



House of Commons  
CANADA

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

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ETHI • NUMBER 012 • 2nd SESSION • 40th PARLIAMENT

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**EVIDENCE**

**Monday, March 30, 2009**

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**Chair**

**Mr. Paul Szabo**

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

Monday, March 30, 2009

• (1535)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** This is the 12th meeting of the Standing Committee on Access to Information, Privacy and Ethics. Pursuant to Standing Order 108 (2), we have our study with regard to the Access to Information Act reform.

We have witnesses today. We are waiting for one other member, so if I may, I'd like to ask the committee quickly to consider the budget for our witness schedule for Wednesday, which is being circulated now. Mr. Gogolek is coming from Vancouver. That's part of our budgetary expenses, but we do have to have approval for the operational budget request. It is in the amount of \$10,150 to cover his airline fee and other miscellaneous expenses.

If there's no discussion, could I have a motion for approval of that budget for our witness to appear? Mr. Siksay.

Is there any discussion?

Mr. Siksay.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Just so we're clear, it's not just for the one witness; it's for a number of witnesses. Is that right? It seems as if for the witness from B.C. it's \$3,300, but there are other witness expenses.

**The Chair:** Yes, and/or other witnesses. It's to allow us that flexibility. If, as, and when we get those witnesses, we'll have an approved budget.

If there's no further commentary, all those in favour?

(Motion agreed to)

**The Chair:** Thank you.

With regard to our review of the 12 fixes of Mr. Marleau, the Information Commissioner, we have Mr. Michel Drapeau, who is a professor with the University of Ottawa, and Marc-Aurèle Racicot, who is a lawyer. Those two individuals, as you know, co-authored a very interesting article in last week's *The Hill Times*. We also have with us someone who I've been with at meetings before, who is very active on parliamentary matters, Mr. Duff Conacher, the coordinator from Democracy Watch.

Welcome to all three of you.

I thought what we would do is allow each of the witnesses to make some appropriate but brief opening comments. I think the issues before us have been made known to you. Mr. Marleau's

recommendations are substantively administrative, although a couple do have some impact, potentially, on amendments to the act itself. I thought there were some very interesting points raised in the discussion so far and in the article that was written. The committee felt it was important to explore those a little further and to have that opportunity. I think all of you are experienced in being witnesses. The most useful and constructive work is in the questioning and answering.

Let's move forward. Who would like to begin?

Mr. Drapeau, please.

**Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.):** On a point of order, I understand some materials arrived this morning. As I and perhaps other MPs have not had the chance to go to our offices today, I have the materials from Friday and had a chance to go through them, but I don't have the materials that have arrived in the last few hours. If we can have copies of those, that would be tremendously helpful.

**The Chair:** Okay. Sure, we could distribute whatever materials you need.

If there are other members who don't have the materials prepared for this meeting, there are copies.

Mr. Drapeau, *s'il vous plaît*.

**Professor Michel Drapeau (Professor, University of Ottawa, As an Individual):** Mr. Chair, let me open by thanking the members of the committee for permitting me to appear before you this afternoon.

I wish to keep my opening remarks short for two reasons. First, I have a sense that our article published in last Monday's *The Hill Times* has already alerted you to our position on the 12 recommendations submitted by the Information Commissioner on March 9, 2009. Second, we have provided each of you with a written submission that contains additional reasons and details on why we oppose these recommendations for change.

We are absolutely convinced that what ails the access regime cannot be cured by tinkering with the act. We believe that for the time being the act should remain as it is. Instead, energy should be deployed to identify and correct the systemic deficiencies and obstacles now afflicting the access regime. For example, in the previous Parliament the act was modified by adding a number of crown corporations and by including a positive duty to assist requesters. These changes were in and of themselves very positive, and they represented a significant step forward for freedom of information. Regrettably, however, these improvements to the act have been drowned by a significant worsening of the performance of institutions and of the Office of the Information Commissioner. Hence, if I may be so bold as to say so, government has been let down by its own administration.

We believe this committee has the stature, the authority, and the mandate to ensure that the act is properly administered, as was intended by a past Parliament. There was at that time a very careful and deliberate study, commencing in 1977 with the publication of a green paper and followed by two major cabinet discussion papers. This went on until 1982, when the enactment of the fundamental democratic right of access was provided to citizens. You will agree that before this quasi-constitutional statute is changed Parliament should be certain of the objectives and careful not to disturb an essentially good, clear, and well-structured statute that has served as a model for many countries.

You also have before you some brief biographical notes that outline my professional background and identify my contribution to the field of the access to information law. However, with your indulgence, I would strongly recommend that the following persons, whom I consider to be renowned in the field at both the national and international levels and whose experience and reputation for professional excellence is both proven and exemplary, should also be asked to appear before you to provide their sage advice before you proceed with any change to the current statute. I name Mr. Alan Leadbetter, who has served as deputy information commissioner under three commissioners; second, Professor Alasdair Roberts, who is a recognized academic authority in the field of access to information. I can also think of several more, such as Commissioner John Reid, but you have already benefited from his work. I must also add Mr. Justice Gomery, who made eloquent comments in his commissioner's report, which advanced the access rights of Canadians.

As I understand it, you have received an article that I recently wrote for the *Open Government Journal* on the state of paralysis of the Canadian access regime. I say "paralysis". I felt compelled to write these comments because in my opinion the Canadian access system has never been in such a sorry state. For all intents and purposes, it is now dead in the water.

● (1540)

One can juxtapose this situation to that in the United States, which has received a great boost recently through an initial act of leadership by the new President, on his first day in office.

It is for these reasons that I decided to answer your call to appear before your committee, despite the fact that I knew my spouse, who

is here today, did not relish the thought of discussing this subject on this day, our 45th wedding anniversary.

**Some hon. members:** Hear, hear!

Thank you very much.

**The Chair:** Thank you.

Monsieur Racicot.

[*Translation*]

**Mr. Marc-Aurèle Racicot (Lawyer, As an Individual):** Mr. Chairman, members of the committee, it is a great honour for me to accept your invitation to come and appear before you today.

I have been interested in access to information issues for close to 10 years now. In recent years, I have done a great deal of research and thinking about this fundamental right in any democracy. I am the co-author of *Federal Access to Information and Privacy Legislation Annotated*. After a work term at the Federal Court of Appeal of Canada, I worked for a few years at the Office of the Information Commissioner of Canada as a legal advisor. I also helped establish a bilingual training program offered over the Internet on access to information and privacy at the University of Alberta. I am the editor of the *Open Government Journal*, a scientific journal available free of charge on the Internet that has to do with issues of access and transparency. I am currently a lawyer in private practice.

The Access to Information Act sets out the basic principles regarding access to information in Canada. In the last 25 years, the act has been tested and interpreted on many occasions both by Canadians and by the government. The Federal Court has handed down many decisions regarding the Access to Information Act. The act works only if all the people involved play their proper role and assume their responsibilities. The basic principles that appear in the current legislation are valid, even though times may change.

For example, in 1982 when the act was passed, the Internet did not exist or was in the embryonic stage. However, the travel expenses of senior managers in federal institutions are now posted proactively on the Internet. In 1982, there was no e-mail. And yet, e-mails are included in the definition of a "record" that is contained in the act and are routinely disclosed in accordance with the act.

These few examples show that this legislation, which sets out basic principles, can easily be adapted to changing conditions, without being amended. The people who use the act, the government, the Office of the Commissioner and the courts have been able to use and interpret the act in such a way that it has been able to function since July 1, 1983, the date on which it came into force.

Great caution must be exercised in any attempt to amend this basic legislation. The problems we are experiencing at the moment do not stem from the act, but rather from the fact that some of the people involved are not performing their role properly.

The Access to Information Act, which has quasi-constitutional status, is good and valid legislation.

● (1545)

[*English*]

**The Chair:** Thank you.

Mr. Conacher.

**Mr. Duff Conacher (Coordinator, Democracy Watch):** Thank you very much to the committee members for the opportunity to testify today on this very important, good government subject, namely access to information.

[*Translation*]

I should be practising my French, but since there is a lot of technical terminology in this field, I will be making my presentation in English.

[*English*]

Since the act was passed in the early 1980s, it unfortunately has proven to be ineffective in requiring government institutions to make information created, gathered, or maintained by the government and all government institutions easily accessible to the public. Of course, some information, in particular personal information that the government requires individuals to submit, must be kept secret by governments to prevent harm or injury. Because of the many exemptions in the act and the very weak enforcement system, essentially the disclosure of information is discouraged, and keeping things secret is encouraged. As a result, the public is denied the right to information about actions and decisions it has paid for and has a clear right to know.

Essentially, the act is currently a “guide to keeping information secret” law, not an open government law. As in all areas of regulating the activities of humans in large organizations, especially when there are many incentives to violate the rules, the system, to be effective, must be changed to meet the following standards: we need to have strong rules without loopholes, because the many loopholes that currently exist in the act allow for abuse; we need a fully independent, fully empowered, well-resourced enforcement agency; and we need high penalties for violations.

The history of government and government institutions in all areas of the democratic process—honesty, ethics, openness, representations, waste prevention—has shown that you need a system that meets those standards to ensure that the rules, and the spirit of the rules, are followed.

To transform the current act and enforcement system to meet these standards, the following changes must be made. These changes were, most of them, promised by the Conservative Party during the 2006 federal election. They've also been recommended by many others, including the open government coalition in which Democracy Watch participated in 2000-01. Other groups in that coalition included the Canadian Association of Journalists, the association of libraries, community newspapers across the country, and several other citizen groups from a variety of areas.

I'll go through the key changes.

First of all, any type of record created by any entity within the government or that receives significant funding or that plays a public purpose must be automatically covered by the act. The act must require every entity to create records of all decisions and actions. They must have information management systems so that there are individuals responsible for each record. And most importantly, the act must require them to routinely disclose records so that records

don't come out based on requests but are made public on a routine basis after being screened to see whether any exemptions apply.

