would not be regarded as an acceptable statistic. If McDonald's or Home Depot tracked customer satisfaction this way, they would be out of business.

Our audit was designed to produce three global stories that would run nationally, while each participating newspaper would also have a window to tell readers about local reporters' experiences. Add to this the follow-up stories, and in just one week we have counted well over 200 stories in newspapers read by millions of Canadian readers. The findings of the CNA's national audit are a scathing indictment of the failure of freedom of information in this country.

Our audit wasn't simply an exposé on poor service to the public. It illustrates how officials routinely evade disclosure of even the most innocuous information. It provides proof that in a disturbing percentage of cases, public servants believe it is all right to cheat the law. This is patently unacceptable. Editorial writers for the *Montreal Gazette*, commenting on our audit, said "Such obstructionism is unsupportable...Canadians are citizens with rights, not nuisances to be fobbed off with officious excuses".

The Canadian Newspaper Association has put forward a series of proposals to reform federal access to information legislation that will strengthen Canadian democracy. If you are not familiar with it, I encourage you to read "In Pursuit of Meaningful Access to Information Reform", which we published in February of this year. We have made this document available to you in both official languages.

One of the paper's recommendations deals with data collection and reporting on the performance of the system, perhaps something along the lines of the Auditor General's performance audits, because we think performance benchmarking and standards of excellence could go a long way to addressing some of the current problems.

In conclusion, I would just like to say the CNA looks to you, the members of this committee, to take up an important challenge. You can show the courage and resolve that have been lacking in terms of bringing the requisite political pressure to bear to ensure adequate enforcement of the Access to Information Act, because currently it is not adequately enforced; quite the contrary, as our audit shows.

You can bring political pressure to bear to ensure that reforms are introduced, where needed, to bring what started out as a good law, a great law, into line with our modern times. You are in the unique and I would say even historic position of being able to take action to right the wrongs that helped produce the sponsorship scandal and the Radwanski affair. I look forward to engaging in dialogue with you to determine how this can be done and how we at the CNA can help.

Thank you very much.

• (0920)

**The Acting Chair (Mr. David Tilson):** Thank you for your presentation, Ms. Kothawala.

It certainly is timely. I expect this committee will be looking at this whole topic in the fall. There are several areas where I believe it will come forward. Mr. Martin has a draft bill. I don't know where he is on the list, but I guess eventually he will have an opportunity to introduce his draft bill. I believe Mr. Reid, the commissioner, has indicated that his staff are working on a draft bill, and the Minister of Justice has indicated that he will be introducing a draft bill in the fall, so obviously this committee will be involved.

As well, I think you're sponsoring a one-day conference, is it, in the first week of September?

**Mr. David Gollob (Vice-President, Public Affairs, Canadian Newspaper Association):** It's a one-day conference on September 8 at the Westin Hotel. It's already attracted interest among the entire access to information community.

Ms. Kothawala will be speaking at that, and she spoke as well just last week to the summit of the information and privacy commissioners, federal, provincial, and territorial, which was held here in Gatineau.

**The Acting Chair (Mr. David Tilson):** Well, I'm sure some of us will try to attend that conference.

Again, I thank you for your presentation.

I know members of the committee will have some questions. In case you don't know, there are different rounds and each caucus has seven minutes for questions and answers.

We'll start with Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you very much, Mr. Chair.

Thank you, Ms. Kothawala, for your presentation. I found it fascinating. I think it reaffirmed a lot of the concerns I have about governments in general and their non-compliance with individual citizens' requests for access to information.

My first comment would be that I absolutely applaud you for your efforts in this audit, and I would encourage you to keep the pressure up. I think the only way governments are going to respond in a proactive manner and make some meaningful changes is if they are pressured, and not just by opposition parties but by individuals and by associations such as the CNA. Governments do tend to respond to political pressure at all levels, capital *P* and small *p*. So kudos on you, good for you, and keep it up.

I have a couple of questions. You had mentioned the problems with adversarialism, and specifically you had mentioned in your presentation the Liberal Party and some roadblocks you had found. You gave some very graphic examples of some of the frustrations your member reporters experienced when going after information from respective federal departments.

My first question is, do you distinguish any real difference between any levels of government? In other words, have you found it unique, say, to the federal Liberal government, where your reporters found a higher level of non-compliance and resistance from them as opposed to, say, individual provincial governments of different political stripes? Or are they all basically the same, in your opinion?

• (0925)

**Mrs. Anne Kothawala:** It's a good question. One of the issues, I think, that prompted the committee's asking us to appear was that the federal government actually got an F; we did do a sort of coast-to-coast report card.

We did generally find, as I said, *grosso modo* that FOI laws were a little bit stronger and the audit showed stronger results in the west as opposed to the east. In a number of the Atlantic provinces, New Brunswick, for example, there were huge issues. This actually led the New Brunswick government—they also got an F—to make a commitment to actually take a look at reforming their legislation.

Part of it was something we had long suspected, that the federal government and the provinces that have older and what I would call weaker or out-of-date FOI laws generally scored worse than those that had reformed their FOI laws in more recent history. The federal government is working with a 20-year-old piece of legislation. So there is definitely a connection between the recency and the robustness of the FOI laws that are governing the province or the municipality and the disclosure of the information.

**Mr. Tom Lukiwski:** That basically answers most of my question as to why some governments would be less receptive than others. If I'm hearing you correctly, you're suggesting that it may be due to the act itself that respective governments have and the need for updating it, as you quite correctly pointed out.

