



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

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

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ETHI • NUMBER 038 • 2nd SESSION • 41st PARLIAMENT

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**EVIDENCE**

**Monday, June 1, 2015**

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**Chair**

**Mr. Pierre-Luc Dusseault**



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

Monday, June 1, 2015

• (1530)

[Translation]

**The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)):** Good afternoon and welcome to the 38th meeting of the Standing Committee on Access to Information, Privacy and Ethics.

We have committee business on today's agenda. I see that the members of the committee are ready to begin discussions. So I will give the floor to them. They will decide what the committee will be working on over the course of the six remaining meetings. Therefore, I give the floor to the first members who asked to speak.

Ms. Borg, go ahead.

**Ms. Charmaine Borg (Terrebonne—Blainville, NDP):** Thank you, Mr. Chair.

I am pleased to move the following motion:

That, pursuant to Standing Order 108(3)(h), the Committee undertake a study of the report of the Information Commissioner, entitled "Investigation into an access to information request for the Long-Gun Registry" referred to the Committee on May 14, 2015; that as part of the study the Committee request from the Department of Justice all of its documents relating to this case; that the Committee invite as part of the study the Information Commissioner of Canada, the Attorney General of Canada, the Minister of Public Safety and Emergency Preparedness, the Minister of Finance, the Commissioner of the RCMP, the RCMP ATIP Coordinator, the Director of the Public Prosecution Service of Canada, and the RCMP officers who destroyed the registry data; and that the Committee report its findings to the House.

Mr. Chair, what we saw in the House of Commons—Bill C-59—is without precedent. The objective of the bill is to retroactively amend the Access to Information Act, so that all data on the long gun registry would be exempt from the legislation. The Information Commissioner characterized it as a very dangerous precedent.

Mr. Chair, we have to respect a quasi-constitutional right—access to government information for Canadians. A complaint was submitted by a citizen because he could not access the data, as the RCMP had destroyed all of it knowing that a complaint had been submitted to the Information Commissioner of Canada. That is a serious problem.

In addition, a bill that has been introduced seeks to retroactively legitimate the RCMP's actions. That is a very dangerous precedent. Every time the government violates a piece of legislation or decides not to comply with it, the legislation could be amended retroactively. We would be living in a world with no responsibility whatsoever. It's very worrisome.

[English]

Mr. Chair, I want to take some time to speak about what we saw here at committee. These are just some of the things the Information Commissioner has said following the report that she brought forward. It's our duty to study this further because Canadians have the right to access, they have the right to know. That's their quasi-constitutional right and that right now is at risk.

I want to read one thing that she said to the media: "Each member of Parliament is going to have to look themselves in the mirror and decide whether they can, in their own integrity, actually vote in favour of those proposed amendments." Of course, she's talking here about Bill C-59, because it sets a very worrisome precedent.

[Translation]

I ask all the members of this committee to read the report referred to us. We are not asking the committee go beyond its duties or its mandate, as the report was referred to the committee for consideration. We are really dealing with an exceptional situation. The Information Commissioner of Canada pointed out that a law has been violated. So it's very important for us to consider this.

That said, I will give you a moment to think about it. I hope we will vote in favour of the motion. That is what Canadians deserve, as their right of access to information is concerned.

**The Chair:** Thank you.

The motion has been put forward, and it is in order.

We can start weighing the pros and the cons of the proposed study, starting with Mr. Angus.

[English]

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you, Mr. Chair.

I want to say how much I support the motion brought forward by my colleague. This Parliament is a very partisan and sometimes toxic place. What binds us should be our respect for the rule of law. Through the rule of law, through the work of Parliament itself, the independent officers of Parliament ensure that parliamentarians and the Government of Canada abide by the laws and respect constitutional requirements.

I'm very concerned about what has happened in this regard with Bill C-59. We have seen a steady undermining of the powers of the independent parliamentary officers who report to this committee. The Information Commissioner has spoken out time again about how her work is being undermined. She has said that the right to information of Canadians is being stonewalled and that the access to information system is now seriously broken. That has a direct impact on democratic accountability. If Canadians can't access information in a timely manner, which is a constitutional right, then there is no accountability.