All exemptions under the act must be made discretionary, limited by a proof-of-harm test and a public interest override, as applied by the Information Commissioner. A couple of provinces have that proof-of-harm test and that public interest override.

As in many other jurisdictions, including Ontario, B.C., and Quebec, the Information Commissioner must be given explicit powers to make orders, including the order to release information. As well, extending coverage of the act to any government institution is a decision that should not be left in the hands of cabinet. Also, very importantly, the commissioner must be given the power to require systemic changes to government institutions' information management systems to improve compliance. Finally, the commissioner must have the power to penalize violators of the law. There's no danger in turning the Information Commissioner from an ombudsperson position with the power only to recommend, which he is currently, into a judge who can actually make binding orders.

• (1550)

The experience in Ontario, B.C., and Quebec has shown that this is a major change that changes the way the system works, because essentially, information institutions know that very quickly they can face a binding order to release documents, so they are less resistant to releasing them in the first place.

As well, I know from my experience working with the Ontario commissioner's office that there is a mediation system that can be set up to also quicken the release of documents and make orders not needed. There's less cost for everyone involved. No lawyers are needed by requesters for information. They can go through a very simple, easily accessible, and low-cost mediation system that can possibly lead to an order if there is no agreement reached.

Moving on, I'll quickly highlight a few other key changes.

Significant penalties must be established in the act for not creating records, for not maintaining records properly, for unjustifiably delaying responses to requests, and for denying access to information that is clearly required to be made public.

Because the Information Commissioner could possibly develop a backlog—as is current, but it could be at any time—requesters must be given the right to go to court if the commissioner refuses or fails to deal with the complaint within a specific time period. And we suggest 120 days.

Finally, funding to the system must be increased to solve backlog problems instead of increasing fees or other administrative barriers as an attempt to decrease the costs. There is a cost to this system, but if there is proactive routine disclosure of documents, the costs will decrease enormously because requests and complaints will also decrease.

Of course, if these changes are made, an extensive training program must be created to ensure everyone in the government is aware of the new standards and powers.

Finally, just to make a general point, some commentators, such as Donald Savoie of the University of Moncton, have claimed that since the act and its overall disclosure system was created, public servants have not been able to “speak truth to power”, and cabinet ministers have, as a result, not received as good information and advice as before the act.

Democracy Watch's position is that if this is true, the problem is not the act; it is the fundamental attitude and operation of the government and government institutions. An actually democratic government or government institution would welcome all information and advice on each issue, even if it were contrary to the position of its leaders, and would not hesitate to make all that information and advice public as part of a process of meaningful consultation with the public, which is the best way, as has been shown in many cases, to come up with actual solutions to societal problems and actual accountability measures that measure whether solutions are actually working. It is only when a government seeks to impose its ideology and will on society, in defiance of what the majority want or what best practice standards require, or when it seeks to help its own members, their relatives or friends, that a government needs to keep information and advice secret. As too many examples from the past have shown, this secrecy causes abuse and waste.

True, it is difficult to imagine a government operating in such an open and democratic way, but that is only because governments to date have not operated this way, not because it is not possible or advisable for governments to be open, engaging, and accountable. Changing the Access to Information Act in the ways that I've highlighted today would very much help move the federal government in this democratizing direction, but to be truly effective these changes should be accompanied by the passage of a law requiring meaningful consultation by the government before any significant decision is made. That would truly open up the government and ensure that decisions are made with all information available and advice in an open public debate. As a result, very likely those decisions would be better than decisions that are made behind closed doors, in secret, with only a few people allowed to participate in the deliberation and the dialogue.

This change both in access to information and meaningful consultation has been advocated by many citizen groups in many areas for decades, and hopefully very soon—sooner rather than later—we will see a ruling party and all political parties respond and make these changes to truly open up and democratize the federal government.

Thank you very much. I welcome your questions.

• (1555)

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

There is one issue Mr. Drapeau raised that I hope we will get some feedback on through your questions. I don't want your answers now, but maybe I could just flag it for you.

The commissioner himself has made some commentary on the lack of leadership. Mr. Drapeau, you also are inferring in your commentary that there has to be this leadership, and if I heard you correctly, it's really not coming from the commissioner himself. Unfortunately, his mandate does not appear to allow him to have those leadership tools. When he did that report card on the ten, six of the report cards were failures, and I think two were red-flagged. PCO was about the worst, being the leader—the top civil servant of the country having the worst performance. So it would be interesting to see if we could find out if there's a resolution on the role of the commissioner and the tools they have to be able to address some of the concerns that have been raised.

I'm going to allow you to fill that in when we get through the questions. Is the commissioner simply going to be an investigator and report to Parliament periodically, while performance under the act is somebody else's problem?

**Prof. Michel Drapeau:** Which it is not. I've taken care, in the paper that I put before you, in fact, to quote Mr. Marleau in his last annual report. Frankly, it's the same comment as has been made for 25 years. All of the commissioners have taken great pride in calling themselves ombudsmen and acting as ombudsmen. If you look at the definition of ombudsman, it's very broad, and subsumed to the title itself is leadership—by appealing to your committee, by appealing to the Canadian public, and by using the power of persuasion, which is another way of saying leadership, upon institutions to do what is required of them, short of using a legislative club.

**The Chair:** It's going to be interesting.

We're going to start with Mrs. Simson, please.

• (1600)

**Mrs. Michelle Simson (Scarborough Southwest, Lib.):** Thank you, Chair.

I'd like to thank you three gentlemen for appearing before the committee.

It's been interesting listening to testimony on this subject for the past little while. I'll address this question to you, Mr. Drapeau, or Marc Racicot.

I read your report and I was a bit stunned that we have a statute that's essentially over 25 years old and it has essentially seen no amendments. We have an opportunity to look at changing it because, obviously, it was enacted before the Internet. There have been significant technological changes. I was stunned that you came up quite strongly against all the recommendations. I am surprised, given where we are technologically and how far behind we're lagging in terms of access to information around the world, how you could say that the act is really working. I agree there's probably a cultural issue in terms of releasing information that has to be addressed, but I just can't square a 25-year-old statute that has never been revisited as something that is great, when we're clearly lagging behind other jurisdictions around the globe.

**Prof. Michel Drapeau:** First of all, I am not saying that the act is working; it's quite the reverse. The fact that it's been in existence for 25 years, I think on this point..... So has the charter. They were enacted one year apart.

What doesn't work is making changes to a moving target, and that's really what you have. Any one of the twelve recommendations will do nothing to ameliorate the current situation. What is the current situation? We have institutions that have very little respect for the act. Today at my office, just by happenstance, I received three replies to three requests that I had put in about a month ago. The replies are from the Privy Council Office asking for an extension of 210 days. That's one aspect of the act. Currently, as worded, it simply doesn't work.

My only choice as a requester in the face of this is to submit a complaint to the Information Commissioner. The Information Commissioner right now has a backlog of two years. I know from current experience that it will require at least two years to get a response. The act, when you submit a request, basically says you'd better be patient because the norm is two years.

My point is, change it if you must, but none of these 12 recommendations will, in any way at all, change either the backlog of the Information Commissioner or the institution's lack of respect for the act. My recommendation is that you need to address this first.

**Mrs. Michelle Simson:** Yes, exactly, but on the same token, with respect to.... As you say, it has slowed down. You have to wait. There's a backlog for the complaint process. Why would you take such exception to this order-making power recommendation that would put some teeth into it?

I agree that the commissioner, with due respect to him, has absolutely no power, short of taking a complaint to the Federal Court once it has been processed. The order-making power, to my way of thinking, would probably facilitate eliminating some of what you just explained, but you seem to be heading in the other direction on that.

**Prof. Michel Drapeau:** Madam Simson, if I may, I'm sorry if I have to argue against you on this one also. The commissioner has extraordinary power as it is. He's using only a fraction of it. He has the same powers as a superior court judge. He can call witnesses before him, deputy ministers if required—it has been done before—to provide answers as to why they are not releasing records in due time.

For instance, he can also issue a report, and as you rightly pointed out, if his recommendations are not followed through, then he can go to the Federal Court. He can also come to this committee, which his predecessors have done, and issue a special report or go to the media, as an ombudsman will do.

Now, let me address the reverse side of it: what happens if we grant him order-making power? You will find that in Ontario a great number of the orders that are provided by the Office of the Information and Privacy Commissioner are challenged in court. So we're not going to solve the problem if instead of making a recommendation to an institution, which the Information Commissioner does at present, he makes an order and then the institution

goes to the Federal Court. We're going to be tied up in courts for the next six years. We're still not going to have access to the records.

I think by providing the Information Commissioner with order-making power.... And I hasten to say that the Information Commissioner has only asked for order-making power for what he refers to as administrative complaints, not the serious ones—

• (1605)

**Mrs. Michelle Simson:** Which, by the way, are over 50%—

**Prof. Michel Drapeau:** I know.

**Mrs. Michelle Simson:** —of what he's dealing with in terms of a backlog.

**Prof. Michel Drapeau:** Which, by the way, are the most minor ones. If the Information Commissioner at the moment cannot sort out the minor complaints, if 50% of the complaints are about delays, deemed refusals, and these sorts of things—

**Mrs. Michelle Simson:** We've also received testimony that the current backlog is a direct result of the umbrella expanding in terms of the institutions that fell under the act, and that 80% of the complaints, essentially, are being generated by just a handful of requesters. These individuals aren't asking for specific information; these are large requesters, which doesn't make them any less serious, but in effect, everybody is made to queue up. There are large requesters that are backing it up.

**Prof. Michel Drapeau:** You have two questions in your presentation.

First, on the suggestion that the increase in backlogs is a result of extending the act to a number of new organizations, I don't know. I'm not the Information Commissioner so I don't have the statistics, but somehow, from reading last year's report, I don't get this impression from it.

