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Chair

Mr. Bob Zimmer

Standing Committee on Access to Information, Privacy and Ethics

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● (1530)

[*English*]

The Chair (Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC)): I call the meeting to order.

Welcome, everybody, to the Standing Committee on Access to Information, Privacy and Ethics, meeting 74. Today we're going to hear from the Canada Border Services Agency, represented by Robert Mundie, the acting vice-president, and Dan Proulx; and from the Department of Citizenship and Immigration, represented by Michael Olsen and Audrey White.

First, though, there is a motion to be made by Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, Chair. I'll try to be quick out of respect for our witnesses' time.

I talked briefly about this the last time, and some committee members had commented on it as well.

This is a motion I submitted on Friday, October 20, 2017:

> That, pursuant to Standing Order 108(3)(h)(vi), the Committee undertake a study of the Conflict of Interest Act and how it relates to public office holders; that the Conflict of Interest and Ethics Commissioner be invited to discuss her 2013 recommendations provided in the context of the five-year review of the Act; that the Finance Minister be invited to explain decisions he has made in accordance with the Conflict of Interest Act; and that this study begin as soon as possible.

As reference for those who haven't committed it to memory yet, the mandate of the Standing Committee on Access to Information, Privacy and Ethics says, under Standing Order 108(3)(h)(vi):

> in cooperation with other committees, the review of and report on any federal legislation, regulation or Standing Order which impacts upon the access to information or privacy of Canadians or the ethical standards of public office holders

That is what Standing Order 108(3)(h)(vi) does.

That's it.

The Chair: Is there any debate?

Go ahead, Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Certainly we would support this motion and would call for a recorded vote.

The Chair: Go ahead, Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): This is a bit of déjà vu, because I made this comment last week as well, but I don't think anyone on this side has concerns about inviting the Ethics Commissioner. It's certainly within the purview of our mandate, and certainly to discuss her 2013 recommendations. If we can improve the law, we ought to improve the law, but we also don't want to turn this into question period and further politicize a particular individual. I don't think that's particularly fair or the right thing to do.

I have a friendly amendment: to remove “that the Finance Minister be invited to explain decisions he has made in accordance with the Conflict of Interest Act; and that this study begin as soon as possible”, and instead insert, after “year review of the Act”, “and that this study begin in January or February 2018”.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I totally understand the Liberal member's concerns about the Finance Minister piece there. I think it was pointed out by Mr. Kent previously that under the rules of the different committees, when it's behaviour of an individual around ethics, it actually may fall under the purview of the procedure and House affairs committee, PROC. I can understand the government not wanting Mr. Morneau in front of us under these conditions, so while it would be more ideal to hear from Mr. Morneau, because I think he has a story to tell, the only quibbling I would have is with the delay on what we're doing.

In a previous meeting...was it in camera or not? We've talked about the calendar previously. It was in camera.

I suspect that there might be space in our calendar prior to Christmas. I don't know for certain, but from my recollection and any public utterances from the committee's chair, I don't think I remember any moment in which our calendar was filled up right to the end docket of Christmas. I don't suspect a full study would even be possible prior to Christmas, and that's not what I'm suggesting. Having someone such as the Ethics Commissioner come in could certainly answer some questions we might have, but it could also help committee members with what a scope of study might be, and then prepare us well going into January or February if we were to dive deeply into this, if the committee chose in one of those in camera meetings to look at the ethics and Conflict of Interest Act. That could be something, but at least we could get going now with that initial scope, and then allow committee members to put forward something broader as we went ahead.

● (1535)

The Chair: We have an amendment on the floor.

Go ahead, Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: I don't think it makes sense to start something and then return to it in a month and a half. We have things to do. We have to deal with the estimates before we rise as well. Frankly, rather than trying to jam this into one or two days that we might have at the very end, let's start fresh when we return in the new year and deal with it as seriously as we can and deal with it all at once.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: It sometimes happens that I completely understand the perspective of the Liberal members. I'd vote in favour of going ahead and voting on this. Then if Mr. Erskine-Smith wanted to propose his amended piece, we would need unanimous consent to allow it to be introduced and voted upon today as a new motion.

The Clerk of the Committee (Mr. Hugues La Rue): Please say that again.

Mr. Nathan Cullen: Would we require unanimous consent of the committee to allow a new motion that had a different scope?

Mr. Raj Saini (Kitchener Centre, Lib.): It would be a friendly amendment.

Mr. Nathan Cullen: Yes, but it has to be accepted as “friendly”.

Mr. Nathaniel Erskine-Smith: If we don't put a timeline on it.... I don't think we are going to have space to start on this matter until the new year anyway, so I'm happy with removing the last two provisions and saying to remove the finance minister and start immediately. I thought it would make sense to start in January and say as much so that it doesn't get delayed down the road, but if you'd prefer that we don't say anything, I think that's sufficient as well.

The Chair: Right now we can vote on the amendment. That's fine. We can do that right now and have a recorded vote. If the amendment passes, then we can vote on the main motion and proceed.

What would you like to do, Mr. Cullen?

Mr. Nathan Cullen: I wouldn't mind hearing from Mr. Kent as well.

Hon. Peter Kent: I would like to see an eventual recorded vote on the motion as it stands, but I do agree and I understand the logic. We would support the simple removal of that phrase after the semicolon to the end of “the Conflict of Interest Act”.

Mr. Nathan Cullen: Just for the record, you would support it if that very last section that begins with—

Hon. Peter Kent: It would be “That the finance minister be invited to explain decisions he has made in accordance with the Conflict of Interest Act”.

Mr. Nathan Cullen: You're suggesting to strike that all?

Hon. Peter Kent: I would strike it all.

Mr. Nathan Cullen: Okay.

I thought it was poetry the way it was written, but okay.

Mr. Nathaniel Erskine-Smith: Do my colleagues on the Conservative side have concerns with beginning this in January or February?

Hon. Peter Kent: It is one of the more pressing issues before the House at the moment, and without wanting to get into the slots that may or may not be available, I think we would like it to be a priority. That's the position.

Mr. Nathaniel Erskine-Smith: We're finishing an act, two studies, PIPEDA, and border security. I think that's a lot of work to do before the end of the year, and to commit to doing it upon returning....

I think we're—

Hon. Peter Kent: No, it does make sense. We're here to work, but if it were possible, we would favour doing it immediately. Studies are very often interrupted by significant periods of time, so the record stands until the report is written anyway.

The Chair: We have an amendment before us right now that we need to proceed on.

Is there any further debate?

Mr. Nathan Cullen: Could we reread it after the conversation, so that we'll be able to...?

The Chair: A recorded vote has been asked for, so we'll have a recorded vote.

Mr. Nathan Cullen: Would you mind if Mr. Erskine-Smith reads it one more time, Chair, just so we have it?

Mr. Nathaniel Erskine-Smith: We would be deleting everything after “in the context of the five-year review of the act;”. Everything thereafter would be deleted, and instead we would say, “and that this study begin in January or February, 2018”.

The Chair: We'll put it to a recorded vote. This is on the amendment, just to be clear.

(Amendment agreed to: yeas 9; nays 0)

The Chair: Now we can proceed to a recorded vote on the main motion, as amended.

Is there any debate? We've already kind of debated this, but is there any more debate?

We'll move to the recorded vote, then, because it's been asked for.

(Motion as amended agreed to: yeas 9; nays 0)

The Chair: That's it, so it does pass. That will happen in January or February.

Thanks, everybody, and my thanks to the witnesses as well.

We'll start off with Canada Border Services Agency.

Thank you.

● (1540)

Mr. Robert Mundie (Acting Vice-President, Corporate Affairs Branch, Canada Border Services Agency): Thank you, Mr. Chair.

My name is Robert Mundie, and I'm the acting vice-president of the corporate affairs branch. I have with me today Dan Proulx, who is director of the access to information and privacy division at the Canada Border Services Agency.

[*Translation*]

This division is responsible for overseeing the access and privacy functions at the agency. These include administering and fulfilling all legislative requirements of the Access to Information Act and the Privacy Act related to processing requests; interacting with the public, agency employees, other government institutions, and the offices of the Information Commissioner and Privacy Commissioner regarding investigations and audits; and implementing measures to enhance our capacity to process requests.

[*English*]

I will briefly outline the CBSA's access and privacy functions and the way the agency performs against established service standards and will highlight some of the successes and challenges we experience in our administration of the acts.

As the second-largest law enforcement agency in the federal government, the agency is responsible for border functions related to customs, immigration enforcement, and food, plant, and animal inspection.

[*Translation*]

The agency administers and enforces two principal pieces of legislation: the Customs Act, which outlines our responsibilities to collect duty and taxes on imported goods, interdict illegal goods, and administer trade legislation and agreements; and the Immigration and Refugee Protection Act, which governs both the admissibility of people into Canada, and the identification, detention and removal of those deemed to be inadmissible under the act.

[*English*]

The agency also enforces 90 other statutes, many on behalf of numerous federal departments and agencies.

Mr. Chair, given the numerous daily interactions the agency has with businesses and with individuals on a variety of matters, we are no strangers to requests for access or personal information. We have approximately 62 employees working in the ATIP division, 44 of whom are solely dedicated to the processing of privacy and access to information requests. The agency also has an internal network of 16 liaison officers who provide support to the ATIP division within the agency's branches at headquarters and in regions across the country.

The CBSA's operating expenditures to run its privacy and access to information program totalled approximately $5.1 million in 2016-17, with $4.3 million dedicated to salary and $800,000 to non-salary expenditures. With respect to volumes of requests received under the Access to Information Act, we received just over 6,250 requests in 2016-17, which is the second-highest total for a department within the Government of Canada. Under the Privacy Act our numbers are equally significant, with approximately 11,600 requests.