The issue before us is an access to information request that was made to the RCMP. Members of the RCMP were aware of that access to information request, yet they destroyed all the data before the government had made it law to do so. This is problematic because one has to wonder who gave the order within the RCMP to destroy data that was subject to an access to information request. That is very, very troubling for an independent police force. The Office of the Information Commissioner looked into the issue and referred the issue to the Attorney General, concluding that it was possible that offenses occurred under subsection 67.1(1) of the Access to Information Act, for destroying these records. Yet, rather than deal with the seriousness of the allegations raised by the Information Commissioner, the government has stepped forward with a bill that will actually erase the record of an offence which has occurred.

Bill C-59 is an omnibus bill. What has been put in this omnibus bill is the ability of the government to erase and make legal what was illegal. In press release dated May 14, 2015 and titled, "Bill C-59 sets a perilous precedent against Canadians' quasi-constitutional right to know," the Information Commissioner states:

As Information Commissioner, it is incumbent upon me to inform Parliament of my findings in this matter because certain provisions of the *Economic Action Plan 2015 Act, No. 1* (Bill C-59) will, if adopted, deny the right of access of the complainant, deny the complainant's recourse in court and render null and void any potential liability against the Crown.

In an interview for CBC's *Power and Politics*, which aired on May 14th 2015, she went further to state that:

What these provisions do is they actually erase any potential administrative, civil or criminal liability for any actors involved throughout the investigation and in the destruction of those records in contravention to the Access to Information Act.

Either we have laws that we respect in this country or we don't. Laws in a democratic society do not depend on a whim or political calculation. For the government to say that it is okay just to rewrite the law to make something that was done illegally appear legal sets a precedent. I'm sure my colleagues understand that when they stand to vote on legislation they are creating legal precedents. Once a legal precedent is set, it can be used again. So the ability to go back and retroactively rewrite a law to say that a crime that had been committed could not longer considered a crime could be used in all manner of cases where a government is dealing with potential scandals and potential embarrassments. Certainly, on the issue of Duffy scandal, the Prime Minister's Office could have retroactively changed the law and residency requirements to make it appear that Mike Duffy was actually eligible to sit as a Prince Edward Island senator when everyone knew he wasn't. Once someone uses their majority to retroactively write laws and erase crimes that may have been committed, we are on a very dangerous path.

Without our deciding in advance the full merits of what happened, without understanding why the RCMP did what they did, it is incumbent upon our committee to bring it here, to ensure that due diligence is done, to get to the bottom of why those records were destroyed, what happened and who was involved, and to reassure Canadians that this is a nation that is still very much under the rule of law.

● (1535)

I would again quote what my colleague said. The Information Commissioner stated that every member of Parliament "is going to have to look themselves in the mirror and decide whether they can, in their own integrity, actually vote in favour of those proposed amendments".

I think this would be something within the purview of our committee. It's something we should do. The Information Commissioner has asked our committee to do our job, and we'd be derelict if we ignored that request.

[Translation]

**The Chair:** Mr. Angus, thank you for your comments.

We will continue discussing Ms. Borg's motion.

Mr. Simms, the floor is yours.

**Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.):** Thank you, Mr. Chair.

[English]

Very briefly, to add to what has already been said, the one thing I want to emphasize is that it is certainly under the purview of this committee and is certainly very important to do.

We have seen this issue being played out in the media quite a bit. Every time we seek a response, all we get is talk about a particular policy eliminating the long gun registry. It's not about a long gun registry; it's about law. It's about how we deal with laws and about a process by which we can undo due diligence in this country. We can undo a process that we honour so much in this democracy.

I would like to see these witnesses come in to find out if anybody has raised any red flags to say this is not a good thing, for all these reasons. It seems to me that only one person did. We need to hear from the others, to allow them to be in front of this committee for the sake of saying what they went through and how this can be fixed, because I think a lot of people here are silent, and they probably don't want to be silent about this issue. I'd like to make sure we handle this in the right way and it doesn't happen again.

Thank you.

● (1540)

[Translation]

**The Chair:** Thank you for your comments, Mr. Simms.

Since there is no one left on the list regarding Ms. Borg's motion, I call the question.

(Motion negated)

**The Chair:** The committee has decided.

We have six more meetings before the session ends, on June 22.

We have to decide what work the committee will undertake until the end of the session. Mr. Angus has a proposal.

Mr. Angus, go ahead.

**Mr. Charlie Angus:** Thank you, Mr. Chair.

[English]

I would like to bring forward a notice of motion. I'm sure my colleagues have it. I think this is something that perhaps we could actually invite the commissioners here for, if my colleagues want to hear from them about the need.