Certainly there has been an incremental increase, as you would expect to have, because VIA Rail, Canada Post, CBC, and some others have been made subject to the act. That may be an adjustment from one year to the next, but that's the mandate, and the Information Commissioner has the staff—he got additional staff—required to deal with these. I don't think we should increase the coverage of the act on the one hand and then deplore the fact that there will be additional requests and additional complaints as a result of it. It's a consequence of it, and I think a happy consequence of it.

I know the Information Commissioner seems to have a bee in his bonnet when repeatedly he alludes to those requesters that make a number of requests. I know some of them personally, because they represent people in the media, or people like you as members of Parliament, or industries, or whatever. My answer to that is, "Bless them." They have a skilful use of the Access to Information Act. Their requests are normally targeted. They're not vexatious or superfluous. They use the act the way it should be used and they direct their requests to the appropriate institution.

Ultimately—and I will finish on this point—I hope you will ask the question of me later on as to how many requests we are getting in Canada and whether it is excessive compared with other democracies. I would be pleased to answer that, to perhaps better focus that answer.

[*Translation*]

**The Chair:** Thank you.

Mr. Lemay, you have the floor.

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Thank you, Mr. Chairman.

I read your presentation and heard your remarks, Mr. Drapeau. I also listened to what Mr. Conacher had to say. I find the presentations interesting.

Subsection 2(1) of the act reads as follows:

2.(1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public [...]

There must be a purpose to whatever is stated in legislation. That is an important principle that is regularly mentioned by the Supreme Court. Based on your text, and Mr. Conacher's remarks, I would like to know whether it is a shortcut to say that government employees are causing the problem. Whether the Liberals or the Conservatives are in power, there is always someone causing a problem somewhere, and people have to wait two years to get a response to their request. It is all about political will.

● (1610)

**Prof. Michel Drapeau:** If a prime minister of whatever political stripe issues a directive, as Mr. Obama did on his first day in office, that will definitely be helpful. However, the fact remains that it lies with government employees to deliver the goods, to ensure that the spirit and the letter of the law are respected. I worked with a number of ministers in my former position in the Department of National Defence. Ministers are not involved in the day-to-day administration of this act. The people responsible for ensuring that the spirit and the letter of the act are respected are the public servants within the departments, starting with the deputy minister. I'm absolutely convinced that so far not only have there been no penalties if someone fails to comply with the act or asks for a 210-day extension, there have been no consequences at all.

Should a very clear, categorical directive from the clerk or deputy ministers be issued very broadly? Based on my 25 years of experience with the act, I would say no. So far, public servants do their best, but they know that if they fail to meet the deadline by one or two months, there will be no consequences for them at all.

**Mr. Marc Lemay:** If I understand correctly, and Mr. Racicot will correct me if I am wrong, the act provides for certain time limits. Could people not simply systematically turn to the Federal Court to point out to the government that it did not respond within the time limit?

**Prof. Michel Drapeau:** That could certainly be done. When requesters do not get a response to their request within the 30-day period set out in the act, the act refers to this as a deemed refusal. The only option for requesters in this case is to complain to the commissioner. If they do that, they will have to wait two years before they get an answer back. And if they are not satisfied with the answer and if they opt for judicial review, that will take another year.

In light of this situation, we would like people to be able to use this act without being lawyers or having to go through a lengthy

process. We want ordinary citizens to have this right, not lawyers or the privileged members of society. This is their constitutional right. At the moment, the procedure is not only cumbersome, it is paralyzed.

**Mr. Marc Lemay:** Exactly. People listening to us today or who read this article could write to the Defence Department and ask for information regarding the tanks stored in Montreal within 30 days. This is how the system should work, but it does not.

**Prof. Michel Drapeau:** Let's assume that there are no exemptions or exclusions in the information requested.

**Mr. Marc Lemay:** That is what I am saying.

**Prof. Michel Drapeau:** You asked for the information, and you should get it. But that is not what happens.

[*English*]

**Mr. Duff Conacher:** Almost anywhere in Canada, if people park their automobiles in a place where it is illegal to park, they have a very high chance of getting caught, they will face a penalty, and the penalty will be collected or imposed within a reasonable time. We don't have an access to information system that works that way, and we need to. Across the country, if people could park illegally and not get caught, they would, because there wouldn't be a penalty. They wouldn't be caught, they wouldn't be publicly identified, and they wouldn't have to pay any price.

So multiple changes have to be made to the system. Part of the changes are...usually the signage is very clear that you're parking illegally. It's not clear to many public servants what can or cannot be released. The only way to clear this up is to give the Information Commissioner very broad powers to set all sorts of precedents, with decisions, about what has to be disclosed, require every institution to routinely disclose every document they create on the Internet at no cost—it can be done very easily these days—and maintain a public list of all those records. You reduce the requests where there are complaints. If there's a penalty for withholding the document and someone has clearly been identified as the person who made that decision and they'll face a significant penalty—like half a year's salary—as a fine, you'll see them stop doing it. That will change the culture—

[*Translation*]

**Mr. Marc Lemay:** I agree with you, Mr. Conacher.

[*English*]

**Mr. Duff Conacher:** —just as it has in every other area of regulating human behaviour in society since society began.

● (1615)

[*Translation*]

**Mr. Marc Lemay:** I will give you time to reply, Mr. Racicot.

**The Chair:** That will be your last question.

**Mr. Marc Lemay:** It is all very well to set time limits, but if the government does not meet them, where does that leave me as a citizen?



**Mr. Marc-Aurèle Racicot:** That is why we have a commissioner, an ombudsman. Under the system we established in the early 80s, the ombudsman takes the citizen's complaint without going through all the paperwork of lawyers and clerks. Ordinary people make their complaint directly to the ombudsman, to the Information Commissioner, who has full investigative powers. The commissioner may go to any department or institution and ask people there to tell him why the deputy minister cannot meet the 30-day time limit in that department.

He then reports to a committee which, in turn, may impose penalties and criticize the department. If the commissioner becomes a court and we make this into a legal process, the commissioner will not be able to go into the department. He would have to keep his distance. Lawyers will do that instead, and this will result in case law rather than in comprehensive investigations.

[*English*]

**The Chair:** Mr. Siksay, please.

**Mr. Bill Siksay:** Thank you, Mr. Chair.

Thank you for being here today, gentlemen. Congratulations on your anniversary, and to Madame Drapeau as well.

I want to continue this discussion. Mr. Racicot, you were just describing a situation where the commissioner could take some action, but I think, Mr. Drapeau, you might have mentioned that they have from time to time done those kinds of things you were just describing. Why don't they do it more regularly or as an everyday practice of the office of the commissioner?

**Mr. Marc-Aurèle Racicot:** You'll have to ask the commissioner why they're not using all their powers.

**Mr. Bill Siksay:** Could you describe instances where they have done those kinds of things you just mentioned? Are there any examples of this?

**Mr. Marc-Aurèle Racicot:** I remember in the past when I was there.... When they conduct an investigation, if they're not happy with the answers they get and they want to get to the basics and understand what's happening in the department or institution, they can subpoena the person to appear before the commissioner. They can ask them on the record what's happening in their ministry. Then they can understand.

I think the role of the commissioner is to show what's happening and help the department do better. That information is then put in an annual report and a special report to you, and then you can take action. Without that information from the commissioner, you know there's a problem but you don't know why there's a problem.

**Mr. Bill Siksay:** Mr. Conacher, you have a different take on this, I gather.

**Mr. Duff Conacher:** Yes.

The Ontario commissioner does the same through the mediation process. They have many mediators. Most of the complaints are solved through mediation. But does the institution or minister know the commissioner has order-making power? Resist mediation, and if you're wrong and you're doing something illegal, the order is coming.

The problem with Ontario still, though, is that there's still no penalty for violating the act. Unfortunately, that's far too common in so-called good government laws. Unfortunately, governments are quite happy to impose penalties for violating other laws, but not good government laws. We need those penalties. We need them for the public to ensure they follow the rules of society. We need them for governments to ensure they operate in ways that are good government as opposed to bad government.

**Mr. Bill Siksay:** I hear some different analyses from Monsieur Racicot and Monsieur Drapeau and you, Mr. Conacher, about the effectiveness of the Ontario system. Mr. Drapeau, I believe, said that a lot of orders end up in court in Ontario. Has that been your experience? How would you respond to that criticism of the Ontario courts?

**Mr. Duff Conacher:** I don't know what the definition of "a lot" is, but I don't think it's very many as a percentage of the overall number of requests, and most are mediated.

**Mr. Bill Siksay:** Okay.

**Prof. Michel Drapeau:** The point I want to make is that order-making power is not a panacea. It's not the end of the road. It doesn't mean that you'll have compliance. You are now opening a new door where the institution or the requester will say, "Let me go to court now, because I'm not happy with this." So you go full circle. What have we done now? What have we accomplished?

In the meanwhile, you have dramatically and drastically transformed the role of the ombudsman into a judicial officer. He's going to be in his office; he's going to be acting at administrative tribunals. He will no longer have persuasive power. He will no longer have the very vast powers that he now has. Probably in the process you're going to be asking requesters to engage the services of lawyers, because there will be an administrative law process that we now have to go through.

That's not what your predecessors meant, and I say "your predecessors" in the long range from 1966 to the green paper of 1977, and I'm referring to a couple of cabinet discussion papers. All the discussion that took place in Parliament before the enactment of the act itself was a careful balance of asking, what model do we want?

This model, ladies and gentlemen, we have exported to a number of countries. A number of countries have followed our example of how to have an access to information law, and they've adopted basically what is the Canadian Access to Information Act. The principle that was also accepted by a Committee on Human Rights at the United Nations is a carbon copy of the act.