Have you seen in your audit across Canada, which dealt with all levels of government, any attempts by provincial, federal, or municipal governments to engage in any kind of dialogue to work together? Have they started to try to discuss harmonization or bringing common standards, or is it still 10 provinces and three territories, a federal government, and municipal governments working independently, all working off their own act? Have you seen any attempts by governments collectively to try to get together?

**Mrs. Anne Kothawala:** Well, I think that if there was ever to be an attempt, it might happen now, partly as a result of our audit exercise. I say that because after we'd addressed the provincial and federal information commissioners last week, together we came up with a number of ideas that would see people learning by looking at best practices, looking to the jurisdictions that have actually achieved success, and finding out what it is that....

The law is part of it, but I have to say the culture is very much part of it as well. If from the premier or from the Prime Minister right on down there's a very strong message that this is important; that our government believes in openness, transparency, and accountability; that this is our mantra and this is how we should govern ourselves, if there's leadership, then that message tends to filter down. I think there are some opportunities to work to achieve better harmonization by looking at the best practices.

We talked about perhaps establishing a sort of right-to-know week or right-to-know day to really, again, raise the profile of the issue so the average citizen is able to connect the dots.

That was very much what we wanted to do with our audit. We wanted people to understand that this basic information is something they have a right to receive. Oftentimes journalists end up getting it for them but that's not enough, and they have to recognize that this is part of how a democracy works well. That was really the goal of it.

• (0930)

**Mr. Tom Lukiwski:** Just with respect to citizens' rights, what is your impression or your opinion of the knowledge base of the average citizen? Are they concerned about the situation you've uncovered, which shows that most levels of government have a high degree of non-compliance when responding to access to information requests? Is this a big issue in the minds of most Canadian citizens?

**Mrs. Anne Kothawala:** I think the concern grows every time we engage in an exercise like the audit, because in newspapers across the country there were stories about what it meant to you as a parent sending your child to school or as somebody who drinks the water in your municipality. We very much chose questions that would matter to John and Jane Q. Public, and there was real method in our madness, if you will, to try to make it about information that's important to the ordinary citizen. The more they see stories and say, oh, that could be me....

There's the woman who battled with the city to get her local playground equipment fixed because it was just dangerous for children. Those are stories people can identify with. It removes it a

little bit from the sponsorship scandal. People are interested in that, but it doesn't necessarily directly impact on them in the way these kinds of stories do. I think the more we're able to connect the dots....

And with respect to your point, this can't be a one-off. We'd like to do it again. Obviously, we wouldn't be able to give a lot of notice of when we were doing it because that would defeat the purpose, but certainly we intend to keep up the pressure.

**Mr. David Gollob:** If I could, I'll just add something. One of the key things this points to is that training and public education are required at a number of different levels.

There's the lady who couldn't find the number of the ATIP office or the ATIP coordinator in her department. That speaks to just a basic failure of training at that level, people dealing with the public.

But there's also something else we're looking at pushing forward a little bit, and that is public education, so people are aware of their rights the same as you may be aware of your rights as a citizen at other levels, in terms of employment or in terms of recourse in certain circumstances. People should be aware of their rights to information.

**Mr. Tom Lukiwski:** Thank you.

**The Acting Chair (Mr. David Tilson):** Monsieur Laframboise.

[Translation]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Thank you, Mr. Chairman. Ladies and gentlemen, thank you for your presentation.

You are aware that you have a unique tool: you have the luck to be able to act in the role of other people. This is good, and it is how things should be. In politics, we don't have this tool. If we were to act in the role of other people, we would be criticized.

We must not forget that during the last elections, the Prime Minister stated quite clearly that, in the light of the sponsorship scandal and the Gomery Commission, there must be transparency in the federal government machinery. When we look at your analysis, we realize that civil servants didn't believe him or that ministers simply have not made it clear to the civil servants in their departments that transparency is necessary. This astonishes me.

You asked about the number of personnel and how much money had been paid for sick leave. This is rather innocuous information. This means that there is great malaise in the federal machinery. You think that a law can remedy the situation and so do we. We are in agreement on a legislative amendment, but there is more. The whole government must become involved. I would like you to analyse the situation in a way that we can understand. I think the message has not been understood, or that there has been no political will regarding transparency.

**Mrs. Anne Kothawala:** I agree with you. As I have already said, we need more than a new law. There must also be a reform and a change in culture. The message must be much stronger. We can't simply say we want greater transparency. We must do something tangible that clearly shows that we want greater transparency. I think that civil servants don't have...

● (0935)

[English]

They don't have a real sense of commitment and leadership. They hear that this is important, but at the end of the day it requires a little bit more than just, on the campaign trail, saying we believe in openness as a government. It requires a lot more than that.

There needs to be a very strong message, saying not only is this important but we're going to start to measure your performance, and this is going to be one of the key criteria we're going to use to say you as a department have performed well. One of the tools we're going to use is to say, you responded to access requests; you released information in 80% to 90% of the cases; and you released that information in less than 30 days.

It just requires a fundamental shift in thinking, I think, and in leadership. That's what's required.

[Translation]

**Mr. Mario Laframboise:** That worries me as well. The Minister came to set out his action framework, and not a law, to the great loss of my colleague Martin who has been promised a law. The fact remains that three things were perceived in the document he had proposed. You say that there are three points: exclusions must be eliminated, fees must not be increased, and waiting times must be reduced. The Minister's action framework spoke of an increase in fees, exclusions were maintained and they didn't want times to be specified in the legislation. The Minister, Mr. Cotler, knows very well how it works. When fees are increased, times aren't specified and exclusions are maintained, access to information is restricted. You are trying to put us on guard against that, aren't you?