[*Translation*]

Furthermore, in the first half of this fiscal year, there has been a 15% increase in the number of requests received under both acts. These high volumes are largely attributable to individuals seeking copies of their history of arrival dates into Canada.

[*English*]

In fiscal year 2016-17, 78% of privacy requests and 45% of access requests came from individuals seeking their traveller history, a report we generate that is used to support residency requirements for programs administered by Immigration, Refugees and Citizenship Canada and by Employment and Social Development Canada. Analysts from the ATIP division have direct access to the database that houses these reports. Also, the review of these reports and the application of the law are standard, which allows our analysts to complete these requests without needing to obtain recommendations on disclosure from departmental officials. This greatly reduces the time it takes analysts to process these types of requests.

Of all the requests completed last fiscal year, the CBSA was successful in responding within the legislated time frame in more than eight out of 10 cases under both acts.

As indicated in the Office of the Privacy Commissioner of Canada's annual report last year to Parliament, 70 complaints were filed against the CBSA to the Privacy Commissioner. Given the large volume of requests that we process, this number is a very small proportion of the total requests closed, representing less than 1%.

● (1545)

A similar result was seen under the Access to Information Act. A total of 125 complaints were filed with the Information Commissioner, representing less than 2% of the requests completed by the CBSA. However, we aspire to better serve Canadians and look to find ways of improving our service.

[*Translation*]

Our success reflects the agency's commitment to ensuring that every reasonable effort is made to meet obligations under both the Access to Information Act and the Privacy Act. The agency strives to provide Canadians with the information to which they have a right in a timely and helpful manner, by balancing the right of access with the need to protect the integrity of border services that support national security and public safety.

[*English*]

Innovative approaches and careful planning will help the agency to continue the success into the future.

In closing, we welcome the review of the Access to Information Act and the Privacy Act and will fully support and adopt any new measures that are introduced by the Treasury Board Secretariat following passage of legislative reforms.

I want to thank you, Mr. Chair, for the opportunity for us to provide our input into your study and for welcoming us here today. I look forward to the members' questions.

The Chair: Thank you.

Next up is the Department of Citizenship and Immigration for 10 minutes.

Mr. Michael Olsen (Director General, Corporate Affairs, Department of Citizenship and Immigration): Mr. Chair, my name is Michael Olsen. I'm the director general of corporate affairs and chief privacy officer at Immigration, Refugees and Citizenship Canada. Accompanying me today is Audrey White. She's the director of access to information and privacy at IRCC.

I thank you for welcoming us here today and giving us an opportunity to discuss Bill C-58, an act to amend the access to information and privacy acts. IRCC has had the opportunity to appear before this committee on two previous occasions to discuss this review.

Mr. Chair, I want to discuss our department's performance first and then move into a discussion about the proposed amendments to the act.

[*Translation*]

In 2012-2013, the department received 30,124 ATIP requests. Since that time, the number of requests has more than doubled. Over the course of 2016-2017, we received more than 63,000 ATIP requests, representing a 23% increase from the previous year. For the current year, we are again seeing a 23% increase in the number of requests received.

In 2016-2017, our last year of reporting, IRCC received more access to information requests than any other federal institution. IRCC represents approximately half of all ATIP requests received by the Government of Canada.

[*English*]

Despite this increase in volume, IRCC was able to maintain a compliance rate of 79% for access to information requests and 68% for privacy requests. The ATIP division has been efficient in managing the volume of requests received in order to meet the legislative deadline.

IRCC has launched a number of initiatives in an effort to improve its performance and to address current challenges. Although these initiatives have increased productivity year over year, we continue to create strategies aimed at decreasing our backlog and improving our compliance rate.

The majority of ATIP requests received and processed within our department concern immigration case files. The department holds personal information on millions of individuals and collects significant amounts of personal information annually, due to applications for citizenship, passports, permanent and temporary residence. This in turn has a direct effect on the growing number of ATIP requests received by IRCC.

Mr. Chair, a total of 165 official complaints against the IRCC were filed to the information and privacy commissioners last year, representing less than 1% of all requests processed during that period. The duty to assist is taken seriously at IRCC. The ATIP division notifies requesters of possible delays in service. We act proactively to minimize the number of complaints.

ATIP also offers diverse training in person and online to IRCC employees on the importance of safeguarding privacy and protecting personal information. Mr. Chair, as the chief privacy officer at IRCC, I'm pleased to announce that we'll be having our second annual privacy day on November 1. This will provide a forum to spotlight key privacy issues in a complex and rapidly changing technological environment. Most importantly, privacy day demonstrates our continuous efforts to develop a culture of privacy institution-wide as well as our commitment to increased privacy vigilance. At IRCC, protecting privacy and personal information is paramount.

Bill C-58 provides new proposed subsection 6.1(1), which provides government institutions the ability to refuse requests that are vexatious or in bad faith or missing key details. This new power is discretionary, and IRCC will continue to exercise judgment appropriate to the spirit of the legislation.

As I mentioned, IRCC is committed to the “duty to assist” principles embedded in the act. We already process requests that lack specific details, either because they are unknown, unnecessary, or unspecified. Where necessary, ATIP works with requesters to clarify the scope of the request and to obtain missing information. We would only consider refusal in exceptional circumstances where, for example, all “duty to assist” options had been exhausted, processing the request would be impossible, or processing the request would impose a significant burden on IRCC that could not be reasonably managed through time extensions or other provisions of the act.

Mr. Chair, I thank you again for the invitation to provide IRCC's view on this important subject and for welcoming us here today.

I look forward to any questions you or the committee have. Thank you.

● (1550)

The Chair: Thank you. That was very timely. You only used up about five minutes, so there is a lot more time for questions.

First up is MP Erskine-Smith for seven minutes.

Mr. Nathaniel Erskine-Smith: Thanks very much for all this information.

Mr. Olsen, I'll start with you just to get a comparison.

We heard some numbers from the CBSA in relation to their budget and the number of individuals who are focused on ATIP. Perhaps you could provide us with the same information.

Mr. Michael Olsen: Yes. Our staff complement varies over the year. We have casual employees and we have full-time employees. Roughly, there are about 80 full-time equivalent employees in ATIP at IRCC. Our budget is around $5 million.

Mr. Nathaniel Erskine-Smith: That's interesting.

When we talk about compliance rates, in both of your testimonies you indicated fairly high compliance rates. Is that in reference to the 30-day prescribed limit in the act, or is that also in reference to asking for an extension and meeting the time limit within the extension?

Mr. Michael Olsen: If the extension is asked for and granted, then that would count as the time limit.

Mr. Nathaniel Erskine-Smith: Okay, so 79% of the time it's not within the 30 days. Then 21% of the time you're actually beyond what you've even asked for in terms of an extension from the Information Commissioner.

Mr. Michael Olsen: The extensions that are granted in cases have to be justified. If we go beyond 30 days, that 30 days does have to be justified.

Mr. Nathaniel Erskine-Smith: I understand, but it's 21% of the time you're beyond what you're able to justify, I guess.

More resources appear to me to be one answer. When it comes to the act itself, can you point me to provisions of the act that would help limit your burden or help you to deal with the increasing number, the doubling in the last five years or so?

Mr. Michael Olsen: The doubling really has been due to the fact that obviously privacy is a growing concern of everyone. I think everyone realizes that. Ten years ago it was not the concern for the public that it is now. People are interested in knowing what information the government has on them. As I said, we have a lot of information on a lot of people. They know the Access to Information Act and they know how to use it, so they make requests of us.

Mr. Nathaniel Erskine-Smith: Maybe I'll be more specific.

We've heard some testimony suggesting that proposed section 6 is drafted in such a way that it would be too exclusionary and too complicated for a layperson to ask for information. Presumably, it was drafted for a reason. You guys are sitting in the department and may have an explanation for why you think it's a good thing or a bad thing.

Do you think that proposed section 6 is helpful? Beyond "vexatious".... I don't want to go there, because I think everyone agrees—well, the Information Commissioner agrees—that this is fine. Are there other provisions in proposed section 6 that are helpful?

● (1555)

Mr. Michael Olsen: To my mind, again, proposed section 6 is probably not going to hurt the volume growth. A lot of the ATIP requests we receive are related to case files. People want to know about immigration case files. They've made an application for permanent residence or temporary residence, and they want to know what we have in that regard.

Mr. Nathaniel Erskine-Smith: I'll put the same question to the folks at the CBSA.

Do you view provisions in the bill—I'll use proposed section 6 as an example, but perhaps there are others—that would help reduce the current burden?

Mr. Dan Proulx (Director, Access to Information and Privacy Division, Canada Border Services Agency): In our opinion, yes, it would help reduce the burden.

Having folks file requests by subject matter would stop what we commonly refer to in the ATIP community as "fishing expeditions", whereby folks will ask for anything and everything without a subject, and sometimes without limits around that request.

If you complement a duty to assist with the efforts of government for open government initiatives, and then you include section 6 as it is currently proposed, I see it working quite well. If more information is public, folks will know what type of information to request, and the requests will be specific. There will be perimeters around what they can request and how much of it they can request, which would stop, as I mentioned, those types of requests that simply say, "Give me anything and everything you have about between two individuals for the last six months." There's not even a subject. It could include the most common type, which is email accounts. Someone would ask for your entire Outlook email account because they don't know what you are working on. Instead of asking for a subject, they are going to say, "Just give me the whole box."

Mr. Nathaniel Erskine-Smith: CBSA, you said that 45% of your ATIP requests are about travel history.

IRCC, do you have similar numbers in terms of common requests?

Mr. Michael Olsen: Yes. I think about 96% of our requests are related to case information.

Mr. Nathaniel Erskine-Smith: Those are individuals asking for information about their own case.