So change if you must, but why are we changing? If you think that by changing it, giving it order power, things will now happen and institutions will now respond to it, my point to you is that if they're not responding to the sovereign power and the authority of this committee and of the Information Commissioner, why would they now all of a sudden respond adequately to a decision by an Information Commissioner?

● (1620)

**The Chair:** Mr. Conacher, you wanted to say something.

**Mr. Duff Conacher:** A court cannot have a mediation service unless it sets it up formally, which the Federal Court is not talking about at all for the Access to Information Act or anything else. A commissioner can, and the Ontario commissioner does. This committee and the commissioner do not have the power to order the release of a document or the cleanup of an information management system so that documents are routinely disclosed, the power to approve or reject an institution's request for delay, the power to extend the coverage of the act to any government or government-funded institution, or the power to penalize anybody. Those are all powers that are missing.

No, it's not going to be a panacea. There will be a huge transition, no matter what you do in terms of changing the act: transition periods, there will be difficulties, precedents will have to be set, backlogs will be created. But trying to set up a framework that will actually work to ensure that humans in government institutions follow the rules.... Point to me an area in society where humans just generally follow the rules where there aren't clear rules without loopholes or a fully independent, fully empowered, fully resourced enforcement agency or penalties for not following the rules. Show me where that works elsewhere, and I'll adopt it and say yes, let's just do that in government. But government has proven that doesn't exist, and so has the public in many other areas.

**The Chair:** We have time for just one more brief question.

**Mr. Bill Siksay:** Mr. Drapeau, I want to give you your chance to talk about what's happening in other countries that have a larger number of complaints than Canada. I know that you talk about our agency being swamped—

**Prof. Michel Drapeau:** Yes. Let me try to make it as short as I can.

There's often talk about the vast number of requests and how that explains why we have such a backlog and so on. Let me give you some perspective on it, please.

In the 1977 green paper a detailed analysis took place, and we had at the time the experience of the States. The States had had an act in place since 1966, and making allowances for size of population, temperament—we're far more reverent in Canada and less nosy, maybe, than our southern colleagues, and so on—the talk was that perhaps we could anticipate 70,000 requests a year. That was in 1977. The highest number we have had in the 26 years the act has been in place is 29,000 requests, last year.

Let me give you some perspective on it. In Thailand in the past three years, under the act in place since 2005, a million Thailand citizens have applied under the access regime. In the United States last year, four million requests were put in. So 29,000? In the 15 years before last year, we had an average of 13,000 requests a year. We're just barely scratching the surface, so volume is not a problem.

•(1625)

**The Chair:** Thank you.

Mrs. Block, please.

**Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC):** Thank you very much, Mr. Chair.

As well, thank you to our witnesses for coming today. I, too, echo congratulations to you, Mr. Drapeau. I'm sure you can find ways to compensate Mrs. Drapeau for spending some time here today.

**Prof. Michel Drapeau:** I'll have to.

**Mrs. Kelly Block:** In his testimony before this committee on March 9, the Information Commissioner told us that the Conservatives' Federal Accountability Act was the most significant reform to the Access to Information Act since its inception in 1983. David Loukidelis, Information and Privacy Commissioner of B.C.; Stanley Tromp, author of *Fallen Behind: Canada's Access to Information Act in the World Context*; and Murray Rankin, a lawyer specializing in information law and author of the preface for *Fallen Behind*, all agreed that the Federal Accountability Act was the most significant reform to the Access to Information Act since its inception.

Would any of you disagree with that assessment?

**Prof. Michel Drapeau:** I don't, and I said so much in my opening remarks. It's quite the reverse: I think you should take a bow. It was a major step forward. It signalled a very important step in the evolution of the act itself, no question. I'm the first one to applaud it.

I said—and I repeat—I think we've been let down, because the successes and the applause that you should receive from it have been muted because the government has not been responding to your clear signal: not only do we want the act to be applied, but we want it to be extended. What have they done under your government? If I can be so bold as to say it, the act has not met such a fate that it is now.... I said it, and I'll repeat it: it's dead in the water. That's no fault of yours. You've done what was required of you. Institutions should have followed suit and said, "We're going to make you look good." That's not what they've done.

The Information Commissioner has also accumulated a large backlog, and I see no end in sight. The act as it is today—not because of its coverage, which has been good and has been made better because of its application—is in a state of paralysis.

**Mrs. Kelly Block:** Thank you.

Is there anyone else?

**Mr. Marc-Aurèle Racicot:** I agree. I don't want to take more time on that.

**Mrs. Kelly Block:** Okay. These questions are for Mr. Drapeau and Mr. Racicot.

Your article in the *The Hill Times* specifically questioned the wisdom of giving the Access to Information Act a global reach. We have raised similar concerns in this committee as well. Can you please tell us what you think the consequences would be of expanding the current scope of the ATIA from approximately 30 million Canadians and others with direct ties to our country to over four billion people worldwide?

**Prof. Michel Drapeau:** If I may, I am not philosophically opposed to it, because I think the time will come when we should do this. This is what's happening in the United States. In my own practice, I use the Freedom of Information Act in the States to gain access to records on behalf of my clients. I've also used the U.K. act, which is universal.

But before you make it universal, there are some things you need to do that Mr. Marleau has not touched on. I'll give you some examples. First, you need to change the act so that you can submit a request by e-mail, not in a letter. You don't expect someone in Africa to send a letter to us. Second, you need to drop the fees. You don't expect someone in the U.K. or someone in Nebraska to send a \$5 Canadian postal thing. So there are some minor changes that you need to make.

The system is so swamped now as not to work. Why would we want to be an embarrassment on the world scene by saying, "Come on board. Put in your request. And by the way, you, Canadian, go to the back of the queue, because we're now swamped"? The institution can't respond. They sent me a request for a delay of 210 days. If the Information Commissioner cannot respond to a simple complaint within two years, why would we want to open it to anybody, particularly the States? If they submit four million requests and they all get together, we'll do nothing else but answer access requests.

Let's clean up our act first, and then once we do, we should open it. We'll be certain by the time we open it that we can show the world that when our law says 30 days, we mean 30 days, not six months or two years. Otherwise, we'll become an embarrassment, and for now we're not. Most countries—and most of them that have adopted our act—look to Canada for leadership. They've accepted our act, our model, and they look to us. A vast body of jurisprudence that we have has something to emulate. Let's not destroy the good thoughts that they have about us. Clean up our act first, and then we can open it. That won't happen today or tomorrow. I'll have time to celebrate my 50th anniversary before that happens.

**Some hon. members:** Oh, oh!

• (1630)

**Mr. Marc-Aurèle Racicot:** If I could add to that, if the government were to accept e-mails and letters, this could be done even without changing the act. It could be done through regulations. You don't need to change the act to do that.

But what we are concerned about too is that in the document tabled here by the commissioner, the 12 recommendations address only the most pressing matters, and we don't think that the universal right of access is one of these 12 pressing matters right now.

**Mrs. Kelly Block:** Thank you.

I have one more question. Given that Canadian taxpayers fund this program—not users but Canadian taxpayers—do you think it is appropriate for Canadian requests to be given priority over requests made by foreign nationals, who do not pay Canadian taxes and who do not cover the costs of their requests?

**Prof. Michel Drapeau:** Madam, I think that issue I have to bounce back to you, because ultimately you are the legislator.

In response to a government proposal in amending this legislation, it should be costed. As the green paper said, we expect 70,000 requests. I think there should be a cost associated with it. We expect 100,000, and if that happens we need 50 more people or 30 more people.

But I can tell you, from where I sit, I know there is a paucity of trained, experienced access professionals. That's another issue, but

it's really a crisis. It's Paul robbing Peter who robs Jeanette at the moment, and there is a kind of a merry-go-round because there are not sufficient people. At the moment we have in most departments a host of people acting on contract, consultants, doing the work—at great expense, I might add—to meet the demands. Now, why would we want to expend that, at a time when we're all facing a financial crisis, to provide someone in Zimbabwe or someone in Finland access to our records and to make that a priority? That's really what the recommendation says: pressing, needs to be done now. I question that, to say the least.

**Mrs. Kelly Block:** Thank you.

**The Chair:** Thank you.

Mr. Wrzesnewskyj, please.

**Mr. Borys Wrzesnewskyj:** Thank you, Chair.

I find it fascinating that in fact you all—the commissioner, Mr. Conacher, Mr. Drapeau, and Mr. Racicot—seem to be in agreement on one thing. The commissioner made it quite clear he didn't think the act was working. Mr. Conacher, you called the situation ineffective. Mr. Drapeau, your adjectives were even harsher. You called it an embarrassment. In fact, you also said it's dead in the water.

So you all seem to be in agreement that it's not working. It's just that you all seem to be taking very different approaches on how to fix it. The commissioner has his quick fixes and obviously would like to see more resources. Mr. Conacher believes that what we need is a regime of consequences, penalties, etc., that this might do the trick. I almost get this feeling...you haven't come out and outright said it, but you've said that the commissioner has the powers, and I guess we are to infer that the present commissioner isn't using his powers, so he's actually not effective in his role.

So first of all, just to clarify that, because you haven't come right out and said that this current commissioner isn't getting the job done, is that what you're trying to say here?

**Prof. Michel Drapeau:** That's what I'm saying.

**Mr. Borys Wrzesnewskyj:** Thank you.

You've also referenced a number of countries that have used the Canadian model. In passing you mentioned Thailand. Could you provide us with a list of those countries? If you don't have it handy, could we—

**Prof. Michel Drapeau:** I don't have it—

**Mr. Marc-Aurèle Racicot:** No, but we could provide you with it.

**Mr. Borys Wrzesnewskyj:** Could you at least mention three countries? You said Thailand and two others.

**Mr. Marc-Aurèle Racicot:** India and the Cayman Islands.

**Mr. Borys Wrzesnewskyj:** The Cayman Islands. I see.

**Mr. Marc-Aurèle Racicot:** It's a lot of the Commonwealth countries.

**Mr. Borys Wrzesnewskyj:** Sure. There's another Commonwealth country, New Zealand, that has taken a very different approach, and I'd like to hear a commentary from all of the panel of witnesses here today.