[Translation]

**Mr. David Gollob:** I will attempt to answer you.

If I have properly understood the document that Minister Cotler tabled during his visit to this committee, it was a comment that had been prepared by the Department regarding the results of the work of the Delagrave task force, which presented its report in 2002.

It's from this perspective that the Department and the Minister are approaching this matter, and that's where we find the malaise you mentioned. We greatly admire Mr. Cotler's comments. The Prime Minister defended the right of access to information in very clear terms, saying that it was a quasi-constitutional right according to the Supreme Court. This is very important, but it must nevertheless be understood that, behind the Minister, under certain circumstances, there is a public service that is perhaps afraid of change in this context.

This is why, from our point of view, a very close, strong and coherent leadership is necessary, as Mrs. Kothawala said.

**Mr. Mario Laframboise:** Even though the Minister talks a great talk, I know he is aware that if he increases fees, refuses to specify response times and maintains the exclusions, he is going to attain the objective of not providing information. This is my problem.

The Minister is a lawyer and he understands that rights and freedoms require access to information. You don't need to convince me. The problem is that he is a skilled politician, and able to talk out of both sides of his mouth. He can claim that he really wants the law

to permit greater openness, but if this law is implemented in a way that makes access to information impossible because it is too expensive, because there are too many delays or because exclusions are maintained, the result will be the same as before. We will not have more information because requests won't get submitted or delays will be too long. In the end, we won't get what we want.

This is why you must continue to maintain pressure. The Minister talks a great talk, but he really must make the decisions that affect his civil servants, and the whole government machinery must be on side

● (0940)

**Mr. David Gollob:** This is why we are calling on you as members of this committee. In our opinion, you have a very important job to do.

**Mr. Mario Laframboise:** Fine.

Thank you very much.

[English]

**The Acting Chair (Mr. David Tilson):** Thank you, sir.

Ms. Jennings.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you.

Thank you very much for your presentation.

I've looked at most of the brief you tabled with the clerk, and I have to say that with respect to the core principles of access to information you enunciate here, I don't think there would be anyone actually interested in openness, transparency, and accountability who would disagree with them.

I'd like to discuss point B, which is "Public money and public services must be subject to public scrutiny." One of the points you make about government, and the commissioner himself also makes it, is that there's been a creep in terms of what is deemed to be non-disclosable, and therefore rather than being an exclusion, it should be an exemption—if I'm getting it right—whose disclosure would cause difficulty, actually put out sensitive information, that there would be a justification.

Then we come to CBC-Société Radio-Canada. It's public money; therefore, there has to be the same kind of openness, transparency, and accountability. You say on page 6 of your brief, "However, an exemption should be added for the journalistic activities" of CBC.

I'd like you to give a definition of what those journalistic activities are that would not be disclosable, as opposed to all other activities that would be subject to disclosure and subject to the Access to Information Act. CBC has also raised this issue, and my concern is that if the definition of journalistic activity is overly broad, then we could see the same thing happening with CBC that the government is being taxed with over cabinet confidences, cabinet documents, ministerial documents, etc.; that is, overly broad but not justified.



**Mr. David Gollob:** Let me put it to you this way. I invite you to consider that what is in a reporter's notebook, the questions a reporter may have asked you in an interview, and what went into the preparation of a documentary for *The National* are not areas that should be in the public domain. The CBC in its reporting will give what they feel the public should know about this. That is their role; their mandate is to inform the public. We don't need to know, and it's not our business to know, how that process works, because that is their professional responsibility, in the same way we would not want to know what the conversation between a doctor and his patient might have been.

So we look at the way a journalist and people involved in journalistic activity go about their work as being embraced under a sort of professional umbrella, and under this there should be some protection or acknowledgment of a qualified right to keep that information confidential.

But what I would put to you is should we also as taxpayers and members of the public be able to inquire as to how much the CBC spends on coverage of news? Should we be able to inquire as to what the size of that budget is relative to other things, such as whether they spend more on promotion? Should there not be some kind of public accountability on that score? This is the area, we would submit, that is in the public domain.

● (0945)

**Hon. Marlene Jennings:** Very good.

However, you appear to have no problem whatsoever in advancing, on the government side, a fairly comprehensive definition, a very narrow definition, as to what should remain non-disclosable and what should be public information—that is, subject to the access to information requirement to actually divulge. I would like you to do the same exercise for journalistic activity, because my concern is that if that is not clearly defined in the act, then we will be in a position where the powers that be at CBC-Société Radio-Canada may make their own definition, which then will be overly broad—which is no different from what the government seems to be doing—and then make it non-disclosable.

You have no problem with providing clear definitions and directions in other areas, so I would like you to think about this and come back with what you would consider to be an appropriate definition of journalistic activities, one that would then define what would be disclosable and would not be disclosable. I'm sure the commissioner will have no problem with providing us with the same thing.

The other thing is that you also say the "Access to Information Act should apply to both Houses of Parliament subject to exemptions for information whose disclosure would breach parliamentary privilege." I'd like you to expand a little bit on that, first, and also on "The Act must specifically include travel and hospitality expenses of MPs, Senators...." I won't talk about ministers of the crown and exempt staff, because that's something we would like to see in the act, but specifically about MPs and senators.

Right now, if I'm not mistaken, the Board of Internal Economy actually releases that information for Speakers of the House. It is public. So if there's something I'm not catching here, I'd like you to explain that.