Mr. Michael Olsen: That's correct.

Mr. Nathaniel Erskine-Smith: It seems that this is not really what ATIP was originally designed for. Is there no way to make this information available to individuals, a way for them to log into an account and find this information themselves, without going through a cumbersome ATIP process?

Mr. Michael Olsen: We are working on a way to get that information to people much more easily. It's not necessarily as easy as it might appear at first blush.

Mr. Nathaniel Erskine-Smith: I would encourage you to speak to the folks at the CRA, who seem to have figured it out.

The only other question I have is not specific to the legislation but to ATIP requests. It's about the software different departments use.

Do you speak to ATIP folks at other departments? Are you all using the same software, or are you on different software?

Mr. Michael Olsen: We are on AccessPro Case Management. Most departments are, as I understand. We use it, but it's getting near the end of its useful life. I know that Treasury Board Secretariat is actively looking at replacing it, and we look forward to the replacement.

Mr. Nathaniel Erskine-Smith: CBSA, how about you?

Mr. Dan Proulx: We use the same system.

It is commonly used in the federal government, because there are limitations out there as to who can produce an ATIP tracking system.

Mr. Nathaniel Erskine-Smith: Thanks very much.

The Chair: Thank you, Mr. Erskine-Smith.

Next up is MP Kent, for seven minutes.

Hon. Peter Kent: Thank you, Mr. Chair. Thanks to all of you for appearing before us today.

First, I have a general question for the agency and the department. The Information Commissioner has quite roundly considered Bill C-58 to be a regression of existing rights.

I would like to get your opinions, Mr. Mundie and Mr. Olsen. How would you characterize Bill C-58 in the Information Commissioner's terms?

Mr. Robert Mundie: Thank you for the question.

The Access to Information Act has not been looked at since 1983, so this a long time in coming, but it seems to me that it's a step-by-step process of reform. I think the discussion that we just had here around proposed section 6 is an indication of something that would help the community to have more precision around the types of requests we get. I see that as a positive, not a negative.

Along the lines of what Mr. Olsen said, it's really the way that we would use that section of the act, should it exist. We're going to use it in a very deliberative fashion, with direction from the Treasury Board Secretariat, so that we're fulfilling that duty to assist but still insisting that we get from the requester a greater detail on what they're looking for.

From that perspective, I think it is positive.

● (1600)

Mr. Michael Olsen: I agree. I think, certainly from the perspective of the public, the changes are positive.

The sections that require proactive disclosure of briefing books of ministers, for example, and also of deputy heads, are very positive for the public. There are other things that also help, such as the parts about the expenditure of public funds.

If I can put it this way, I know the Information Commissioner has said that she didn't want any limit placed in proposed section 6.1 on how many records, if records were too voluminous—

Hon. Peter Kent: That was my next question, actually.

Mr. Michael Olsen: As an example, we are dealing with a request right now for which the number of records could get into the tens of millions.

Let's just say there were 30 million. If you were processing one page a minute all day, every day, it would take.... Well, you can do probably 120,000 pages a year. What that means is that it would take roughly 300 person-years to process that one request for all those records.

Imagine all of the members of the House of Commons working on one file for an entire year—nothing else, just working on one file—and the person who suggested that file paid $5 to make that request. I do not believe that is a prudent use of taxpayer dollars. I think there should be some limit on that.

We should be able to limit the requests that we answer in some ways, and I think what's in the act is in fact quite reasonable.

Hon. Peter Kent: The recommendation that all fees be removed would obviously be—

Mr. Michael Olsen: The interim directive from the Treasury Board Secretariat was that the vast majority of fees are being reduced. The $5 filing fee is still there, and that remains unchanged. I can't really make a recommendation on that.

Hon. Peter Kent: Thank you.

Last week we had an appearance by Mr. Therrien, the Privacy Commissioner. One of his key points was that he sees Bill C-58 as a disruption to the balance between his office, himself as commissioner, and the Information Commissioner.

You've spoken to the balance that you try to achieve within your agency and the department. I'm wondering whether you believe there is potential for disruption of an existing balance, in either of your situations.

Mr. Michael Olsen: There are elements in the act that allow the Information Commissioner to exercise order power. In those cases where the information would involve personal information, the Privacy Commissioner, to my mind, must be notified of that. Otherwise, I'm not sure that I see a lot of problems in the current—

Hon. Peter Kent: You would agree in that case with his position that Bill C-58 confers order-making powers in an unwise way, in a way that would disrupt your balance.

Mr. Michael Olsen: As I said, as long as the Privacy Commissioner was consulted on the release of that information, I wouldn't necessarily see a problem. There might be a cleaner way of doing it, but I'm not sure I see a huge problem.

Hon. Peter Kent: Mr. Mundie, would you comment?

Mr. Robert Mundie: If I could raise a different point, it's important to realize that for almost every government department or agency, it's the same people who are working on both the records for access to information as well as for privacy.

One of the only issues I would have is if the Information Commissioner orders a department to proceed with a given request that could have an impact on our ability to address other requests in a timely fashion, which could be both on the access to information and the privacy side.

It's always a trade-off between the volumes on each side. You try your best to address the time constraints on both sides. It would depend on the degree to which that order-issuing power was exercised.

Hon. Peter Kent: Briefly, there's been a great deal of discussion over frivolous and vexatious and good faith.

I wonder if, rather than going into a long prologue, you could address your perceptions of frivolous and vexatious requests and in requests made in good faith, as referenced in Bill C-58.

Is frivolous and vexatious an issue for you today?

● (1605)

Mr. Michael Olsen: For the most part, I would hesitate to use the word “frivolous”. I think that's wrong. “Vexatious” might be a little bit closer, but I certainly agree with my colleague's view that sometimes, perhaps increasingly, there are fishing expeditions. People make a request for email subject headers. They're not requesting information. They want to know what's on the menu before they decide what to order. In this context, I'm not sure that's what the act was originally intended for. Certainly the act goes back to 1983. There was no email at that point, so I don't think that's what was intended.

I think to the extent that we can avoid requests like that.... They take up a lot of the time of the people who are being requested and also the people processing the ATIP request, and it would be nice to be able to limit those in some ways.

The Chair: Time's up. Next is MP Cullen, for seven minutes.

Mr. Nathan Cullen: Thank you, Chair.

Thank you to our witnesses.

Let me pick up on that last stream there, Mr. Olsen. In your own purview in having watched the act perform, would you deem somebody doing what you called “fishing”, looking up subject headers, as frivolous or vexatious?

Mr. Michael Olsen: It could be.

Mr. Nathan Cullen: Isn't that sometimes the nature, though, of trying to get access to information from government?

One of the concerns that's been raised by journalist groups, advocacy groups, and first nations organizations is that sometimes knowing exactly the document you're looking for is rarely the case for Canadians trying to get some information that they are entitled to.

I'm looking back at some of the access to information requests that have revealed important public policy decisions, Afghan detainee transfers, the F-35 purchases, and those types of things. The person requesting the information didn't know specifically what document they were looking for and had to spread that net first before they could start to focus in.

Is not the duty to assist where that starts to come into play? If somebody has gone so broad, don't you ask what exactly they're after, and then you start to refine the search that way?

I think there's a false.... I'll let you answer that question first.

Mr. Michael Olsen: When we get requests for email subject headers of 100 or 150 varied employees for a period of three or four months—

Mr. Nathan Cullen: Right.

Mr. Michael Olsen: —and there's no real strategy to this request —

Mr. Nathan Cullen: Right.

Mr. Michael Olsen: —in these requests, if I can put it that way, there's no specific information or even a specific subject that is being looked at.

Mr. Nathan Cullen: But is that not where the duty to assist kicks in? Then you're able to communicate with the requester and say, “You've done a very broad ask. Is there something we can help you with in terms of focusing your efforts?” Doesn't it work that way?

Mr. Michael Olsen: If someone wants to know something about the permanent residence program, sure, we'd be happy to help, and we have not turned down such requests in the past.

Mr. Nathan Cullen: What percentage—and this is going to be anecdotal—or how many of these requests would you deem as vexatious?

There's this notion out there that there are people just trying to muck up the wheels of government or trying to cause pain, but we've heard from advocates of access to information that it's quite a rare circumstance. Maybe there are Canadians out there who just like to cause trouble and want to use ATIP because they're bored, but I think the vast majority we hear from are doing this in some effort to pry government information from government.

Mr. Michael Olsen: There are a handful per year.

Mr. Nathan Cullen: Right. Are they repeat offenders, if we could use that term—specific people who just keep going at CBSA and various agencies?

Mr. Michael Olsen: Not necessarily. There are a handful per year.

Mr. Nathan Cullen: You can understand the concerns about who gets to interpret these very broad terms.

Mr. Michael Olsen: Of course.

Mr. Nathan Cullen: If somebody has a piece of information they suspect will be damaging to their department or to their minister, there may be a temptation, which we're concerned about in future, of their saying they deem that request to be frivolous or vexatious.

Vexation is in the eye of the beholder, as we all know, so could it be true in the application of this act?

Mr. Michael Olsen: We would rely on guidance from the Treasury Board Secretariat in that regard. We're not about to set our own guidance.

Mr. Nathan Cullen: I'm not sure that's [*Inaudible—Editor*] though, if you follow me, if they may be concerned about the same embarrassing documents being slipped out.

The ministers were before us. They tried to make an equivalency between proactive disclosure and access to information, as if they were equivalent.

I'd offer that those are false equivalents. Who's going to argue against the notion of government offering up more information by default? However, when we we seek to correct government behaviour, curb waste, or any of those things that happen in government, it's a very large institution with a very large budget. The idea that they're equivalent seems like a false equivalency in my mind.