In our judicial branch of government we don't get a lot of complaints about secrecy, abuse of information, etc., because we have an open court system. It begins with a very different philosophy. Twenty-five years ago I guess this act was incredibly innovative, but there has been a huge amount of progress since that time.

How effective is New Zealand's act, or approach, in which they've taken that same sort of philosophy as the judicial branch of government has, that you post everything? Why shouldn't we just say, let's leave aside the quick fixes, human beings are human beings, we'll have different sorts of commissioners? We can start trying to police and apply penalties, but why not just change the whole system to something that has worked elsewhere?

So the question is, has the New Zealand system worked? Is it cost-effective? And looking at the New Zealand system and the open court system, would you suggest that it might be a way to resolve this? I'd like to hear from the whole panel.

• (1635)

**Mr. Duff Conacher:** Yes. You had summarized what I presented, that we need a system of consequences, and that was highlighted by the answers to a couple of questions. But my main point was that we actually need a totally different information management system. You still need to have that required, not just required by law but with no enforcement system and no penalties.

One of the key requirements is routinely disclosing records and adding them to a public list that can be searched, and then you can just find them on the Internet. There's just no reason a so-called PDF format can't be made of all these documents and you put them up as they are generated.

**Mr. Borys Wrzesnewskyj:** Thank you, Mr. Conacher.

And because we have limited time, I'm going to try to zip through the second part of the question, the New Zealand system. Are you familiar with this?

**Mr. Duff Conacher:** Heavens, no, I have not studied that, so I wouldn't have....

**Mr. Borys Wrzesnewskyj:** Okay.

Mr. Racicot.

**Mr. Marc-Aurèle Racicot:** When you are referring to New Zealand, you're talking about the open court system. You're referring to the judicial branch of the courts where all decisions, decision-making, everything is in the open. But we have that in Canada. In the common law system, all the court systems are open.

**Mr. Borys Wrzesnewskyj:** No, I was referring to the judicial branch of government as opposed to the executive branch of government in Canada. The judicial branch posts everything. My question was, should we now not take a similar approach with the executive branch? Is it cost-effective in New Zealand? Has the system worked in New Zealand? We have a Commonwealth country

there and it's not the Cayman Islands, it's a lot more similar to Canada. Should we look at that example?

**Prof. Michel Drapeau:** In theory, yes. But I would say that before we can run—and that's really running, and in a graceful way—I say let's walk. We can't even get what it is you need that you are entitled to by law. You cannot even get this today. The law already provides for this in subsection 2(2), where it says this complements existing processes. There's nothing that prevents the administration—I make a difference between government and administration—from posting anything that they have in a proactive way.

If somebody is asking about, for instance, the passenger list on the Challenger flights and this is being asked every month, and every month you release it and it's part of the public records, eventually the light would go on and you'd say, we're going to post it on the DND website; this is the list of the thing. And if you do this, you're going to reduce your workload, and you will increase your sense of transparency and the sense of confidence that people have in you. Open government? By all means. Most of that should be transparent.

The issue now is—allow me to joke for a moment—if you were to ask a department to give you the time of day, they would ask you why. And they ask you to submit the request. I often speak to people in the media, and they say, what if I were to ask that? Ask, and the first response is, "Put in an access request." That was not the purpose of this act. In fact, this act is to complement; it's when you hit a block, because this document is for you to have. It has to be processed to exclude and to exempt material and so on, but as for anything else, you should have it.

**Mr. Borys Wrzesnewskyj:** Sure. And thank you for that.

With regard to the limited amount of time we have, what is the level of satisfaction with the system in place in New Zealand? What is your knowledge of that system? It seems that you're almost suggesting that very thing.

Will I have time for another quick question?

**The Chair:** No, you're at seven minutes, and this is a five minute round.

**Mr. Borys Wrzesnewskyj:** Thank you for your flexibility, Chair.

**The Chair:** All right, I think the question is out. Do you have a quick response? No?

• (1640)

**Prof. Michel Drapeau:** I do not know the New Zealand system. I've only—

**The Chair:** We can't pursue that. It's a little more than we can address at this time.

Mr. Dechert, please.

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Thank you, Mr. Chair.

Gentlemen, thank you for your presentations.

Recently, Mr. Loukidelis, the British Columbia commissioner, appeared before us and he described how, under the B.C. system, they make a distinction between commercial users and individual users of the access to information system in that province. I was wondering, Professor Drapeau, if you could comment on that possibility in the federal system? Mr. Marleau mentioned to us that a significant number of the major users of the federal system are what he would describe as data brokers who are accumulating information on behalf of their clients, for which they charge their clients a fee. And it seems to me that perhaps in those situations the taxpayers would be better served if there was a cost recovery of the cost to government in providing those services.

**Prof. Michel Drapeau:** It's the flavour of the month. Because we have a backlog, it's easy in some cases.... And I've heard it a number of times, that if we could only do away with the commercial users, industrial users, or frequent users, whatever you want to call them, somehow it would make the system disappear. It's a quasi-constitutional act.

To give you my personal experience, I have clients who come to me because they don't want to reveal their identities, for political, commercial, or whatever reasons, and they ask me to submit a request. Now, whether I submit 10 or 20 requests in a given year, whether that makes me commercial....

As I said before, I certainly know the act well. But to suggest that there be two classes of citizens, that somebody, because of commercial or professional reasons...because you work for the CBC and make several requests or you work for a pharmaceutical company and make several requests, or you're in administrative law, as I am, and have clients who have to file complaints on human rights or they have a complaint before the Canadian International Trade Tribunal and they need access to their information....

Keeping in mind that the Access to Information Act is the only legal means by which to obtain access to government records, why would we want to penalize someone? If you do, then you will have mailboxes being created. In other words, someone will have multiple identities to try to get around the 100 ceiling or the 200 ceiling.

My point—and the courts have said this repeatedly, and it's universal—is that whoever submits a request should attach no motive to it. In other words, whether you're doing it on behalf of your sister who's trying to find out whatever on the medical side, or you do it on behalf of one of your constituents, or whether I'm doing it on your behalf, on behalf of MPs, which I have done on several occasions, my motive or your motive has nothing to do with anything. You have a right to submit a request. You pay your fees. You sign your name to it, and your address. You're a Canadian citizen and you're exercising your rights.

As a lawyer and someone who is into human rights, among other things, I would object as robustly as I could to the suggestion that there be two classes of citizens in exercising a quasi-constitutional act. It puts me in the wrong frame of mind.

**Mr. Bob Dechert:** I appreciate your comments, Professor Drapeau. I was also a lawyer in private practice before I was elected to government. My colleagues and I often made requests on behalf of clients, for which we charged service fees.

What do we do about the huge backlog? What do we do about the request that we open up the access to information system to anybody in the world—for example, that we make it easier for people to make requests over the Internet? Given the information that the Information Commissioner provided of the percentage of cost actually recovered from the fee that's charged—and I think he said it was 1% or less—how do we compensate for that in terms of the cost to the taxpayers of Canada?

**Prof. Michel Drapeau:** In terms of the backlog, you need to ask what the backlog is about. I mean, there are two ways to look at it. Either you try to apply more resources to eliminate the backlog, or I would go to the source of the backlog and ask why we have so many complaints of delays, complaints that are deemed refusals, complaints of exemptions. I would rather work on this. If the message were to be sent loud and clear to institutions....

Contrary to my good friend Monsieur Conacher, I'm not for penalties. I'm for appealing to the ideals of public servants. I'm absolutely convinced that they will respect the law if they are told to. It's a question of priority: we want you to do this and we expect you to do that. If institutions, instead of sending me letters saying it's going to be extended by 210 days.... In the end, it probably requires more effort to apply an extension and defend it, or to have a complaint created, than it is to respond in the first place.

But at the moment there is no incentive, and there's no pressure on the higher management in institutions to tell their ATIP staff, "First of all, we'll give you the resources you need to do the job, and second, we expect you to do the job within the deadlines set by the act." In the States it's 20 days, not 30 days, and they seem to be able to do it.

• (1645)

**The Chair:** Thank you.

We're back to Mr. Lemay, *s'il vous plaît*.

Monsieur Lemay.

[Translation]

**Mr. Marc Lemay:** I read the analysis of the recommendations, Mr. Drapeau. I am wondering why the system works in British Columbia, Ontario and Quebec. It does not take that long for people to get information. There seems to be a culture of secrecy in Ottawa, and that leaves a bad taste in my mouth.

Am I wrong in thinking that the commissioner's recommendations will change nothing?

**Prof. Michel Drapeau:** Absolutely nothing. I do not know why, but there real issue has been avoided. There is a lack of rigour in enforcing the current legislation. We should start by speaking to two people. The first is the clerk. Why has no directive been issued? The Access to Information Act is one of many laws in Canada. Why are different standards applied in the case of this act as compared to other acts covering areas such as pharmaceuticals, food, immigration or others?

What do we expect of our officials? Two weeks ago, I was staggered to read in the *Hill Times* that the commissioner's reports stated that the Privy Council, which is the Prime Minister's department, after all, the department that issues all government directives, had elicited no reaction from the clerk saying that something would be done to correct the situation. That was a recent case.

There is a lack of will, not at the political level, but at the administrative level.

**Mr. Marc Lemay:** If I understand what you are saying, even if we passed the 12 recommendations, the problem would remain the same.

**Prof. Michel Drapeau:** I do not even see how you can deal with the problem. Some of the recommendations are not bad. I am not opposed to the idea of extending the scope of the act, but this is not the time. Let us start by clearing up our own backlog and getting things in order. Not only will the recommendations change nothing, the situation will actually get worse. There is already a two-year backlog.