**Mr. David Gollob:** Yes, that information is public. The travel and hospitality expenses of exempt staff and senior officials are also public.

**Hon. Marlene Jennings:** No, I'm just talking about members of Parliament and senators.

**Mr. David Gollob:** These expenses are public. They've been made public. We would like them under the act.

**Hon. Marlene Jennings:** Why?

**Mr. David Gollob:** Because we feel that for consistency they should be under the act. The Board of Internal Economy, for example, is a committee of the House that, if I'm not mistaken, meets in secret, deliberates in camera, and makes enormous money decisions that have an impact, and it's a mystery to all the reporters working on the Hill. That's an example of an area we would like to be open and public and transparent.

**The Acting Chair (Mr. David Tilson):** Thank you.

Just before we proceed with Mr. Martin, I'll mention the question of privilege; you talked about solicitor-client privilege. I think the committee would be interested in knowing—I'm just pursuing what Ms. Jennings has raised—how broad the legislation should be with respect to any privilege reporters may have. Without getting into the court issue, I understand there is no privilege except solicitor-client privilege.

But I think her first question was particularly good. I'd like to hear more about that in the future.

● (0950)

**Hon. Marlene Jennings:** Thank you.

**The Acting Chair (Mr. David Tilson):** I compliment all members of the committee.

**Hon. Marlene Jennings:** It only took eight months to get a compliment out of you.

**The Acting Chair (Mr. David Tilson):** I know. I'm a cold guy.

I don't expect you to comment now, but I think it's an issue the committee would be interested in hearing more about in the future, because it always pops up.

Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** Thank you, Mr. Chair.

I want to thank Mr. Broadbent for allowing me to substitute for him today. There was actually competition in our caucus as to who would get to come to this meeting. That's how happy we are to have you here.

Let me begin by thanking you on behalf of all members of Parliament and all Canadians, in fact, for the incredible research and study you've undertaken here. I think it's very fitting that its subtitle is "Proposals to Strengthen Canadian Democracy". I couldn't agree with you more, and I think it's a graphic illustration of the role and the importance of a free press in democracy.

On that point, I think we all are coming to recognize freedom of information is a cornerstone of democracy. People have used the term “quasi-constitutional”...similar in weight to the Canadian Charter of Rights and Freedoms. This is powerful stuff. It just makes it all that much more compelling when you tell us the federal government gets an F, that it is a catastrophic failure in terms of compliance to that basic fundamental freedom, the right to know. It's so important you're here today.

In 1987, three years after the Access to Information Act was enacted in 1984, a mandatory review took place, in keeping with the act. The standing committee at the time published a report called “Open and Shut: Enhancing the Right to Know and the Right to Privacy”. In it, the justice committee made 100 unanimous recommendations to improve the legislation, and not one of those recommendations has ever been implemented by any one of the successive Ministers of Justice.

My question is not meant to be critical, because there's a time and a place for that. I know the bill I sponsored, Mr. Bryden's bill, tried to pay attention to those 100 recommendations and was crafted...stemming from that. How many of your 20 recommendations are in fact a repeat of those recommendations made almost 20 years ago in the study “Open and Shut”, or can you answer that?

**Mrs. Anne Kothawala:** I can't with a great degree of certainty, but I would say the broad themes have not changed. Certainly our 20 recommendations would likely mirror the 100 recommendations. That was why I took you through them. Our involvement doesn't stem back to 1987, but it does stem back to 1997, which is now almost 10 years ago.

As we see, the two research reports we sponsored using Professor Al Roberts when he was at Queen's really are the academic underpinning of what our audit actually revealed, showing what we always suspected was the case just in case there were some doubting Thomases who'd say, well, these recommendations look good and sound good, and yeah, you could say they might strengthen democracy, but we haven't really seen the evidence that there's a problem here.

Absolutely, I think this is further evidence of the fact that this has gone on for far too long, and the time to fix it is now. Let's not wait another 10 years to recognize that the same problems still exist.

• (0955)

**Mr. Pat Martin:** Thank you, Ms. Kothawala.

Because we have so little time, I'll just jump right to your specific recommendations on the core principles here.

In your recommendation 11 you talk about cabinet confidences. I know that's one issue Mr. Bryden and I wrestled with for a long time, Mr. Bryden for 10 years and I more recently when I took over this bill. In some provinces that score very well, I know, cabinet briefings are no longer committed to paper. You've driven cabinet confidences underground, which is no real help to anybody.

Can you expand a little bit on your recommended treatment of cabinet confidences and on juggling those problems?

**Mrs. Anne Kothawala:** We, like the Information Commissioner, believe very strongly that it has to be, rather than a blanket

exemption, something that is subject to review by the Information Commissioner.

**Mr. Pat Martin:** On an issue-by-issue basis.

**Mrs. Anne Kothawala:** Exactly, because otherwise there's no counterbalance. If you just have a broad exemption and say everything that's deliberated in cabinet is not subject to the act, you can drive a truck through that.

**Mr. Pat Martin:** Maybe Mr. Gollob's analogy works here too: the result is publishable; the steps leading up to the result are not. Is that similar in vein to—

**Mr. David Gollob:** You mentioned the first review. In fact, the justice minister at the time, Mr. Crosbie, agreed with one of the fundamental conclusions of that review, which was to remove the wholesale exclusion of cabinet confidences and make them subject to...very much as Information Commissioner Reid has proposed and as we propose.