Mr. Mundie, you seem to think Bill C-58 is okay. I just went through the commissioner's report and added up as she went through it piece by piece. She saw 13 categories in this bill as regressive, three of them as neutral, two of them positive, and two of them outstanding.

Is she wrong? You seem to pass it, to think it seems okay. She's looking at it from the perspective of the public seeking information. She sees 13 negative, three neutral, two positive, two outstanding. Is she wrong?

● (1610)

Mr. Robert Mundie: I don't have an opinion on whether she's right or wrong. I'm looking at it in terms of our responsibilities under the act and our ability to fulfill our responsibilities under that act. That's the perspective I take.

Mr. Nathan Cullen: And that perspective is from someone who has to fulfill these access to information requests.

Mr. Robert Mundie: Very much so.

Mr. Nathan Cullen: I think she has to do the work of looking at it from two perspectives: one from that of the public seeking information, and one from the government trying to fulfill the information.

Mr. Robert Mundie: For sure.

Mr. Nathan Cullen: Other than the ministers, I think you're the first panel we've had—maybe there have been others I missed—that like this bill. Very few who use access to information to seek information from government like this legislation at all; maybe they can find a few worthwhile nuggets.

With the little time I have left, I'm trying to stick to particulars. I can only work in specifics. You're dealing with migrants coming across the border. Right now we're setting up winterized trailers or something for them. If you offered advice to the minister, would it shield him from Bill C-58? If you said you think the cost estimate is going to be $100 million to set up a bunch of trailers and you provided that as advice to the minister under the current legislation, is that shielded from a future ATIP request?

Mr. Robert Mundie: The proposal to undertake certain—

Mr. Nathan Cullen: Yes. Suppose I'm in your department and I'm looking at contracts to set up winterized trailers—

Mr. Robert Mundie: Contracts are public information, so that's proactively disclosed every quarter.

Mr. Nathan Cullen: I'm dealing back and forth with the minister's office on options A, B, and C. As soon as I provide that as advice to the minister, what happens to that information, that correspondence?

Mr. Robert Mundie: Part of it may be advice—I don't know, Dan, if you want to speak to section 21—and then the government or the minister or the department takes a decision. The decision is part of the public record, but it may be that the advice that was provided by officials had various options, and that may not be made public under the section 21 provisions.

Mr. Nathan Cullen: Mr. Proulx, would you comment?

Mr. Dan Proulx: Most of the exemptions in legislation are discretionary. We go through the exercise of discretion. We have a look at what's being requested and when it's being requested. Has the plan been implemented? Are they just putting numbers back and forth? Is it a final decision? Then you make a decision based on your exercise of discretion at the time the request is submitted.

Timing is everything. You can request something today and be denied, and then request it next week and be given full access, so it also depends on what moment the ATIP request comes into the institution.

Mr. Nathan Cullen: That would be helpful. I hope we get to explore that difference about timing.

Mr. Dan Proulx: Yes, timing is everything with an ATIP request.

Mr. Nathan Cullen: I'd like to know more about that.

Thank you, Chair.

The Chair: That's your time, speaking of time.

Next up, for seven minutes, is MP Saini.

Mr. Raj Saini: Thank you very much for being here.

I think there's been a lot of discussion about duty to assist, so I would like some clarity from you in what it means for those people who try to seek information under Bill C-58. For procedural purposes, because I have never filled out an access to information request, could both departments take me through the procedure step by step, including how you receive the request, how you evaluate the request, and where you intercede to provide a duty to assist, so I can understand how the whole process works from beginning to end?

Mr. Robert Mundie: Those are two perfect questions for Dan Proulx to answer, as director of ATIP.

Mr. Dan Proulx: Generally speaking, how it works is that we get receipt of a request. They now come in at night with the online portals. Once we get a request, the front-end staff—in most ATIP shops you have an administrative staff—will log the request into the ATIP tracking system, which is the software we talked about earlier. The request is logged in to the system, and then it moves over to a pod, if you will. All the new requests that came in the day before, the night before, are sitting in this pod. There are a couple of hundred of them on any given day in our institution.

What happens then is that management assigns them to the analysts. They're farmed out. We have about 40-odd analysts that respond to these requests, and the requests go to them. The first thing to do when you get one of these new requests is read it and make sure you understand it. If you do not understand the request, you go back and seek clarification right away. We will not task it out within the CBSA to do a record retrieval if we don't understand it ourselves.

When we look at the subject of a request, one of the first things we do is query our system to see if someone else has requested something similar. As you know, we put the subject lines of completed requests on the Internet. If I processed a similar request in the past, I can offer that up as a request that can satisfy your immediate needs, or maybe something that can help you out in the interim as I process your new request for similar information. That is also done, because if we can satisfy you by giving you something we've given someone else without having to process the whole request, we save everyone time. You're happy and we're happy. Everyone's happy.

Once we understand the request properly, we have this initial 30-day window to make a lot of decisions. In that 30-day window I have to guess, often without even having the records, what's going to be coming my way. Am I going to need third party consultations? Am I going to have to consult other government institutions? What are my indications of the volume that I'm going to receive? A lot of that is done by phone with the program area that has the physical records. You try to guesstimate what's coming through the pipe, because if you don't take your time extension within the first 30 days, you can't take it. That's your window.

You may be lucky enough to get the information within the first 30 days. At CBSA they come by way of a drop zone. To expedite the processing, we created an online drop zone. The records are electronically put into a portal and they're grabbed by my staff. CBSA is fully automated; we don't have paper. If we receive paper, we scan it, and then we shred the paper. Everything moves in a system.

Once we get the information back to us, to make sure that we have good, solid recommendations, that we have what's being requested—not more, not less—and that we have a thorough review of what's coming my way before I do an ATIP analysis, we have a mandatory process whereby an executive level director or above at the CBSA needs to sign off that what is being requested is included in ATIP. It's complete. It's accurate. It's not too much. It's not too little. Here are the sensitivity recommendations or the recommendation to do a full disclosure. Those files are then assigned to an ATIP analyst.

A lot of folks say, “Can you process this in 30 days?” To give you an idea of the volumes right now, currently at ATIP CBSA my folks have between 80 and 100 files each. Every single day when they arrive in the morning, they have about 80 to 100 to juggle, with an expectation to either get it out the door in 30 days or to make the determination within 30 days of whether an extension is needed and how long it needs to be. You can see it's a very, very heavy workload, and everything is done very quickly, in time, in my office.

When you get that all back, to finish the process you have to do a line-by-line review. Seriously, it's a line-by-line review. Most of the exemptions, as I told you, are discretionary, so you have to ask yourself whether this is something that I can release to the public. Is it something I need to exempt? If I exempt it and it's a discretionary exemption, how do I exercise my discretion? How do I document it? Why am I choosing to release or not release? We'll document the exercise of discretion both ways. If we do a disclosure, we'll document why we're doing a disclosure. If we don't, we'll document why.

Once this is all done, it has to go to a delegated person. The Minister of Public Safety has delegated certain individuals to sign off on ATIP requests. The lowest delegation at CBSA is a team leader; most are signed by them. They will do a cursory review of the line-by-line review that is done by the analysis, to make sure that everything was done properly and everything's sustainable in law. Then they sign off.

To close, at CBSA all true access requests—those are non-personal access requests—come to me from the delegated team leader for a quick review to make sure that everything was done properly. Then I give them the go-ahead and it's disclosed.

● (1615)

Mr. Raj Saini: Just that.

Some hon. members: Oh, oh!

Mr. Dan Proulx: Just that. On any given day, we have about 3,000 on the floor.

Mr. Raj Saini: Obviously, you can appreciate that we want to make life a bit easier, so we want to create proactive disclosure in general. I'm thinking of the Pareto principle and its 80/20 rule. Over the course of time, when you have a decent sample size.... You mentioned you had 11,600 on the privacy side and 6,250 on the information side, so obviously there are 18,000 or 19,000 requests per year ongoing. You must find, after a certain amount of time, that you have very similar requests coming in.

Would proactively disclosing that information free up more of your resources to deal with those people whose requests are very specific and very directly targeted?

● (1620)

Mr. Dan Proulx: Yes.

In Robert Mundie's opening remarks, he talked about the traveller history report. That is a report that is highly utilized by IRCC, our colleagues here, to help them do a determination for citizenship applications. People come to CBSA ATIP to request a copy of their traveller history report about 12,000 times a year. That costs me about 10 FTEs or $800,000 out of my salary in order to respond. Those traveller history reports are given to these ATIP requesters, who are also citizen applicants, and they submit them as proof of how long they've been in the country.

That is the highest volume of common requests that we have. We have worked with our colleagues at IRCC—

The Chair: Sorry, but we are out of time. Thank you.

Go ahead, Mr. Gourde, for five minutes.

[*Translation*]

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

These 12,000 requests submitted consistently to your department; are they similar? You say that people mostly want to know the date they entered Canada. Is there no document that they could keep that would indicate that? Do these requests keep coming up and overload the system?

Mr. Dan Proulx: The traveller history report is not a document that people can keep when they come into the country. The document indicates all the ports of entry, meaning where and when they entered Canada. It also indicates how many times they have done so.

I could ask my colleagues to talk to you about their need to keep that report, if you wish.

The document actually helps to determine how long people have been in the country. Given that we are at the ports of entry, we have that information. It is kept in our records and then the report is generated.

To assist people with access to the information they need, we have worked closely with IRCC, which has access to our system that produces the reports. Since 2012, the date when the department gained access to the system, it has published about 500,000 reports, relieving us of a possible load of 500,000 requests. There are still 12,000 requests per year left over and I would like to find a solution to them. To make that task easier, we have removed from the report all sensitive information that would require them to undergo a secondary examination, because it is the dates that are needed.