The motion is as follows:

That the Committee report to the House recommending that the government, in consultation with the offices of the Information Commissioner, the Lobbying Commissioner and the Privacy Commissioner, immediately increase their funding to a level that will allow each office to adequately and sustainably meet its responsibilities and protect Canadians' rights.

We could do this very simply, in that I'm sure my colleagues have heard very clearly from these officers of Parliament about the funding crisis they're facing and their inability to do their jobs. In particular, we've heard very clearly from the Privacy Commissioner and the Information Commissioner, and the Lobbying Commissioner, who also said that her office was facing increasing difficulties.

If these officers of Parliament are not fully able to undertake their work, we are then in a situation where they're not able to hold parliamentarians and government to account.

The Information Commissioner has repeated her request for funds time and time again. I wrote to the President of the Treasury Board. He stated to me that if there were ever a request, he'd be more than willing to entertain it—yet there were numerous requests. I've written to the access to information people within the justice department to find out what happened to those requests. The justice department said they had no record of the Information Commissioner making these requests. That seemed very bizarre. We went back again, and lo and behold the documents were there.

Obviously, even when we try to find out about funding for the commissioner through access to information, the system is broken.

This Parliament is in its last days, in the twilight of a very partisan and very toxic Parliament. Our officers of Parliament are facing a financial crisis. I think it would be a good sign of non-partisanship that we're willing to work together and say that we support the work of these commissioners, that we think their work is important. They hold all of us to a higher standard than we might otherwise meet. I'd like to ask my honourable colleagues to support a call to increase their funding.

[Translation]

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

The motion as moved is in order.

We will now debate it.

Ms. Borg, go ahead.

**Ms. Charmaine Borg:** Thank you, Mr. Chair.

I would like to support my colleague's motion to increase the funding for those three commissioners. When they testified last week, they told us they were making as many cuts as possible, but that they have run up against a wall. Their current funding no longer enables them to fulfill their mandate.

The Office of the Information Commissioner even went through a crisis. At the end of last fiscal year, the commissioner made an urgent request for a funding increase. She had only 0.2% of her budget left. She was worried, not about her office, but about Canadians' right of access to information. I repeat that the right is quasi-constitutional. By failing to allocate our commissioners the funding that enables them to continue to operate and do everything their mandate requires, we are letting Canadians down. That is the key issue.

The Privacy Commissioner, who has been assigned new responsibilities, told us that he was managing for now, but that he could not get through another fiscal year after the implementation of Bills S-4 and C-51. Many bills directly affect his activities. He will be asked to carry out more and more tasks with less and less funding, and that's unreasonable. He said that he could not go on much longer with the current funding. The Lobbying Commissioner also said that it was becoming increasingly difficult for him to deliver on his mandate with the funding he receives.

In closing, I would like to say that the commissioners are there to implement an accountability system, so that someone oversees our actions as parliamentarians, and those of lobbyists, and to ensure that regulations and acts are being complied with. Their actions are being limited when they are not given an opportunity to carry out their activities properly. It's as if we were saying to those tasked with overseeing us that we no longer want their oversight. It is really disgraceful.

I would really like us to give serious consideration to this motion and not to cast it aside as we have others. As my colleague said, I think it would be good for the future Parliament to provide the commissioners with the funding they need to deliver on their mandate properly.

Thank you.

• (1545)

**The Chair:** Thank you for your comments on Mr. Angus' motion, Ms. Borg.

We are continuing the discussion with Mr. Simms.

**Mr. Scott Simms:** Thank you, Mr. Chair.

[English]

I don't think it would be too taxing of the committee to do this. We've heard what is going on from an assortment of witness testimony, which has laid the base for doing this. If they came in and focused on what their respective offices required, I don't think it would take long at all. I think it would make for an interesting report back to the House.

[*Translation*]

**The Chair:** Thank you.

If no one else would like to speak to the motion, we will move to the vote.

(Motion negatived)

**The Chair:** Are there any other proposals regarding the rest of our committee's work until June 22?

Mr. Calandra, did you want to propose something?

[*English*]

**Mr. Paul Calandra (Oak Ridges—Markham, CPC):** I move that we adjourn.

[*Translation*]

**The Chair:** As the motion to adjourn is not subject to debate, we will vote on it right away.

(Motion agreed to)

The meeting is adjourned.

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