The other thing to bear in mind is that the initial thrust of the act was to somehow make public part of the process that led to a government decision. This was all contained in the section dealing with the release of discussion papers of cabinet. What happened subsequently, as successive Information Commissioners have pointed out, is that this original intention of the act became frustrated because those background documents ended up getting stuck under another shell and thus did not become releasable any more.

It's worth noting that this has been an issue that's been going on and has been under discussion for a good 20 years. Many of us are therefore speaking from the same hymn book here.

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Martin.

That concludes the seven-minute rounds, all of which went over seven minutes, I might add, but we do our best.

Just so members of the committee and our two guests realize it, we have some in camera proceedings, of all things, at a time like this. That will take place about 10:30.

We'll now start three-minute rounds.

Mr. Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you.

In your paper, in recommendation 6, you say the Access to Information Act should apply to both Houses of Parliament. You haven't distinguished whether you're talking about the administration of each House or about senators and MPs individually. Is that lack of clarity intentional? How much did you intend to include individual MPs and senators?

**Mr. David Gollob:** If there is a lack of clarity, it is unfortunate; some clarity may have been sacrificed for brevity. Our concern here was not to submit a tome, a brick, but to clarify, as on the question from your colleague concerning CBC.

I don't think we consider the discussions between a member of Parliament and his or her constituent would be subject to the act. We would require further definition. But again, what we are looking at are general principles here, and the general principle is not to delve into confidential business or discussions that would not necessarily come into the public domain.

**Mr. Derek Lee:** The coverage of your recommendation isn't clear enough yet. You haven't reconnoitred the issue of members of Parliament and senators as objects of access requests.

• (1000)

**Mr. David Gollob:** As we said earlier, although their travel and hospitality expenses and so on are already released on an annual basis, we would like them to be covered under the act. The objective of this is not individual MPs and senators. The objective of this is the business of the House.

**Mr. Derek Lee:** Then you'd go to the Board of Internal Economy. Every institution has to have the ability to run itself, manage itself, and take decisions. Perhaps you don't recognize it in your organization, but the House needs that ability too, just like the cabinet needs it and just like almost every institution does. Our courts need it. You have to be able to make decisions, and you can't make them in the public eye, because if that were the case, you couldn't bring all the issues that need to be dealt with to bear in making the decision.

Do you think you've paid adequate attention to that need of the House as a whole, in managing its affairs, to have some decision-making body that makes its decisions not in the public eye?

**Mr. David Gollob:** Our response to that would be that the bias should be towards disclosure, the bias should be towards access, and government should be a glass house. If there are reasons you would naturally want to have curtains in a glass house, then the onus should be on you to show why and just exactly where those curtains should be.

Again, that's the same argument we make with regard to cabinet confidences. Of course, we believe that cabinet should be able to discuss in private and make considerations that are not visible or accessible to the public, that some domain must be carved out; however, this needs to be subject to a public-interest override.

On the issue of the Board of Internal Economy of the House of Commons, we have not made a specific recommendation. We do not go as deeply into the issue as that, but what we are doing is saying here are some general principles, and let us declare a bias towards openness.

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Lee.

Mr. Epp.

**Mr. Ken Epp (Edmonton—Sherwood Park, CPC):** Thank you very much.

I want to engage you in a little bit of a debate on an issue I think is quite critical here. One of the things we hear from time to time is that documents that are prepared for cabinet should be made public so the public can see what it is they're considering. I'm just wondering whether, in your view, democracy is strengthened by this, in light of the fact that in our present environment politically—well, in fact for all the 12 years I've been here—what you say is instantly thought of

as being your party policy or your personal belief. I find this quite offensive, actually.

In fact, I recall one of my colleagues, Herb Grubel, who came from a more academic environment than I do. He got so exasperated here, because he said that with his students he used to be able to say things that were really challenging to them to get them to think and debate and so on. I'm a lower-level academic, but that's one of the things that really bothers me too. You can't say anything here without somebody saying, ah, there's your hidden agenda. You can't talk about things; if that were to become public....

In some of our discussions we have some ideas that are put out. I think it's very healthy to be able to say in a discussion group that no idea you can put out here is going to be dismissed out of hand; we will discuss it. Now, after we discuss it, it could be that your ideas are just dismissed summarily on the strength of the argument, but it's not done as a personal attack. Yet in this environment it's always—I think almost always—twisted into a personal attack, and you can't have a decent debate.

I think there are some areas where, if somebody does some research and if that research is subsequently thrown out by the party, the leadership, the individual member of Parliament, or a cabinet minister as being not acceptable, there is some merit in saying, well, let's keep that from the public because it smears the person unjustifiably; he rejected that idea, so don't pin him with it.

What's your response to that as a journalist and as a communicator?

• (1005)

**Mr. David Gollob:** We're wrestling with what the specific question is. Is it a philosophical question, whether there should be an opportunity for frank and free discussion? Absolutely, we support that.

Just speaking to the point we made in our recommendation six, we recognize parliamentary privilege, we recognize caucus discussions, we recognize in fact that the Speaker of the Commons or the Speaker of the Senate should have a role in determining whether harm would result from the release of information. So there is a recognition on our part of the necessity of a forum for discussion and debate that is not necessarily open to the public, absolutely. But where decisions are taken that affect the lives of citizens, that affect the shape and the future of the nation and the national interest, we feel that as much as possible of this must be disclosable, and that if it is not to be disclosed, abundant reason should be shown.

The other thing we're recommending is that there be an independent third party who is able to determine whether a reasonable case has been made.