So that allows us to respond to requests without delay and without having to gather anything else. My people have direct access to the system and send out the responses. However, we receive hundreds of requests per day and we need a dozen employees per financial year to work on them. At the moment, we are actively working on a system that people can use themselves. It would be much like a license renewal where you can go to a kiosk in a public location, enter your personal data and get your license renewed.

We would like to have a portal that people could use to find their own reports, like My Account at the CRA. We are actively working on it. If we manage to get the portal up and running, it would help to reduce the requests, especially in terms of the provision in the bill that requires the information to be available in another way. It would not be necessary to process it under the Access to Information Act. If we could make the information available in a public domain, it would be good because people could look for it there and obtain it more quickly.

Mr. Jacques Gourde: You would at least have to give people the guarantee that access to the information would be private. If they can do that kind of research on themselves, perhaps they could also do it on other people. That is a little touchy. However, I feel that it still could improve the system.

In Bill C-58, have you seen any provisions that could adversely affect the way in which your two departments operate?

Mr. Dan Proulx: Does anyone else want to answer?

Mrs. Audrey White (Director, Access to Information and Privacy Division, Department of Citizenship and Immigration): Can you repeat the question, please?

Mr. Jacques Gourde: Yes. In the new version of Bill C-58, the one we are studying, are there any provisions that could adversely affect the way in which your departments operate, in your opinion?

● (1625)

Mrs. Audrey White: We do not see where the bill could have negative effects in its current form. We fully support the bill.

Mr. Dan Proulx: I feel that it is a major step forward. The legislation needs to be modernized. It also asks for a regular review to be done. So it may not be perfect the first time around, but, rather than doing nothing, it is better to do something and to make corrections eventually, if need be.

Mr. Jacques Gourde: If you had a recommendation to make about this bill, what would it be?

Mr. Dan Proulx: There is something I am not getting,

Mr. Jacques Gourde: Would you have any proposal to improve this bill?

Mr. Dan Proulx: I would recommend putting it into effect as soon as possible.

Voices: Ah, ah!

Mr. Jacques Gourde: That's everything from me.

[*English*]

The Chair: Mr. Dubourg is next. You have five minutes.

[*Translation*]

Mr. Emmanuel Dubourg (Bourassa, Lib.): Thank you, Mr. Chair.

Mr. Proulx's answer made us laugh. It is very good to hear him recommend that we put the bill into effect as quickly as possible.

Mr. Proulx, you also said that you want to continue working on proactive disclosure, to see how you could make this public and to reduce the number of requests. I assume that the same also goes for immigration.

Mr. Olsen, is it the same on your side? Are you also working along those lines? You say that you get about half of all the requests submitted to the government. Could you tell us what kind of customs requests you receive? What are people asking IRCC for? There are 63,000 requests. Could you give us a general idea about what those requests include?

[*English*]

Mr. Michael Olsen: I'll ask Audrey to go into more detail, but again, the vast majority of those requests are for case information. People have made applications for permanent residence or temporary residence, and they want to know the status of their applications. They want to know why their applications were successful or not successful.

Audrey, do you want to add anything?

[*Translation*]

Mrs. Audrey White: The way in which Mr. Proulx described the process earlier is quite similar to what we are doing. It is really very detailed. We have to go through various channels in order to be able to assess and process all the requests we receive as quickly as possible. It is a significant volume. As Mr. Olsen mentioned in his presentation, 96% of the requests we receive come from applicants who want to find out about and understand the status of their applications for immigration, for citizenship, or for passports. It is really personal information.

The last time Ms. Beck appeared before the committee, I believe she mentioned that access to information was going to evolve and change significantly with the technological methods that will help us come to grips with the increase in the number of requests. In that respect, the legislation will be very useful to us, but improved technology will be useful as well.

Mr. Emmanuel Dubourg: Yes, that is what we would like. However, we have 338 members of Parliament here at the service of Canadians. So if some of them want to know the status of their immigration files, they can come directly to our offices. At least, that is the case in my constituency.

Do you think that they do not make sufficient use of that method, by which I mean that they automatically make access to information requests rather than coming to their elected federal representative?

[*English*]

Mr. Michael Olsen: To my mind, the optimal solution is actually for IRCC, as my colleague from CBSA mentioned, to get the information into the hands of the people whose information it is. They own that information. There may be some things that cannot be revealed for national security reasons, but it is their information. My desire is to get as much information into people's hands as possible. It's like knowing the status of your bank account. You can go in, check the status of your bank account, and know what's in there. You shouldn't have to pay for it.

[*Translation*]

Mr. Emmanuel Dubourg: Are these requests submitted by the people themselves or by those representing them, lawyers or notaries, for example?

● (1630)

[*English*]

Mr. Michael Olsen: There's a mix of requesters; we get all kinds. Of course, we get requests from foreign nationals as well, and those are done through a representative.

Audrey, I'm happy for you to jump in.

[*Translation*]

Mrs. Audrey White: The general tendency is for 50% to 55% of the requests we receive to come from immigration representatives.

Mr. Emmanuel Dubourg: Okay.

I asked that question because there is currently some discussion in the media about falsified passports and things like that. Is it possible that people have used access to information requests to traffic or counterfeit Canadian passports?

[*English*]

Mr. Michael Olsen: I'm not aware of any link.

[*Translation*]

Mr. Emmanuel Dubourg: Okay. Thank you,

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you.

Thank you, witnesses, for testifying today before our committee.

We're going to suspend briefly so that our next witnesses can take their seats.

● (1630)

(Pause)

● (1635)

The Chair: I'd like to bring the meeting back to order.

I want to thank the witnesses. From the Canadian Superior Courts Judges Association, we have Pierre Bienvenu, and from the Canadian Union of Public Employees, we have Robert Ramsay.

First up is Mr. Bienvenu. Go ahead, sir.

Mr. Pierre Bienvenu (Lawyer, Senior Partner, Norton Rose Fulbright Canada, Canadian Superior Courts Judges Association): Mr. Chairman, members of the committee,

Thank you for inviting the Canadian Superior Courts Judges Association to give its views on Bill C-58. My name is Pierre Bienvenu. I'm a lawyer in private practice at Norton Rose Fulbright, and I have long represented the association in relation to judicial compensation and benefits, and other constitutional law issues.

The association is composed of judges appointed by the federal government at the various levels of courts around the country. It has around 1,000 members, representing approximately 95% of all federally appointed judges, including judges of the superior courts, appellate courts, the Tax Court of Canada, and the federal courts.

Members of the committee, the provisions of Bill C-58 that cover judges are of grave concern to the association. The judiciary was not consulted prior to the bill's being tabled in Parliament, and the association therefore welcomes the opportunity to address this committee on questions that it considers fundamental. I should mention that the association has shared the submission I am presenting to you today with the Canadian Judicial Council, and the council has indicated that it endorses this submission.

Let me say at the outset that the judiciary acknowledges that Bill C-58is pursuing important objectives of transparency and accountability. However, there are compelling reasons that these objectives, in the case of judges, must be pursued by means that differ from the means adopted for elected officials and members of the bureaucracy.

The part of the bill relating to judges would require the publication of individualized information regarding a judge's expenses, including the judge's name, a description of the expense, the date on which the expense was incurred, and the total amount of the expense. The expenses in question are those reimbursable under the Judges Act as so-called “allowances”. There are provisions in the bill proposing to allow the registrar of the Supreme Court of Canada and the commissioner for federal judicial affairs to withhold publication if publication could interfere with judicial independence, could compromise security, or contains information that is subject to privilege or professional secrecy.

There are three basic points I want to make here today.

The first is that Bill C-58 proposes to apply to judicial expenses a regime that, insofar as accountability is concerned, is duplicative of control mechanisms that already exist in relation to reimbursable judicial expenses.

The second is that the proposed expense publication regime is unsuitable for judicial expenses and raises profound concerns for all judges, but particularly for judges on national courts who are required to travel extensively.

My third point is that the important objectives of the bill can be achieved by other means that do not violate judicial independence.

These points are developed in a written submission, a copy of which I've provided to the clerk of the committee, and which I invite members of the committee to read. I have time only to say a few words on each of them.

Bill C-58 is duplicative in relation to federally appointed judges because there are robust measures already in place to ensure that judicial expenses are legitimate, reasonable, and subject to independent verification. The categories of expenses that judges may incur in performing their functions are set out in the Judges Act. Judges cannot seek reimbursement of any expense falling outside of these defined categories.

● (1640)

In addition, there is a federal official, assisted by his own staff, whose responsibility is to review each and every judicial expense claim to determine whether the submitted expense falls within a category set out in the Judges Act and whether it was properly incurred and is reasonable. That person is the commissioner for federal judicial affairs, and for the judges of the Supreme Court of Canada it is the registrar of the Supreme Court.

I come to my second point, which is that there are two fundamental problems with the proposed regime as it would apply to judges. The first is the granularity of the information required to be published, tying named individual judges to identifiable judicial expenses. The second is the designation of a member of the executive to make a final decision as to whether the publication required by the bill could interfere with judicial independence.

Allow me to articulate the first concern by reference to expenses incurred by judges of Canada's national courts, such as the Federal Court, the Federal Court of Appeal, and the Tax Court of Canada. National courts are a service to Canadians and an expression of our commitment to our country. Judges of these courts are required to reside in the national capital region, but they must travel extensively, as they sit on cases across the country. As a result, they have significantly higher expenses than their colleagues at courts that do not require such extensive travel. Even among judges of national courts, some will travel more than others as a consequence of assignment decisions by their respective chief justices.

The point is that the total expenses of a judge may stand out for the reasons just given, but those expenses would have been incurred not by choice but by reason of service on a national court and the assignment decisions of a judge's chief justice. It is grossly unfair, and indeed unacceptable, that the burden of standing out from the lot by reason of high travel expenses be borne by an individually named judge, as opposed to the court to which he or she belongs.