**Mr. Marc Lemay:** Mr. Conacher recommends that penalties be imposed on these debates—that is my word for them—and even talks about legal action. Let us set up a tribunal, if that's what it takes.

I do not know where you are getting your examples, Mr. Conacher, but I'm having a little trouble seeing what mediation or a tribunal or court, which is more cumbersome, could do to reduce the two-year backlog. Tens of thousands of access requests are still pending.

[English]

**Mr. Duff Conacher:** Which part, the order-making power or mediation service?

[Translation]

**Mr. Marc Lemay:** Let us talk about mediation. I do not know how we could go about that.

[English]

**Mr. Duff Conacher:** Well, it has worked for the past 20 years in Ontario very well. I was there in the first two years of the operation of the new act, in the information commissioner's office in Ontario for two years as a summer student when I was at law school, and they were setting up the mediation service. I was in the legal services branch. We were researching and coming up with legal opinions as to where the various lines were. The commissioner was signing off on those, as essentially enforcement policy. And then the mediators were given those definitions of various exemptions. And then they had 20 mediators who were hired, and most of the complaints were mediated. They didn't go to an order. The requester and the government institution reached an agreement.

• (1650)

[Translation]

**Mr. Marc Lemay:** At what stage would the mediation help? After the 30-day period, after the government has asked for an extension?

[English]

**Mr. Duff Conacher:** As it is in Ontario, when you make a complaint, mediation is attempted first. And if mediation doesn't work, if the requester is not satisfied, then the complaint goes to the commissioner for an order.

[Translation]

**Mr. Marc Lemay:** That would make the process more cumbersome.

[English]

**Mr. Duff Conacher:** No, not at all.

[Translation]

**Mr. Marc Lemay:** You do not think so?

[English]

**Mr. Duff Conacher:** No, not at all. You don't need a lawyer for the mediator, and there is no cost to the service. And you can have 20 mediators following the enforcement policies and precedents set by the commissioner. So they can do 20 times as much work and clear away 20 times as many complaints as the commissioner, as only one person can only work so much.

No, it's part of the system that has been put in place in Ontario for all civil cases. They're forced to go to mediation now to speed things up. It's viewed as a way of speeding things up, not slowing them down.

**The Chair:** Mr. Dreeshan, please.

**Mr. Earl Dreeshan (Red Deer, CPC):** Thank you very much. It has been extremely enlightening to hear both sides of the issues here.

I was looking primarily at recommendation 12. Finally I've learned there are some reasons why we have data brokers, some of the rationale for that. Earlier we heard that three people were responsible for 30% or so of the requests, and 10 were responsible for 47%, I believe it was. I'm not sure if any of the three of you are part of that particular group, and that's not my concern. But I really do appreciate the fact that you've been able to point out some of the reasons why this happens.

My question goes back to something I asked the commissioner before. We still have this report card. The report card was based on the time it had taken for various departments to get their responses in. I'm curious as to whether or not some of these data brokers are going into one or two different departments, and if that might be one of the reasons we're finding failing grades for certain areas.

Could you comment on that first, please?

**Prof. Michel Drapeau:** I don't have access to the database that the Information Commissioner speaks from. I object to the characterization. I don't know who those three individuals are. They could be a large law firm or a media organization. For all I know, it could be a pharmaceutical company, and they are known to be heavy users of the act.

My point is, who cares? If these requests are, for example, from a large law firm...and I wish it were me, because perhaps it would be effective from a monetary standpoint. But if a law firm represents an entire industry, they could have a number of requests. Years ago there was a lawyer specializing in fiscal law in Montreal who used to make quite a number of access requests in order to be up to date and to publish a fiscal bulletin on it. It's a legal way to have access to government records. What can I say? It's the only legal way. It's far superior to any other way I know of.

To me, instead of trying to dampen or reduce or eliminate what are referred to as—and I object to the term—data brokers or industrial users, let's not even go there. How can we better respond? There were 29,000 requests last year. This is a drop in the bucket. From the same commissioner who recommends to you to go worldwide, there would be 2 billion or 3 billion. Imagine if the Chinese—

• (1655)

**The Chair:** Let's get back to the questions. Your point has been made.

**Mr. Earl Dreeshen:** Thank you very much.

The other part I would mention, with the lawyers beside me, is this. Is it not something where you'd have cost recovery? I assume the lawyers are charging their clients. It would seem that the departments are doing some of the work for them. I'm just curious about your thoughts from that point of view.

**Prof. Michel Drapeau:** I think at the moment the application fee is \$5, and I think we're getting in something like \$500,000 a year. It's probably costing us more to process the \$5 than what the fees are all about.

But you have to be logical. If you're going to go universal... I'm presuming that the Americans have been assured we're not going to charge a fee. On one hand, we're prepared to open it to the Chinese community and everybody else in the world, and on the other we're going to have a special fee schedule for those Canadians, be they law firms or media, as a recovery type of thing. That ends up with two classes of citizen, and I have difficulty with that.

**Mr. Marc-Aurèle Racicot:** If I could add to that, the next generation of access legislation will be proactive disclosure. We're not looking at a request initiated by a citizen; rather, the government or administration would be disclosing the information proactively. There would be no fees; you'd just need a good computer or a good library.

**Mr. Duff Conacher:** I endorse that point very much. The more you move to routine disclosure, the fewer requests you will have, and the fewer problems you will have with the entire system.

**Mr. Earl Dreeshen:** I have just one last question. What do you make of the recommendations that cabinet confidences should be subject to the ATI? Is this a violation of parliamentary precedent?

**Prof. Michel Drapeau:** I don't agree, and I said so in the document.

I was consulted a number of years ago when the British act was in creation under the then recently elected Labour government, and the first recommendation made was just that, that we should open up. Basically, at home, there are certain places you don't go. You don't go to your parents' bedroom, for instance. By analogy, if you want to

have a frank, honest discussion, the Prime Minister, by the very oath the privy councillor makes, that they will give their honest and forthright opinion to him for better governance.... There is a contradiction there, whether it's going to be done with the eye of the camera or before a stenographer. All I would do is maybe reduce it from 20 years to 10 years. But we're fiddling there.

I think the exception is right. We need to have certain areas as a safe house. In this instance, the government, whatever colour it is and whatever the issue is, needs to be able to discuss without the risk of being in *The Globe and Mail* on the following day.

**Mr. Duff Conacher:** I mentioned this in my opening statement, that I don't see any reason why someone can't speak truth to power in the open. We need to have a government that's actually open and democratic, which means you have these conversations in the open. You discuss possibilities, options, with the public. There's no need to do this behind closed doors except in the rare cases, again, where there might be harm or injury.

These are not discussions of the political party and its strategy. Those discussions the party can have, but when you're in cabinet, there's absolutely no reason why it cannot be in the open.

**The Chair:** I'm going to exercise the chair's discretion and ask a question, which may help us to get a little feedback over the last half hour or so that we have.

Backlogs seem to be at the heart of some of the problem here, and in the future that may not be a problem because of the technology and the open government issues. But right now, according to the Information Commissioner, the 30-day rule is the exception, not the rule. That's a problem. That is what was being contemplated by the act.

One of the recommendations the commissioner said to us is that there should be no extensions beyond 60 days without prior authorization or approval from the commissioner. It is a brand new triage responsibility, which may fall into your concern, Mr. Drapeau, about giving a little too much authority. But you have three items in front of you going for 210 days. The commissioner could short-circuit that and satisfy himself that there's reasonable cause to go beyond 60 days.

So I'd like to have your feedback as to that simple change to the act or the regulations, where there is the authority to intervene to ensure that any requests over the 60 days get prior approval.

• (1700)

**Prof. Michel Drapeau:** Mr. Chair, at the moment, in the manner in which the act is constructed, an institution that claims an extension of 60 days or more has by law to provide a copy and to advise the Information Commissioner. So the Information Commissioner is aware now of every time, including this one—his name is at the bottom of it. So it's not as if he cannot do something without my even submitting a complaint—

**The Chair:** No, no, sorry. He's aware, but there's no subject to his approval. That's different.

**Prof. Michel Drapeau:** No, but he will become better aware of it if I submit a complaint.

**The Chair:** Well, awareness is fine. And 210 days from now when the complaint comes in...it'll be another two years before the complaint is dealt with.

I want you to understand that giving notice to someone about something is one thing; having their approval to proceed is quite another and would deal with backlog. You said at least three times today that none of these things would deal with any of the problems under the act. So I have a contradiction before me.

**Prof. Michel Drapeau:** Let me address it in two ways. The Information Commissioner is aware of it, and when your mailbox brings in more notices every day than anything else, then you know you have a problem, and he has the ability himself in the act to self-initiate a complaint if he needs to, if there's a systemic problem.

To address the second issue, to now give him the power to provide approval for any extension, I see that as a diminution of my right to access to records within 30 days, because all of a sudden now an institution would have to make a request to the Information Commissioner and then it will require him—I don't know—a month or two to investigate and to provide approval for whatever number of days, or a day or five days. So it will add to the system, add to the process.

**The Chair:** Okay, point made.

We're going to move on. Mr. Siksay, please, and then I have Madam Simson and then Mr. Shipley. We probably will have another 5 to 10 minutes left, so if anyone else wants to have another little short shot, please do.

Mr. Siksay.

**Mr. Bill Siksay:** Thank you, Chair.

Mr. Conacher, one of the things you talked about was penalties for not creating records, and I think we raised this when the commissioner was here. There was some indication that a requirement to create records would actually be part of the National Archives of Canada Act, not the Access to Information Act. Do you have any feedback on that or is that your understanding as well?

**Mr. Duff Conacher:** I did not know that the National Archives of Canada Act would cover that as well. But again, I think requirements are something that need to be put in place. I'd like to put forward another analogy from the Gomery commission: part of what the Federal Accountability Act does is require some clear lines as to who's responsible for decisions on spending. If a deputy minister or an assistant deputy minister is in disagreement with a minister about whether something is legal or not, then the minister is required to send a letter to the Auditor General stating the disagreement. This way, if the spending went ahead and it was later deemed to be illegal, it's clear who's responsible.