**Mr. Ken Epp:** Okay. I think my time is up.

Thank you.

**The Acting Chair (Mr. David Tilson):** I'm sorry. We're into Mr. Bains'.

**Mr. Navdeep Bains (Mississauga—Brampton South, Lib.):** Thank you very much. I just have a couple of questions.

If I recall, you've been in existence for about 10 years as a lobby, as an organization; is that correct?

**Mrs. Anne Kothawala:** Well, it's much longer than that, but in our current incarnation we were created in 1996.

**Mr. Navdeep Bains:** During those 10 years, how many audits have you conducted? How many evaluations have you conducted of various levels of government?

**Mrs. Anne Kothawala:** This was the first full-scale audit. We did a number of research projects with Professor Al Roberts, but those were more specific in nature, one looking at the federal government and the other just looking at the performance of access laws generally.

**Mr. Navdeep Bains:** The federal level received an F according to your rating scales—is that correct?

**Mrs. Anne Kothawala:** Yes.

**Mr. Navdeep Bains:** And relative to the previous specific audits, was the ranking you gave it now the same as in the past, or has it improved, or has it worsened?

**Mrs. Anne Kothawala:** No, as I said, this is the first full-scale.... There's nothing to compare it to. This notion of a report card across the country.... This was the first one we did.

**Mr. Navdeep Bains:** Maybe you provided this information; I'm not sure. When the Government of Canada or the federal level receives an F, how does it compare with the other provinces?

**Mrs. Anne Kothawala:** Yes, we did.

In fact, we will, probably in the next week or two, be publishing a sort of fulsome report that will include some charts and graphs that will show.... For example, one chart shows a picture of the nation and gives the report card, the grade, for each province. Generally, we found that those provinces with more recent and stronger FOI laws scored better, and those with weaker and more outdated laws generally scored more poorly.

One of the examples I used earlier, New Brunswick, also got an F, and the government has now committed to engage in a reform process of their FOI laws.

**Mr. Navdeep Bains:** Is there a regional disparity that you see? Is there a certain region that does well relative to another region? Is it just inconsistent, or consistent across the board?

**Mrs. Anne Kothawala:** Broadly speaking, moving from west to east, west was generally stronger and east was generally weaker.

**Mr. Navdeep Bains:** Is there anything you attribute that to, or is that just a general observation?

**Mrs. Anne Kothawala:** Again, it's the strength and the recency of the FOI laws in the jurisdictions.

**Mr. David Gollob:** Saskatchewan was an exception.

**Mrs. Anne Kothawala:** Saskatchewan was an exception, yes.

**Mr. Navdeep Bains:** Are you aware of any attempts by the federal government and the provincial governments to work together to harmonize these laws? Have you tried to facilitate that or be part of that process?

• (1010)

**Mrs. Anne Kothawala:** We're certainly working with the provincial information commissioners and the federal information commissioner to see what we can learn from each other in terms of best practices. That is something we are working on.

**Mr. Navdeep Bains:** Was that part of your audit as well? Did you go to that length as well, to talk about best practices between the federal and the provincial governments?

**Mrs. Anne Kothawala:** No, but I think that will come out of it, because we now have, we think, enough evidence of areas in which certain jurisdictions can learn from other jurisdictions. That information will also be included in our report.

**Mr. Navdeep Bains:** Thank you.

**The Acting Chair (Mr. David Tilson):** Before we proceed to Mr. Lukiwski, could I ask you to make copies of your audit available to our clerk?

**Mrs. Anne Kothawala:** Oh, absolutely. Unfortunately, we didn't have it completed in time for the appearance.

**The Acting Chair (Mr. David Tilson):** Yes, we keep reading about it in the paper; we just haven't seen it yet.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you, Mr. Chair.

I'd like to go back to the process a little bit, not so much to how the act might be strengthened, but to how governments can better comply with requests. Every department has—or should have, at least—access coordinators. Within the departments, they're the point persons to whom citizens would go to request information.

There's always been question or concern or debate about the amount of independence that individual should have within the organization, because they've got to have dual feelings, or the loyalties are a little torn. If someone is asking for information and it happens to be damning or incriminating information about the department in which they are employed, there's got to be some natural reticence of the individual to hand over this information if they know it's going to make their own department look bad. Beyond that, I suppose there's also going to be some natural reticence related to the shoot-the-messenger syndrome. If I give information of a damning or embarrassing nature, and it becomes public, or in the public purview, then am I going to be criticized internally as the one who handed over that information and made my boss look bad?

How do you reconcile with that? What do you consider the level of independence should be? How would you recommend the internal access coordinators deal with that issue, or how did the government deal with the issue of independence for the access coordinators?

**Mrs. Anne Kothawala:** I think it's an excellent point. It's something we've just started thinking about in terms of whether other models are out there that could perhaps inform us a little bit more in terms of how to do this better. I think one potential area would be to have the access coordinators report to somebody who's independent from the department in question. That is currently done—

**Mr. David Gollob:** With the auditors.

**Mrs. Anne Kothawala:** —with the auditors. It would certainly be worth considering, because I think you're quite right that it's part of the problem. You're never rewarded for getting that information out in a big hurry and complying with a request. It's not like a whole bunch of access coordinators are getting gold stars for doing their job swiftly and, as you say, potentially releasing information that may be.... I think it was in New Brunswick that one of the coordinators said, "I'm not prepared to give out that information, because it would make us look bad." That pretty much sums it up.

Absolutely, that is something to look at, because I think it would help to give a certain degree of independence.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Powers.

**Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.):** Thank you, Mr. Chair.

Does the CNA have any registered lobbyists in any of the federal levels or provinces?

**Mrs. Anne Kothawala:** Yes, we do.

**Mr. Russ Powers:** Are there registered lobbyists at the federal level?

• (1015)

**Mrs. Anne Kothawala:** At the federal level, yes.

**Mr. Russ Powers:** Okay, thank you.

I think your intentions, as outlined in your presentation to us, are both honourable and somewhat self-serving.

I would think there are probably not too many people who had dealings with the media over the years who have been subject to abuse and have had to go to, perhaps, in some cases, some measures in order to deal with that. I just want to take you that way, and I've only got three minutes.

Do you have available a review of principles and ethics and that, as it relates to your particular...? You're making the presentation on the basis of it, and I'm only directing it to the Canadian Newspaper Association—I'm not touching on other media on that—but have you prepared something internally as it relates to the policing of your own membership and a review of the ethics and principles that go with that?

**Mrs. Anne Kothawala:** We have a statement of principles that governs our members, and we make no apologies for the job we think journalists do every day—

**Mr. Russ Powers:** I know you don't.

**Mrs. Anne Kothawala:** —to play what we think is a very integral role in serving the public interest and ensuring that the average taxpayer and the average citizen knows what's happening to their tax dollars and can inform themselves better about their nation and their democracy. I think by and large journalists have done a very good job of that, and I think there is lots of evidence of journalists having been at the heart of uncovering some pretty major problems we've had in our democracy.

**Mr. Russ Powers:** Could you provide to us afterwards a copy of the ethics that are required of your industry?

**Mrs. Anne Kothawala:** Absolutely. I'll do that.

**The Acting Chair (Mr. David Tilson):** Thank you.

Monsieur Laframboise.

[Translation]

**Mr. Mario Laframboise:** Thank you, Mr. Chairman.

I come back to the question of waiting times. In your presentation, you say that access delayed is access denied. I know that you previously commissioned Professor Alasdair Roberts to carry out research. Are you going to draw a parallel between the results of your survey and those of Professor Roberts's research?

I understand that waiting times have not improved since 1998 or 1999 when he did his research. The delays are still just as long, and today you come here saying that access delayed is access denied. If you are delayed when doing an investigation, the information is no longer any use to you when you do receive it because you have gone on to something else.

**Mrs. Anne Kothawala:** That's right. One of our recommendations is that failure to comply with deadlines be subject to sanction, and that the commissioner have the power to order that an item of information be communicated.

**Mr. Mario Laframboise:** Have you established the deadline? Are you in a position to submit a suggestion: 60 days, 30 days?

**Mr. David Gollob:** Normally, we are satisfied when the deadline is 30 days. This standard is accepted not only here, but also internationally. The problem is that the deadline is not met. We can imagine situations where an extension of the deadline would be reasonable, for example when a lot of documentation has to be copied.

In the past, the Information Commissioner of Canada, Mr. Roberts and the Canadian Newspaper Association have testified saying that the deadline was an instrument expressly used to prevent having to make documents available.

We saw that during the Gomery Commission, during the cross-examination of a very courageous woman. She was the target of all sorts of pressure inside the department, which imposed deadlines on making available documents requested by journalists.

**Mr. Mario Laframboise:** In your opinion, the deadline is in the end one of the most important motives. If we are to make a reform, we must not forget that the deadline is always the most important thing in your work as journalists.

**Mr. David Gollob:** That is especially true for journalists. It must also be recognized that journalists are not among the most significant users of the Access to Information Act, for a number of reasons. There is one very important reason: a number of journalists told us that it was not worth it, because it took too much time, so they don't make use of the law. They look elsewhere for their information. This is deplorable, in my opinion.

• (1020)

**Mr. Mario Laframboise:** All right.

Thank you very much.

[English]

**The Acting Chair (Mr. David Tilson):** I was interested in what you just said. There was a piece that came out, from *The Windsor Star*, I think—Robert Cribb and Fred Vallance-Jones—that reiterated what you just said: that federal statistics show most formal information requests, almost three-quarters, are filed by citizens and businesses. Media requests account for 10%, and other organizations, such as labour unions, file 15%.

You'd think the media would ask most, but if this is correct, that's not true.

Ms. Jennings.

**Hon. Marlene Jennings:** You've conducted an audit of the government's performance under the Access to Information Act. Have you ever conducted the same kind of audit of your own membership? For newspapers, for instance—you represent the newspapers—has there ever been an audit conducted of the performance of the companies that publish newspapers in their compliance with access to information?

It's not a difficult question, Ms. Kothawala.

**Mrs. Anne Kothawala:** No, I'm not suggesting it's.... I'm just trying to understand the question. Journalists are not subject to the Access to Information Act, so I'm not sure what the question is that we would.... How would we conduct an audit of journalists or newspapers across the country? I'm just not sure how we'd do it.

**Hon. Marlene Jennings:** So your answer is no.

**The Acting Chair (Mr. David Tilson):** No, her answer was, "I don't know how we'd do it."

**Hon. Marlene Jennings:** The answer is no.

**The Acting Chair (Mr. David Tilson):** Well, all right, whatever you interpret. I'm not going to argue with you.

**Hon. Marlene Jennings:** Well, then, I'll explain, or attempt to explain.

Newspapers, media, whether it's radio, television, are run by companies. If I send a letter to The Bay, let's say, and ask for information that normally should be in the public domain, I will get a response—hopefully; I might not get a response very quickly. So I just want to know, has there ever been an audit done of how companies that are in the media domain—whether it's newspaper, television, radio—respond to access to information requests, whether it's under provincial legislation or under federal legislation? Has your organization ever conducted such an audit, or are you aware of any such audit?