Please also consider that by definition, the judicial function results in at least one party being dissatisfied with the result. The potential for mischief in the use of publicly available individualized expense information is enormous, and unlike persons working in other branches of government, judges may not defend themselves publicly when they stand attacked. There are also real concerns about the security of individual judges if where they stay and eat while travelling on judicial duties or where they gather for legal education conferences were publicly disclosed.

There is a glaring constitutional defect in the safeguard clause in proposed section 90.22 in Bill C-58. That section, coupled with proposed section 90.24, proposes to give the commissioner and the registrar final say on the question of whether the principle of judicial independence could be undermined by publication. The registrar and the commissioner are members of the executive branch. It is not acceptable from a constitutional perspective to give them the responsibility to make a final determination of such a question.

I have presented the problems. I now turn to solutions. This will be my third and final point.

● (1645)

There are ways of balancing the bill's important objectives against the constitutional requirements of judicial independence. The commissioner could publish expense information according to the categories of reimbursable allowances set out in the Judges Act and according to each court. For example, the commissioner could disclose that judges of the Ontario Superior Court of Justice spent *x* dollars as a whole on legal education and conferences during the period, while judges of the Federal Court spent *x* dollars as a whole on travel. It would be easy for the public, based on that information, to derive figures on a per-judge, per-court, and per-expense-category basis, which would attain the bill's transparency objective, all the while preserving judicial independence and not compromising the security of individual judges.

As regards the safeguard clause, the decision on whether judicial independence could be undermined by publication could be made to reside with the chief justice of the court concerned.

I thank you for your attention and remain available to answer your questions.

The Chair: Thank you for your testimony.

We'll move on now to the Canadian Union of Public Employees for 10 minutes.

Mr. Robert Ramsay (Senior Research Officer, Research, Canadian Union of Public Employees): Good afternoon. My name is Robert Ramsay. I work as a senior research officer with the Canadian Union of Public Employees at our national office here in Ottawa.

I want to start by thanking the committee for this opportunity to present our thoughts on Bill C-58. We look forward to seeing our recommendations as well as the serious concerns expressed by the witnesses in previous sessions reflected in your committee work.

The Canadian Union of Public Employees, or CUPE, is the largest labour union in Canada. We represent 650,000 workers across the country in sectors as diverse as health care, social services, child care, municipalities, schools, universities, and transportation, among others. Our members provide a range of vital public services in thousands of communities, where they and their locals are engaged civic partners.

Since our founding in 1963, CUPE has been one of the strongest and most consistent voices defending public services in Canada. We know that robust, well-funded public services serve Canadians best and that the privatization of these services leads to higher costs, as Auditors General have revealed when they gain access to the full range of information about a privatization project. Privatization, whether through asset sales, P3s, outsourcing, or social impact bonds, also represents a real threat to the quality and level of access that public services should provide. As such, CUPE has serious concerns about Bill C-58, both about the parts of the current Access to Information Act that it proposes to amend and about the existing deficiencies that it fails to correct.

First, this bill leaves intact sections 18 and 20, which exempt from disclosure any material or information that falls under the broadly undefined category of trade secrets of either the government or a third party. The language removes from public scrutiny any financial, commercial, scientific, or technical information that has what is called “substantial value” or is reasonably likely to have substantial value in an undetermined future.

The current language allows the government to refuse to disclose third party information that was treated confidentially by that third party. It exempts from disclosure, in a preposterously broad limitation, any information that “could reasonably be expected to be materially injurious to... the ability of the Government of Canada to manage the economy of Canada”. The scope of information that can be exempted from public disclosure under this language is virtually infinite: contracts with private security or accounting companies, pharmacological research, reports by consultants on proposed government actions, records of foreign investment, information relating to the health and safety performance of a third party entity providing public services. These are some of the possible exemptions under sections 18 and 20, and they are also examples of material and information that must be accessible to Canadians if access to information legislation is to be meaningful.

Certainly we understand that there are legitimate grounds for non-disclosure, such as national security and personal privacy, and that access requests can sometimes require judgment calls by government officials. These exemptions, however, like those in other sections that hide from view the actions and decisions of the PMO, cabinet, and ministers' offices, are overly broad, not subject to a test of real harm, and not subordinated to a meaningful public interest override.

We must note as well the dangerous ways these exemptions intersect with other legislation this government has proposed in what others more cynical than we are might characterize as a war on transparency. For example, Bill C-22 gives the staff of the Department of National Defence the authority to decide what is excluded from disclosure without any independent review. In Bill C-44, section 28 of the Canada Infrastructure Bank Act expands exclusions to include information about proponents, private sector investors, and institutional investors in infrastructure projects, again with no independent review.

The Canada Infrastructure Bank Act provides a clear example, in fact, of the regressive nature of the current legislative trajectory. Not only does the Canada Infrastructure Bank Act lay out overly broad additional exemptions, it also places final decisions before cabinet, essentially shrouding the entire process in darkness, out of the reach of the Information Commissioner, the Auditor General, and even the federal courts.

Let us provide a concrete example. CUPE recently filed an access to information request for information and material related to the government's participation in the private REM light rail project in Montreal, specifically for the reports and analyses prepared by a third party consultancy called Blair Franklin Capital Partners. This is a project to which the government has committed 1.3 billion public dollars, and it is something the government has indicated the Canada Infrastructure Bank may take on as one of its first projects.

Is this a good investment? What information has the government relied on to make that decision? Were environmental, health and safety, or accessibility concerns integrated into the decision? What is the business model and the business case? What is the projected fee structure, and will it be regressive or restrict access?

Answers to these questions are central to the public's understanding of this particular public investment. In other words, the public interest is immense. However, when we received a response —after a delay, of course—Infrastructure Canada invoked section 18 to redact virtually all of the records, making the entire 613-page disclosure incomprehensible and useless.

● (1650)

Rather than apply the exemptions narrowly and with respect for the public interest, it has become common practice for the government to redact by default, to exclude by default. This is an application that runs counter to the stated aims of the act and the bill under review, and counter to international standards of open government.

While there may be legitimate exemptions for disclosure of third party information, they would need to pass the test of real harm in each case. It is not legitimate for government to refuse disclosure simply because the information is related to a third party interest.

A recent report by the Vancouver-based Columbia Institute, entitled “Canada Infrastructure Bank and the Public's Right to Know”, notes that there is virtual unanimity among information commissioners across Canada that private entities that receive public funds or perform a public service or public interest function must be covered by access to information legislation. This is the emerging consensus internationally as well.

Here, though, this government has moved in the opposite direction by establishing a regime in which information on how our public services and public infrastructure are provided, how they are funded, how these decisions are made, and even who is involved in the work can be hidden behind a curtain of third party privilege. CUPE submits that the government instead needs to ensure that access to information under sections 18 and 20 faces far narrower exemptions that are subject to a test of actual harm, to a strong public interest override, and to review by the Information Commissioner, and that this act take precedence over any other act, such as the Canada Infrastructure Bank Act, that seeks to unreasonably limit the public's right to know.

We would also like to take a moment to echo the serious concerns of your previous witnesses. Proposed section 6, as written, creates new hurdles to gaining access by establishing requirements for the structure and content of requests that void the government's duty to assist and that defeat the very purpose of the act. Proposed section 6 also would allow the government of the day to create unilaterally a “do not respond” list of troublesome Canadians who always seem to want to know something and ask too many big questions. The determination that an access request is frivolous, trivial, vexatious, or made in bad faith is one that cannot and should not be made by the government of the day to whom the information request is made. This is a subjective determination that is necessarily rife with conflict of interest.

Another barrier to access is cost. Bill C-58 leaves open the possibility of government requiring new and onerous costs for access. Where is the promise for a nominal $5 fee with all other costs voided, and for the $5 fee itself to be refunded if timelines are not met?

We also agree with other witnesses that Bill C-58 represents a missed opportunity. There are serious problems with the current legislation, problems that the current government correctly identified while in opposition and that remain wholly unaddressed in the proposals before you. Canada, despite its leadership in other areas, sets a very poor example globally with the current act. According to the global right to information index compiled in part by the Centre for Law and Democracy and based on 61 indicators, Canada is ranked 49th out of 111 countries on the quality of its access to information laws.

News Media Canada has criticized this government's approach to access to information as being “even worse” than the previous government's. Your own outgoing Information Commissioner has called Bill C-58 “a regression of existing rights”, as has been mentioned many times at this committee. We urge you to take her 28 carefully considered recommendations.

To summarize, we submit that the law must apply to private third parties who receive public funds or perform a public service function. All exemptions must be discretionary in practice. The Information Commissioner's office must have at its disposal a full tool box of real order-making powers and the authority to enact penalties. We agree with Democracy Watch that the appointment process for the Information Commissioner must be changed so that it is open, merit-based, and not controlled by the very ministers the commissioner will be reviewing.

In conclusion, we cannot recommend that Bill C-58 proceed as written. It is, quite simply, bad legislation. It makes access more difficult rather than improving it.

Instead, CUPE calls on the government to review the problems that these hearings and previous commentary have identified, to research the best examples from your provincial and international counterparts, and to draft amendments that have as their guiding principle what Mr. McArthur, the acting commissioner from B.C., called “access by design”: an act that facilitates access rather than blocks it and that leads to a government that is truly open by default and closed only in the narrowest, independently defensible circumstances.

Thank you again for the time. I would be happy to answer any questions you may have.

● (1655)

The Chair: Thank you for your testimony.

We'll start off our seven-minute round with MP Fortier.

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you very much.