We need that same clarity. You're required to create a record, and someone is responsible for it and for managing it in the information system. If we had this order-making power, the approval or disapproval of 60 days on something coming out or not, or on a delay in releasing it, then we would have someone who could be held personally responsible. That's what we need to bring to the system overall.

**Mr. Bill Siksay:** Thank you.

Mr. Drapeau and Mr. Racicot, you also raised in your briefs a number of management issues within the Office of the Information Commissioner. You said it had too many middle managers and not enough investigators. You've raised concerns about lack of focus, the turnover of investigators, and the loss of corporate memory. I wonder if you could say a bit more about these issues. Do you think there are significant administrative issues within the office itself that, if addressed, would make a significant difference in backlog and in the ability to deliver on the office's commitments?

**Mr. Marc-Aurèle Racicot:** When you look at the act, the commissioner has only one mandate: to receive complaints and to investigate them. This is the only role and mandate under the act. Right now, based on the public websites, there are only 16 investigators to carry out the mandate. You have the commissioner and two deputy commissioners, nine directors or acting directors, four chiefs or acting chiefs, three managers, one acting senior legal counsel, one general counsel, and one senior policy adviser. So there are only 16 soldiers to carry out the mandate and investigate the complaints from the citizens.

• (1705)

**Mr. Bill Siksay:** Mr. Drapeau, you've said a number of times that you regard the lack of commitment to disclosure of documentation as a problem at the administrative level rather than the political level. I'm struggling with that, because it seems to me that we're blaming the folks who aren't in charge. Why would you focus on public servants rather than on the political masters of those departments? Why not ensure that there is political control over what's going on in these ministries with regard to disclosure and access?

**Prof. Michel Drapeau:** There are two reasons. In every department that I know of, there has been a wide delegation, almost absolute delegation, from the minister to an official or more than one official in the department. This official has the power to apply exemptions, grant extensions, exclude material. In other words, they have full power to do whatever they think is necessary. The act is crystal clear. There has been jurisprudence galore to interpret it.

**Mr. Bill Siksay:** But if that's not happening. Shouldn't it end up back on the minister's desk, asking why the minister isn't ensuring that this takes place in the department?

**Prof. Michel Drapeau:** Perhaps my public service shows through. I spent 34 years in uniform and two years as a senior public servant. I take the law and my duties seriously, and I believe every other functionary does the same. You don't need to be told by your minister to obey the law; that's your task, your *raison d'être*. That's why you're called a public servant. Why isn't that senior public servant, such as a deputy minister, assessed on a yearly basis for performance on access, together with performance on official languages, the Financial Administration Act, and everything else?

If that were to happen, once the delegated official who is known in the department as the coordinator of access to information knows that her—or his—pay, her promotion, her incentives, or her whatever all depend upon not being in this report, or before this committee, but on performing, then I think you will see a change, and way before a minister would say, “By the way, I want you to observe the law.”



So the first reaction belongs to the bureaucracy. In some instances, they have to give the coordinator additional resources to do their job. I think these officials will react with the same aplomb, the same energy, and the same efficiency as they do in every other respect.

**The Chair:** Go ahead, Duff.

**Mr. Duff Conacher:** I want to say, just briefly, that I think I had highlighted the fact that we need a system, as was brought into the spending system, of determining whether it's the minister or the public servant who has made the decision about non-disclosure.

Secondly, I'm happy to hear Mr. Drapeau essentially endorse penalties, meaning that if the person's pay or bonuses are conditional on performance, then they will change their behaviour. I agree entirely, only I think there should also be penalties, not just that you don't get your bonus. Your pay will be docked. You will be suspended. You will be fired if you do not follow this law, repeatedly, on a normal scale of penalty and dismissal, as people face in many other laws that the federal government has passed for many other areas of society. We need this in the area of good government law as well.

**The Chair:** Thank you.

Madam Simson.

**Mrs. Michelle Simson:** Thank you.

I'd like a very brief response from all three of you.

I've read the article that was in *The Hill Times*. In your submission today, you refer to this act as a quasi-constitutional statute. Do you believe access to information is a basic human right in this country?

• (1710)

**Prof. Michel Drapeau:** One word: absolutely, madam.

**Mr. Marc-Aurèle Racicot:** Absolutely.

**Mr. Duff Conacher:** Yes, absolutely.

**Mrs. Michelle Simson:** Okay. Given that, the commissioner testified and on a number of occasions referred to the culture. I'm not referring now to government, or party, or partisanship; I'm referring to the absolute culture among some of the bureaucrats in the institutions. There is a culture of secrecy. I don't think anyone would disagree that things have slowed down because of that.

I'm really interested, Mr. Drapeau; you've painted a beautiful picture about compliance. But there is a reality, and I don't understand your aversion to a penalty, a serious penalty. Giving the commissioner the ability to deal with this without having to go to court means it gets reported.

In fact, I like Mr. Conacher's idea that you do get money docked from your pay. That's the only thing that will get anyone's attention.

**Prof. Michel Drapeau:** Well, I am who I am, and I don't believe, in my leadership style, a penalty should be the first order of business. I would appeal to leadership. I would appeal to professionalism. I would appeal to the higher qualities and values of public servants. I have too much respect for them. They don't need to come to work every day and not know whether, at the end of the day, they may be penalized because of whatever. Once they are given clear direction, we expect them to follow the law, we expect them loyally to let us

know what prevents them from doing it, and if it's an absence of resources that prevents them, then we'll do it.

Most public servants, whether they are the financial officer at Finance, or a food inspector officer, or an immigration official, do the best job they can in accordance with the law. I think the access to information coordinator will do likewise. But we have to let them know that if they do their job, there will be no criticism of them because they have released documents in accordance with the law.

**Mrs. Michelle Simson:** How long would you say this fix will take? Another thing I have an issue with has to do with requests from people outside Canada.

We've heard testimony that in Australia, Ireland, Mexico, the U. K., and the United States they all reported—and I mean *all* reported—that there was no significant increase in the volume of requests, and that people who really want information in Canada will hire brokers. You're not likely to have a billion people on the Asian continent all suddenly sending in requests.

Would it be fair to say, then, that, really and truly, there won't be a big volume of requests? Those people who want the information can access it right now.

**Prof. Michel Drapeau:** Madam Simson, the short answer is that I don't know. Canada is seen as an oasis of peace, and we may, in fact, receive more requests than Australia. Who knows? We would only know on the day.

Perhaps an analogy is that a lot of other countries have come to Canada to ask us to provide them with a model for their legislation. Whether or not there will be the same interest in coming to our data banks to have access to them will only be known once you open them. It is then that you would close the door. Only then would you know. It would take someone other than me to give you an estimate of whether there would be an increase of 5%, or 10%, or 100%. I simply don't know.

**Mrs. Michelle Simson:** The other countries have all reported there was no significant increase, so I guess my question would be what is the thinking behind your belief that Canada would perhaps suddenly be—

**Prof. Michel Drapeau:** But my thinking is not so much about what the volume is going to be. My thinking is that if we open the door—and I am assuming you are 100% right, and I would like to think you are—then why would we want to do it until and unless we clean up our house first? That's my point. Even if we were to go with your suggestion, there would be no increase—

**Mrs. Michelle Simson:** But, sir, you haven't offered one suggestion on how we could do that. In listening to you, I really did hear a lot of pie in the sky, but what we're looking for is feedback.

**Prof. Michel Drapeau:** I've given you two suggestions. The first one is that we need to empower the coordinator to make sure that the law is respected as it is now written, by making sure that senior management provides the necessary directives on leadership first; and second, simultaneously, we should eliminate the backlog.

• (1715)

**The Chair:** Thank you, Madam Simson.

Mr. Shipley, please.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, Mr. Chair.

Thank you, witnesses, for coming out.

And congratulations on your anniversary. I hope you have a great evening with Madame Drapeau after this committee meeting.

Mr. Drapeau, I just want to follow up a little bit. I'm new to this committee or am just on it today, but I have a couple of things I would like to bring forward for some clarification.

I know the committee has had different witnesses before it and in that time has been told about the small number of complaints that come forward from individual companies. It says in one of the reports I read that there were about three individuals. I don't know what "individuals" means, but you referred to them.

And we discussed the costs, 99% of which, or the majority, actually get picked up by the taxpayer. You are opposing having any fee for this. I agree with you based on the fact that if it were a \$5 fee, we know what administration does with \$5. So we should never create a negative balance sheet just by creating some sort of silly fee of \$5.

My point, though, is that if we have such a load, whether from large law firms—and these firms are collecting substantial fees from their clients—or the media or brokers.... We don't know who it is, but if it is mostly those who are making requests through the system, should there not maybe be a limit to the first amount they seek? You could get 10 or 15 requests, I don't know, and then after that, quite honestly, you're occupied with requests from an individual, the Bev Shipleys of the world who may want to put in a complaint or get access to information. I would tend to think that if it is important enough for me to ask for information, then it is likely important enough for me to pay something for it. We do that in just about every other system within our government.

So there should be some sort of user fees. I'd like you to consider if any part of this should be charged a fee, because you have said no to it.

But on the other hand, my further question will be about people basically wanting to be anonymous. Now, we have a major group of people, a handful, who are making most of the requests. And we aren't charging them, on the one hand, but are giving them a free lunch, asking them to the banquet hall and saying, here's a free lunch. But the reality is that you, the requester, never has to tell us that you have a company. You never have to indicate that. And these may be the same people time after time after time, repeat after repeat after repeat, who are making the requests.

So at some point in time, is there an obligation so that the one being requested to provide the information can find out who is actually making the requests for information?