**Mrs. Anne Kothawala:** Our organization represents newspapers, so I can't speak to radio, television and other media. The answer is no, we have not conducted an audit. I don't see a reason why we would, frankly, but we have not.

**Hon. Marlene Jennings:** My only comment to your saying you don't see a reason why you would is most professions and most sectors conduct their own audits as to how they're dealing with the public, with any public requests.

**Mrs. Anne Kothawala:** We perform an audit every day. The audit we perform—

**Hon. Marlene Jennings:** May I finish, please? I have not completed what I was saying.

Most organizations and spheres of activities do conduct audits to determine their own performance with regard to the public, so I would have expected there would be some form of audit that would be conducted by the companies that run newspapers. You have just told me your association does not do that, and that you're not aware of any.

Thank you.

**Mrs. Anne Kothawala:** Well, let me just explain to you the audit we do perform every day. That is the number of readers we have. If newspapers do not perform well every day, then they lose readers. That's how newspapers measure themselves. That's the bottom line: if you don't perform well, you lose readers.

**Hon. Marlene Jennings:** That's completely aside from.... That's like saying The Bay doesn't sell anything. Come on, get serious.

**The Acting Chair (Mr. David Tilson):** We're running out of time. I know you'd like that to continue, but we're running out of time.

**Hon. Marlene Jennings:** No, I'm finished.

**The Acting Chair (Mr. David Tilson):** We have Mr. Lee and Mr. Martin, and because we're running out of time, we'll give each of you two minutes.

**Mr. Derek Lee:** Thank you. I'm not suggesting that we have a bait and switch here today, but I thought we were going to have a chance to look at the actual survey, or alleged audit, or just something described as an audit, and we don't. We have a reform proposal, which on a stand-alone basis is just fine; it hits a number of nails on the head.

But in terms of public reporting of this so-called audit, it wasn't an audit of general public applications for information, was it? It was an audit only of selected reporters requesting information, reporters whose business it is to collect information to provide inventory for their work as journalists. I'm asking you to confirm that this really wasn't an audit; it was an exercise by journalists in attempting to get information for their professional business purposes and wasn't an exercise in citizenship at all.

It still has use. I'm just asking you to acknowledge that.

•(1025)

**Mr. David Gollob:** Thank you for the question.

The report we have prepared is contained in this with regard to the federal results, and I think it's pretty exhaustive in that. There will be a further report, a more extensive report, submitted to you in due course.

The technique and the methodology that we used was not to request information for journalistic purposes. On the contrary, we requested information journalists would normally not be interested in, information that was deliberately set to be innocuous and not contentious, not controversial. We set out to display not how difficult it is to be a reporter seeking information, but how difficult it might be—or might not be, in some cases—for a member of the public to seek information. That is the spirit of the audit.

It is called an audit. This is a methodology that is well established. In the United States, there have been hundreds upon hundreds of audits conducted, statewide audits—audits in Georgia, Florida, Pennsylvania. Associated Press, this year, is mandating that all its regional bureaus conduct audits. You can call it an audit, or not like the term audit.

It is akin to secret shopping or mystery shopping. It is a snapshot of the user's experience when they enter the store. What happens to you when you turn the key in the ignition of the car—does it start or not? In this case, we tried to start the federal car eight times, and six times it did not start. You can draw whatever conclusion you wish from that, but I would suggest that there is something wrong with the battery or the engine, and the car should be looked at.

**The Acting Chair (Mr. David Tilson):** I'm trying to be generous to people, but.... Mr. Martin, very quickly.

**Mr. Pat Martin:** Two minutes.

**The Acting Chair (Mr. David Tilson):** Well, that includes the answer.

• (1030)

**Mr. Pat Martin:** I understand. Thank you for this opportunity.

Let me close by saying I'm appalled to see my government-side colleagues attacking the research done by the Canadian Newspaper Association, just because they don't like the fact that they failed dismally in this test. The science of it—they can whine and complain about it; the fact is, as I'm fond of saying, if access to information is the oxygen that democracy breathes, we're choking to death. We're having another smog day in terms of transparency and accountability. They shouldn't be so sensitive.

It's previous federal governments as well. If there were 100 unanimous recommendations made in 1987, then previous governments of all stripes have failed to live up to any meaningful commitment to enhancing genuine access to information.

Probably my time is up. I have one more saying I'm fond of: if sunlight is a natural disinfectant, then access-to-information laws are the sunlight of Canadian politics, and a natural antidote to the culture of secrecy in which corruption flourishes.

**The Acting Chair (Mr. David Tilson):** Everybody wants me to bang the gavel, Mr. Martin.

**Mr. Pat Martin:** Is that right? I was just getting started.

**The Acting Chair (Mr. David Tilson):** I know it's great stuff, but we have to end it.

We obviously could go on at this time, and we may have you back. We look forward to receiving your audit. I know some of us will try to attend your conference in September.

You'll be interested to know that if we're still here next Tuesday—and who knows?—Commissioner Reid will be coming to the committee and discussing his annual report. I want to thank you both again for coming and making your presentation to us.

We will now suspend the meeting for a few moments. Very quickly, we need to clear the room so we can have a business meeting.

*[Proceedings continue in camera]*

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