Thank you for being here this afternoon and for presenting your testimony. It's very valuable for our discussion here at committee as we look at this legislation.

Mr. Bienvenu, I have a question for you, but perhaps I'll introduce my context first. Like you, I am always cognizant of judicial independence and the role that the separation of governance from the judiciary plays in ensuring that our democracy stays strong and the rule of law is maintained. I'm also very aware of the need for transparency. The testimony we have heard numerous times here at this committee is that there is a need for progress and that this legislation is long overdue, as you probably know already.

You mentioned that you believe the enforcement of these rules should rest with the chief justices versus the independent commissioner. Can you elaborate on why you think this power should rest with the chief justices?

Mr. Pierre Bienvenu: The decision that the bill proposes to have made by the commissioner or the registrar and that I have suggested should be made by the chief justice of the court concerned is the decision as to whether the contemplation and publication of a given judicial expense could undermine judicial independence or not. That is the decision that currently the bill would place under the responsibility of the registrar or the commissioner for federal judicial affairs.

We say that from a constitutional point of view, it is unacceptable to place the decision of whether a fundamental constitutional principle—such as judicial independence—is undermined or not with a member of the executive to make a final determination of that question. Under our form of government, that kind of decision rests with the judiciary. Under the bill before you, proposed sections 90.22 and 90.42—I mentioned the two in my opening remarks—would place that decision with the registrar and the commissioner. We say that in the first instance, the decision should be with the chief justice of the court concerned.

● (1700)

Mrs. Mona Fortier: I was wondering if you could take the time to answer another question. Does it not lead to inconsistent application of the law when each chief justice has more discretion, versus an independent commissioner who is applying the policies across courts? Just as importantly, do you not think that this has the potential to create tensions within the courts when a chief justice is forced to decide between a colleague and access to documents and disclosures that they may not want to be in the public domain?

Mr. Pierre Bienvenu: The short answer is no. I don't think there is a risk that this would be the case, but I need to insist that you are focusing on an exception. The thrust of my submission is that the regime itself is inadequate and unnecessary.

There are two aspects to this bill. One is accountability and the other is transparency. Accountability, in the case of judicial expenses, is currently assured by the fact that these expenses are not, in the main, discretionary. A judge will incur travel expenses if his or her chief justice asks him or her to travel. In addition, the travelling and the accommodation expenses incurred on that occasion need to be submitted to the commissioner for federal judicial affairs. The commissioner publishes guidelines that set limits on rates that may be incurred in hotels, per diem allowances—

Mrs. Mona Fortier: I understand the expenses, but don't you think we're also trying to show that government and the judiciary should be treated the same as the members of Parliament and ministers. Canadians should know what is happening in the courts.

Mr. Pierre Bienvenu: That is a very important question. Why are judges in a position that is not comparable to that of elected officials or members of the bureaucracy? They are in a different position, I would submit, for at least three reasons.

The first, as I've just mentioned, is that their expenses are not, in the main, discretionary. The second is that they are currently subject to third party verification. I have to insist on this. Every judicial expense has to be submitted to an official whose very existence is—

● (1705)

Mrs. Mona Fortier: I only have 30 seconds. What would be the third one?

Mr. Pierre Bienvenu: I just need to finish my answer.

—whose very existence is to stand as a buffer between the government and the judiciary. The third reason, a very important reason, that judges are not in a situation comparable to elected officials is that judges may not publicly defend themselves when they are attacked. Judges speak through their judgments, and when they are attacked, they stand silent.

Mrs. Mona Fortier: Thank you very much.

The Chair: Mr. Clement, thanks for coming.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): I'm a stranger to these issues. I've never encountered these issues before.

That's being facetious, Chair; sorry about that. As a former President of the Treasury Board, I know a little bit about these issues.

Mr. Bienvenu, can you tell me what percentage of the claims under the current process are rejected or scaled back?

Mr. Pierre Bienvenu: I do not have that information, but I know there are expense claims that are rejected by the commissioner.

Hon. Tony Clement: That's probably a better answer than saying all of them are 100% perfect, but it still underlines the question that taxpayers are in the dark about whether there is a judicial officer whose claims are being repeatedly rejected or what have you.

You keep talking about judicial independence, which is, of course, a hallowed principle in our country, but I'm still trying to connect the dots between how, if you have greater public accountability.... Prove to me or show me how that infringes on the independence of the judge.

The judge still gets the paycheque from the Government of Canada, yet no one says that is an outrageous denial of judicial independence. How is it that the judge can be paid by the Government of Canada, ergo the taxpayers of Canada, yet the expenses are still in this alternative universe of process?

Can you walk me through it?

Mr. Pierre Bienvenu: Sir, with respect, I disagree with your premise. It is not the case that the Canadian public is in the dark as to judicial expenses. I mentioned in my opening remarks that all reimbursable expenses must fall within one of the five allowances that are set out in the Judges Act. It is explained in the Judges Act what expenses are reimbursable.

In addition to those broad categories, I've mentioned the role of the commissioner, and to go into further detail, the commissioner issues guidelines that are available to judges detailing the rules that he applies—currently it is a he—to the reimbursable expenses under the Judges Act. Therefore, the percentage that you have asked for—the percentage of claims that are rejected—would not be a useful piece of information, because if the commissioner does his job well through the publication of guidelines and is clear as to what conditions a claim must comply with in order to be accepted, then judges need to comply with these guidelines, and their expense—

Hon. Tony Clement: But how is it that judicial independence is degraded if we have more specific transparency?

Mr. Pierre Bienvenu: The fact, and that's an important point for members of the committee, that judicial independence is engaged by the publication regime set out in that bill is acknowledged by the bill itself. The bill itself contains an exception if the publication can undermine judicial independence, so the fact that judicial independence is engaged is acknowledged in the bill.

● (1710)

Hon. Tony Clement: But you're saying it all—

Mr. Pierre Bienvenu: Let me answer your question. You're asking me to give you examples of how judicial independence is engaged by the requirement to publish expenses. The example I'll give you is travelling expenses.

Hon. Tony Clement: Sorry; would you say that again?

Mr. Pierre Bienvenu: The example I was going to give you is travelling expenses. Judicial independence has three core characteristics: security of tenure, financial security, and administrative independence. Administrative independence has been held to extend to assignment decisions by chief justices. I am convinced that if this publication requirement remains in the bill, assignment decisions by chief justices will be influenced by the risk that one judge, or more than one judge, of our national courts will stand out by reason of his or her travelling expenses, and I think that would compromise judicial independence.

The second way—

Hon. Tony Clement: Okay, I've only got a minute left, Pierre, so you're going to have to wrap it up, because I have one more question for Mr. Ramsay.

Maybe I'll cut you off there. It's nothing to do with what you're saying; it's just that I only have a limited amount of time.

Mr. Ramsay, based on your critique of the situation, what's the motive involved here? Why is the government doing what you're saying they're doing in terms of degrading transparency and openness?

Mr. Robert Ramsay: I don't really have any interest in the motive or any speculation on what the motive might be. I can only talk about the effect of the application of exclusions.

What we see, and have seen over many years, is an application of what should be narrowly defined and specific exclusions being applied very broadly to exclude from disclosure anything relevant in any way to the interests of a third party or private party engaged in some sort of public interest function with the government when, in our view, that language should be subject to a test of real harm.

As I was mentioning with our specific case, the 613 pages of blacked-out pages—and that's not the only case; we have multiple examples of that—we believe that there's information in the public interest contained in that information that is being excluded, yet it is not being subjected to a test of real harm and is not subject to the public interest override. There have been many people before you at this committee talking about the issue of a lack of a strong public interest override in this act, and we agree with them.

The Chair: That's your time.

I'd like to welcome another guest to our committee. MP Rankin, you have seven minutes.

Mr. Murray Rankin (Victoria, NDP): Thank you, Chair. I appreciate it, and I welcome our witnesses.

I'd like to pursue with Mr. Bienvenu the line of inquiry that others have pursued. If the legislation contemplates that the registrar or the chief administrator or the commissioner can determine that the publication in a particular case might interfere with judicial independence, that of course connotes that in other cases it wouldn't. In the interest of transparency, why wouldn't it be acceptable to allow them to exercise their discretion, subject to judicial review, if required? Why is that such a big deal?

Second, what about the way in which the expense reports are handled, the rejected claims in the example you gave? If the commissioner consistently excepts bogus claims, why shouldn't he bear the kind of accountability this legislation is designed to promote?

Mr. Pierre Bienvenu: In response to your first question, the work of judges involves issues of criminal conviction and sentencing fraught with emotion, such as custody of children, disputes over wills and estates, and bankruptcy matters, to give a few examples. As I stated in my opening remarks, judges adjudicate disputes, so by definition, at the end of the process, one party is dissatisfied. I think that there is a very real risk of mischievous use of information if it is tied to named, individual judges.

I'm here completing my answer to Madam Fortier. I had time to talk to the accountability objective of the act, but I believe the transparency objective of the act can be attained by the disclosure of expense information on a per-expense category and per-court basis. Where the problem lies is in tying individual judges to individual expenses in a publication regime where you have too much and at the same time too little information. It's too much because you have expenses tied to individual judges, but it's too little because the public will be unaware of the reasons a given judge has incurred more expenses than the average or more than his colleague of the same court.

Fundamentally, I would submit to you that this regime is misconceived as it applies to judges, because I have given at least three reasons that I believe judges stand in a different position.

● (1715)

Mr. Murray Rankin: If it wasn't individual decisions on expense claims for individual judges but the aggregate expense performance, if I can call it that, by a particular court, and if the commissioner was perhaps being too generous with expense claims for a court that has a particular bent for expenses, as totally different from other superior courts, does the public have a right to know if the commissioner is acting inappropriately? Does the public have the right to see aggregate information that the commissioner provides?