**Prof. Michel Drapeau:** Let me try to answer your question by first perhaps opening.... I'm not speaking for data brokers, industrial—

**Mr. Bev Shipley:** I'm talking about people who likely are sitting there to abuse the system.

**Prof. Michel Drapeau:** Ironically, the very persons you are alluding to are already paying a premium by going to a law firm to hire the expertise and to submit the requests. If anybody's going to pay, and for whatever reason or whatever motive, which the court says should not be of importance to us, either because they don't want to reveal their identity or they want to have somebody who they know has the technical professional skills to put in a request at the right location.... Who knows? Whoever these individuals are, they are already paying professional fees to the law firms they hire, so why would we want to ask more of them?

I have to go back to how many requests we get a year: 29,000 from a population of 30 million. It's not as if we have any tremendous number. You almost have to ask yourself why people are hiring lawyers. Why are people going through these data brokers?

One of them, I would pose to you, could very well be a large media organization that uses the act repetitively and frequently. I know they do. The Library of Parliament uses it on your collective behalf. Ought they to be paying a premium because they asked, not for you but for the gentleman next to you, the gentleman next to him, and the gentleman next to him?

It's a road that I think would meet with more frustration than actual savings, if you know what I mean. Why would you want to penalize this? Why would you want to look behind the veil, wondering if the 15 requests I've received from this individual represent one client or five clients, and so on?

• (1720)

**The Chair:** Unfortunately, we're already over five minutes, and I'm not sure whether the other two....

**An hon. member:** [*Inaudible—Editor*]

**The Chair:** Well, you took three and a half minutes for the question. What can I say? I apologize.

I think Mr. Racicot wanted to add something here.

**Mr. Marc-Aurèle Racicot:** You have to look at the right of access. It's not the privilege of access. You have a right to access information.

If you see a large volume of requests aimed at one department, it means there's a need to be more informed about that department. So why not make it public instead of waiting and accusing the requester of making too many requests? There's a will from the citizen to be informed about that department, so make it public.

**Mr. Duff Conacher:** Yes, require all government entities to maintain information in a way that is easily accessible and to routinely disclose all of it that can clearly be disclosed under the act. You'll eliminate the problem.

**The Chair:** We've completed the two rounds and we have a few minutes left. Mr. Wrzesnewskyj wanted to ask a question or two, as did Mr. Siksay. Is that about it?

We'll deal with those two and then I think we're about done.

**Mr. Borys Wrzesnewskyj:** Thank you.

Let me address a personal frustration. I've done some access requests, one to the heritage department, in fact, which I think was 48 or 49 pages. I thought it was pretty innocuous, but all but two pages came back blank.

We've heard a number of times that MPs' requests are amber-lighted. Now, we have a great responsibility, in that we are elected public representatives. We happen to be in opposition. As a loyal opposition, we should be able to hold the government to account, yet when we try to get information—and this isn't QP, this is through access to information—we're amber-lighted.

Perhaps just very quickly, could I have your thoughts on the fact that MPs are being amber-lighted? Then I have a second question,

**Prof. Michel Drapeau:** Absolutely. I have no doubt about that. That's why some MPs come to me, so I'm amber-lighted as opposed to the MPs. But yes, it does.... So are members of the media.

**Mr. Marc-Aurèle Racicot:** I would add that this should be one of the pressing matters: addressing the amber light system. It's not there.

**Mr. Borys Wrzesnewskij:** Okay. Let me move on to something else.

Mr. Drapeau, you've said that the system is dead in the water and the machine is broken, yet at the same time, you've said that government has been let down by its institutions. It's not that something isn't functioning in this particular department or in this area; it's overarching, and it's the whole system. At that point, would you not agree that the government is responsible for making sure the system gets fixed? We can't blame the officials within the departments.

I'd just like to go one step further before you answer that. In an article in *The Globe and Mail*, Mr. Page, the budget officer, spoke of his frustrations in getting the finance department to provide details. The article says right there that "Tory MPs defended withholding... documents", and I believe Conservative MP Mike Wallace, the parliamentary secretary, kind of sets the tone there.

You've said it's the institutions that have let all of us down, but it seems to be quite clear that the final responsibility, where the buck stops when the whole system is broken.... Is it with the government or is it not? Is the government addressing this in a serious way or is it part of the problem?

**Prof. Michel Drapeau:** The buck stops with the Prime Minister, and the Prime Minister has to jump-start the system in almost the same way as Mr. Obama did when he issued a directive when he was first in office. If that were to happen, changes would occur tomorrow. If the Prime Minister were to say, as Mr. Obama said, disclosure is the rule, exemption is the exception, that's fine, bingo, it's done.

**Mr. Duff Conacher:** Very briefly, the Parliamentary Budget Officer is another example. It says he has a right to any information he requests from any government entity to fulfill his mandate, but he can't penalize anyone if they don't give it to him. What he has started to do is name them all, but naming and shaming is not very—

• (1725)

**Mr. Borys Wrzesnewskij:** He's still got a bad report card, and I don't think he has done anything about it.

**The Chair:** Mr. Siksay, you had a couple of final thoughts.

**Mr. Bill Siksay:** Yes, thank you, Chair. I have just one question, really. It's about how Mr. Marleau's recommendations affect the recommendations of former Commissioner Reid.

I think, Mr. Drapeau, you've said that Mr. Marleau's recommendations constructively reject Mr. Reid's recommendations. I'm wondering if all of you could address that question about whether what Mr. Marleau is proposing affects what Mr. Reid has proposed.

**Prof. Michel Drapeau:** What I meant to say was that Mr. Reid, after six years in office, was requested by this committee to come up with a plan to restructure the act. I've got a copy and I've read it. At the time, Mr. Reid went back to first principles, the 31st article, the very title of the act, looked through it, and asked what changes we needed to make.

So it's a coordinated, synchronized, complete wall-to-wall review. And I know a member of Parliament has already reintroduced this bill. Your committee has supported the bill. Personally, I'm in support of the bill—not now because we've got bigger issues to look at. I would rather look at the act, the proposition made before your committee and now made before Parliament, in a constructive wall-to-wall review than doing it piecemeal. This piecemeal approach will not do anything in the short term, and I really have concerns that it may bring disequilibrium, if I can say that word, to the act in the long term.

**Mr. Bill Siksay:** Does anyone else have a comment on that issue?

**Mr. Marc-Aurèle Racicot:** None of the 12 recommendations will address the problems with the regime right now.

**Mr. Duff Conacher:** The big difference is that Mr. Reid did not recommend any order-making power in any area. Mr. Marleau has only recommended it partially. I think it needs to go fully. But many of the other proposals and recommendations I made were addressed by the Reid bill, except for, again, the key one, which is to require routine disclosure. It's now viewed as a guide to keeping information secret, law and system, and it has to be changed to be viewed as a proactively open government law. And all the requirements need to be put in place to make that real.

**The Chair:** If I may, I have one last thing, Mr. Drapeau. You whetted our appetite by waving some 210-day extension. The committee probably hasn't heard from anybody as to exactly what constitutes something that would require that. Can you, without violating any confidences or specifics, give us an idea of the nature of a matter, the breadth of a matter, that might require a 210-day extension for our response?

**Prof. Michel Drapeau:** The answer is yes, Mr. Chair. Can I not answer now, and I will get back to you in the morning with a straight answer to it? *Inaudible—Editor*]...to look at, including confidentiality and—

**The Chair:** Fair enough. I think it would put some dimension on this. We could talk about it theoretically, but you have a practical example.

**Prof. Michel Drapeau:** Three of them.

**The Chair:** Whatever you can do for us, that would be helpful.

**Mr. Duff Conacher:** I can give you one example, very briefly.

**The Chair:** Sure Mr. Conacher.

**Mr. Duff Conacher:** A person associated with Democracy Watch sent me a letter he received from Health Canada—this was a year and a half ago—and the letter said they were requesting an extension. A very simple exchange of e-mails, that's all that had been requested, between public servants over a very short time period. The request was made in 2004, and in 2007 Health Canada sent a letter requesting an extension because they had finally come around to dealing with the initial request. That's how broken some of the information management systems are.

And it's a multi-faceted problem. There is no one panacea. Multiple things have to be done. And one of the big problems is the turnover of ATIP officers, as Mr. Drapeau has already noted.

**The Chair:** I want to thank all the witnesses for taking the time to provide us with your thoughts and your input. I think it has been very helpful to the committee.

Before we adjourn, I would like to advise the committee that on Wednesday we were to have Minister Nicholson, the justice minister, and Mr. Van Loan, the public safety minister, on our privacy work. Mr. Nicholson has advised the committee that he will not be appearing before us on privacy matters since he has already testified.

He has referred us to his testimony in the last Parliament. Mr. Van Loan has not given us an answer other than that he'll think about it. So I'm just advising you that neither minister will be here on Wednesday as we had originally thought when we circulated a schedule.

Mr. Ken Rubin and Mr. Vincent Gogolek will be here to continue our discussion on access matters. So you can prepare for that.

Mr. Dechert, before we leave, you have something.

● (1730)

**Mr. Bob Dechert:** Mr. Chair, I believe we have a motion to deal with that was submitted by Mr. Poilievre.

**The Chair:** Yes, but it was just this morning. It doesn't have the 48 hours' notice, so we'll deal with that at another meeting.

**Mr. Bob Dechert:** Was it on Wednesday that we were going to have it dealt with?

**A voice:** I believe that it was Wednesday.

**Mr. Bob Dechert:** It was Wednesday. Can we ensure that it's on the agenda for Wednesday?

**The Chair:** It will be on the agenda for Wednesday, and it will be dealt with after our witnesses.

**Mr. Bob Dechert:** Fair enough. I just wanted to make sure that it was on the agenda for Wednesday.

Thank you.

**The Chair:** We're adjourned.

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**Publié en conformité de l'autorité du Président de la Chambre des communes**

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