Mr. Pierre Bienvenu: Yes. In my opening remarks, I acknowledged that one way of pursuing the transparency objective of the act is to have unattributed expense information made public by the commissioner.

Mr. Murray Rankin: Mr. Ramsay, I think you indicated that a lot of Bill C-58 was unacceptable. I can tell you that you're in very good company with the Centre for Law and Democracy, the Canadian Association of Research Libraries, media organizations, academic experts, and most notably, the Information Commissioner of Canada, Madam Legault, whose report is certainly the most scathing that I've ever read in my 30 years of looking at this legislation. You're in good company in saying that.

You mentioned in an answer to another question that you wanted a harms-based test for the exemptions under the act. If you had to list your most significant concerns, would the failure to address that be the main problem with Bill C-58?

In your judgment, could you tell us what are the most significant problems with this bill?

Mr. Robert Ramsay: From CUPE's perspective, I believe that one of the most major deficiencies with Bill C-58 is what is not in Bill C-58. There are a number of issues in the current access to information legislation that are inadequate. Members from all parties have acknowledged this over the years. There have been multiple studies and multiple recommendations. Canada's international counterparts have sped ahead, while Canada's act has stayed the same for a very long time. There are many political reasons for that. I think that this represents an opportunity to address those issues, and they're not in Bill C-58.

One that we are most concerned about, because it is central to our work, is access to information around the provision of public services, whether those public services are provided by government or in co-operation with a private entity. Currently, under the legislation, the so-called trade secrets and commercial and economic information that belong to a third party can be excluded under that blanket language.

● (1720)

Mr. Murray Rankin: Then your concern is that, to the extent that a public-private partnership is involved, it would be a way for the government to avoid any kind of accountability, because much of that would be seen as trade secrets or sensitive business information that could not be disclosed under the act.

Mr. Robert Ramsay: I'll say this: it is a way, currently, for information to be excluded from access requests. Our concern is that information in the interest of Canadians related to how their public services are delivered—how much they cost, what the cost is to them, their access to them in relation to fees, and so on—be available to the Canadian public.

The Chair: That's your time. Thank you, MP Rankin.

The last questioner of the day is MP Baylis, for seven minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you.

Thank you, Mr. Bienvenu. I'll follow up and put you back in the hot seat. I would like to understand a bit more about some of the arguments that you're making for judicial independence and some of the dangers you put forth in linking specific expenses to specific judges.

If I understand correctly, we could have a situation in which a judge, for whatever reason, has made judgments against somebody who is not happy about it and who wants to attack that judge. That person might go through an access to information request, find out that the judge has a huge amount of travel expenses, and compare it to other judges who have very small amounts. This may be used to cast aspersions against his character, to say he's wasting money or any type of thing like that.

Mr. Pierre Bienvenu: Here, he wouldn't have to ask for the information, because it's a proactive publication system—

Mr. Frank Baylis: So it's out there.

Mr. Pierre Bienvenu: —so the publication would be—

Mr. Frank Baylis: How would that be used for mischief?

Mr. Pierre Bienvenu: Well, it could be.... I leave it to your imagination.

Mr. Frank Baylis: I would be to embarrass the judge, maybe?

Mr. Pierre Bienvenu: It could be to try to embarrass the judge. Again, the problem, as I said earlier, is too little and too much—too much and too little.

Mr. Frank Baylis: Is it too granular, in one sense?

Mr. Pierre Bienvenu: It's too granular, because it allows one to tie expense levels to individual judges.

Mr. Frank Baylis: Without the understanding of—

Mr. Pierre Bienvenu: Some judges happen to sit on national courts. National courts are very important to our country—

Mr. Frank Baylis: It would be without the understanding of why this judge would have an awful lot of expenses. You can't compare apples to oranges.

Mr. Pierre Bienvenu: Exactly. The judge may have had a three-month trial in one of the most expensive cities in the country, and that would be reflected in his expenses.

Mr. Frank Baylis: You've made suggestions that we're covering it, in one sense, since we have the control mechanisms in there. Do you see any additional value in adding the process of putting these expenses out for the general public?

Mr. Pierre Bienvenu: I see no value and only serious downsides in the regime as conceived in this bill. However, as I mentioned in answer to Mr. Rankin's last question, I absolutely support and acknowledge the transparency objective of this bill. That can be achieved by disclosing information on a per-expense-category basis and on a per-court basis. It will be easy to translate that on a per-judge basis.

Mr. Frank Baylis: An average per judge, you mean.

Mr. Pierre Bienvenu: It would be on an average per-judge basis, exactly. It will be an average, but per court, per expense. It's pretty granular, but at least it will not single out individual judges. I think the reason behind the level of the expense will flow from the nature of the expense.

Mr. Frank Baylis: In essence, you're for giving the information out in a manner such that it can be used, be effective, and show transparency, but, if I understand correctly, such that it would not target any one particular judge. Because of the very nature of the work that they do, they should not be individually targeted.

Mr. Pierre Bienvenu: Precisely, sir, precisely. The problem here is the proposal to tie the individual expenses to named judges.

Mr. Frank Baylis: You had mentioned that it might impact their safety, theoretically. How would that happen?

Mr. Pierre Bienvenu: Judges tend to stay in the same hotel. Judges, like anybody, have patterns of behaviour. Judges usually do not identify themselves as judges when they travel, for the security reasons that you can imagine, so that is a concern—

● (1725)

Mr. Frank Baylis: In a worst case—

Mr. Pierre Bienvenu: It is a concern if 50 judges gather for an annual legal education conference and it is published on the Internet where and on which dates these judges gather. It is just, in my submission, ill-advised to require that kind of granular information. There is a security risk to that kind of information being published.

Mr. Frank Baylis: You had also touched on administrative independence and a concern that this publication might impact administrative independence. Can you explain that?

Mr. Pierre Bienvenu: Yes. Administrative independence has been held to extend to assignment decisions by chief justices.

Members of the committee, chief justices of Canada's national courts are troubled and extremely concerned by this regime. I cannot overemphasize this point, and these chief justices will not allow one of their justices to stand out.

Mr. Frank Baylis: Then their problem is if they have someone really good at something, but my God, he's run up—

Mr. Pierre Bienvenu: They're not going to make the best assignment decision in that case—

Mr. Frank Baylis: That's because they have to take into account this extra bit of—

Mr. Pierre Bienvenu: That's right.

Mr. Frank Baylis: They have to balance that they have to put this information out there, so they're not choosing the best person for the job. They have to take into account something that has, in your estimation, no additional value, so they may not assign someone—

Mr. Pierre Bienvenu: That's right, and that's the decision, between expense decisions that are discretionary and expense decisions that result from someone else's decision—in this case, the chief justice.

Mr. Frank Baylis: Did you say they're very concerned about this particular point?

Mr. Pierre Bienvenu: They're very concerned about this particular point. They're very concerned about travelling expenses of named individual judges standing out without the information that would provide context.

Mr. Frank Baylis: Did they reflect that publicly, or is that something they reflected to you? I don't know. I'm just asking.

Mr. Pierre Bienvenu: This was expressed to me.

Mr. Frank Baylis: Again, given the nature of their work, they're somewhat limited in expressing what they think, so are you their *porte-parole*, per se?

Mr. Pierre Bienvenu: I'm the *porte-parole* of the association, and as I've said, the Canadian Judicial Council has read the text of my submission and has said that it endorses the submission.

Mr. Frank Baylis: Thank you.

The Chair: I have two minutes for Mr. Erskine-Smith, if you'd like it. He's next on the list.

Mr. Nathaniel Erskine-Smith: I wanted to get to new proposed section 90.25. The Canadian Judicial Council is exempted, and if there's a concern about judicial independence for the Canadian Judicial Council, it's not clear to me why that concern wouldn't apply to the judiciary more broadly. I'm inclined to strike that exemption when we get to clause by clause.

What would you say to that?

Mr. Pierre Bienvenu: Well, it's unclear to me too, sir, why there is that exemption. That doesn't mean that it shouldn't exist. You've heard the substance of my position, which is that the whole regime should be changed, but insofar as that exemption is concerned, it's unclear why it's there. It does result in anomalies.

Let me give you one example. The very same judicial expense under this bill will need to be published or not, depending on whether the activity is a Judicial Council activity or not, even though it's the same expense.

Mr. Nathaniel Erskine-Smith: I have two other quick questions. One is in relation to new proposed section 90.22 and the chief justice of the affected court. If the wording read that the registrar, in consultation with the chief justice of the affected court, or that the chief justice of the affected court should be making the final determination without consulting anyone else, how would that work in practice?

Mr. Pierre Bienvenu: The suggestion I have made is that the decision be that of the chief justice.

Mr. Nathaniel Erskine-Smith: The last thing I would say is this. I take it the specific concern, frankly, is for these individualized expenses, and specifically in relation to travel, since you keep coming back to that. I understand that it's the Federal Court we're talking about, and the tax court or the travelling courts. Isn't the simple answer for the courts to simply say, “This judge writes this number of decisions and sits on this many panels”, and then that information is published alongside any expenses?

I don't see a reporter or any member of the Canadian public taking seriously any concerns if they see that the large travel expenses for an individual judge are commensurate with the work that this individual judge is doing.

The Chair: We're at time.

● (1730)

Mr. Pierre Bienvenu: Sir, I'll answer very briefly. I've given a copy to the clerk of this committee of my submission. We have in our discussions focused on travel expenses, but our concern is not limited to travel expenses, so I do invite members of committee to read the written submission I've given to the clerk. Then you'll see other concerns and reasons given for these other concerns.

The Chair: Thank you to our witnesses for appearing today and thank you to the members of the committee.

The meeting is adjourned.