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Mr. Bob Zimmer

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● (1600)

[*English*]

The Chair (Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC)): It's four o'clock, and it's time to get going.

Welcome, everybody, to the Standing Committee on Access to Information, Privacy and Ethics. Today, pursuant to the order of reference of Wednesday, September 27, 2017, we're considering Bill C-58, an act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other acts.

If there are any questions that need to be answered or if we have questions as a committee, we have with us today from the Department of Justice, Sarah Geh, director and counsel general. From the Treasury Board Secretariat, we have Ruth Naylor, and we have Riri Shen from the Privy Council Office. Thanks for coming.

I've been asked by each party for a one-minute opening comment.

Go ahead, starting with Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Chair.

Colleagues may have noticed that the official opposition presented no amendments. Just let me say at the beginning that after hearing the testimony of the President of the Treasury Board, a myriad of witnesses, and, most importantly, the commissioner herself, the official opposition has decided that Bill C-58 is beyond redemption.

That being said, hope springs eternal, and we will enthusiastically participate in the consideration of amendments. We know the President of the Treasury Board has indicated he may roll back a couple of the elements that the Information Commissioner has termed “regressive”. We look forward to participating.

Finally, it's interesting to note that Bill C-58 is composed of 58 pages of text. The Information Commissioner's condemnation of Bill C-58 amounted to 48 pages of text, and we have before us now amendments taking up 75 pages of text. I wanted to make clear that this is the reason we in the official opposition believe that despite the exercise before us, BIll C-58 is beyond redemption. The status quo would be preferred.

The Chair: Next up we have MP Rankin.

Mr. Murray Rankin (Victoria, NDP): Thank you, Chair.

The objective that the NDP has today is to collaborate in good faith to see if we can improve this legislation. Like my friend, Mr. Kent, there are those who say the bill is beyond redemption, but in hope springs eternal, we believe we can make a difference. We have proposed 36 amendments. I've been very outspoken in my criticism of this bill because I think it's very important we get it right. I was here 30-some years ago, when the bill was initially introduced, lobbying on behalf of reform for the Canadian Bar Association.

I was very, very shaken by what our Information Commissioner said about this bill. She specifically testified here that having the status quo would be better than the bill before us. I can understand the skepticism of my friend Mr. Kent. However, we're here to try to roll up our sleeves and make it better, and in that spirit we look forward to the discussions.

The Chair: Thank you, Mr. Rankin. It couldn't have been 30 years ago. You're so young.

Mr. Erskine-Smith, would you like an opportunity? If not, we'll get right into it.

I'd like to start off by suggesting that we'll allow one minute per amendment.

We'll start off with, of course, clause 1.

We're opening the floor for debate, folks. Shall clause 1 carry?

(Clause 1 agreed to)

The Chair: Shall clause 2 carry? Is there any debate? I don't want to encourage you to talk, but we should take advantage of this as much as we can.

(Clause 2 agreed to)

(On clause 3)

The Chair: Regarding the first amendment, we go to the NDP.

● (1605)

Mr. Murray Rankin: Thank you, Chair.

The objective of this is to be consistent with the recommendations made by this committee in May 2016 to extend the coverage of the legislation to deal with a plethora of quasi-autonomous, non-governmental organizations, subsidiary crown corporations, namely those entities for which the government has 50% or more but that are not covered by the existing definition. That is the objective of the amendment before you. I think you'll see that it's consistent with the ethics committee's recommendations 1 and 2 of May 2016. Chair, I think it's consistent with the principle and scope of Bill C-58 in that this is an amendment to the Access to Information Act. We're simply trying to extend its coverage as this committee has recommended in the past.

The Chair: Before we get started here, I'm going to explain my role a little bit more, so you can understand what the chair's role here is in this particular clause-by-clause consideration.

We've had legislative clerks give us advice on what they deem inadmissible or admissible. Their suggestions and rulings have been put before me. It's still up to the committee to decide. I'm going to go through that first, and then we'll open it up for debate, and we'll go from there.

It's a ruling, so you can challenge it.

Maybe Mr. Champagne could give a brief explanation for the committee.

Mr. Olivier Champagne (Legislative Clerk, House of Commons): Basically, there are many rules in terms of procedural admissibility for amendments. The main rules that we use are principle, scope, and the financial prerogative of the crown.

If an amendment is considered to go beyond the scope of the bill or against its principle, it will be ruled inadmissible. If an amendment would incur new spending for the government that is not already provided for, it will be ruled inadmissible.

When an amendment tries to amend a section of the parent act, in this case the Access to Information Act, that is not currently amended by the bill, it is frequently ruled inadmissible, because it's, in fact, beyond the scope of the bill.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): When you say frequently, why would it not always be? What's the idea behind that?

Mr. Olivier Champagne: Sometimes the amendment would be consequential to another amendment, or it could be a correction to the existing act that wasn't envisioned in the bill.

The Chair: Is that clear for everybody?

Mr. Rankin.

Mr. Murray Rankin: Am I to understand there's an interpretation of amendment NDP-1, or was that just a general statement?

Mr. Olivier Champagne: Yes, that was a general statement, but there's a ruling prepared for the chair.

The Chair: For each amendment, yes, there is.

I will read it for this particular amendment.

The definition of "government institution" in the Access to Information Act is not modified by Bill C-58. The amendment seeks to expand the definition by relaxing the conditions required for corporations to fall under the act. As *House of Commons Procedure and Practice*, Second Edition, states on page 766, "An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, the scope of the bill is limited by the current definition of "government institution". I therefore rule the amendment inadmissible.

Mr. Rankin.

Mr. Murray Rankin: That is, as expressed by yourself, your opinion as chair, so I'm not able to challenge it, except to say that we're here to amend a statute called the Access to Information Act. It seems to me that the key to that statute is the scope of that statute.

The principle of openness is simply being extended to other agencies controlled by the Government of Canada, so it would seem to me that should be within the scope of our deliberations. The government chose to bring Bill C-58 in to amend the act. This is simply in the spirit of that, to extend it to cover other government institutions. I would submit that it is within the scope, but of course, I defer to your ruling.

● (1610)

The Chair: Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: This is just a clarification question. The definition section is being amended. It's specific language that is being amended within the definition section. It's only in relation to the specific words that are being redefined that we could move amendments on. Is that your interpretation?

Mr. Olivier Champagne: Not necessarily, it could be an interpretation. But in that case, my understanding is that the impact of changing that definition, the way it's proposed now, would be quite significant. My advice to the chair was that it would go beyond the scope of the bill.

We have to look at the scope of the bill, and not the scope of the act, and my interpretation is that such a change was not envisioned and not comprised in the scope of the bill itself.

The Chair: Mr. Baylis.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): If I understand, you're saying this change would expand the scope dramatically, and therefore, it's not admissible within the aspects of this particular bill. Is that correct?

Mr. Olivier Champagne: Yes.

The Chair: The procedure will be to move to the next amendment, and not vote on that one, because it's inadmissible.

I don't know if you have the same amendments before you, but the next amendment has been moved by Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

I'm going to be mindful of time, but I do need to put on the record that I would have the right to put this motion in amendment forward at report stage of the bill before all of Parliament if not for a motion passed by this committee identical to the motion passed in all committees, a motion that I continue to protest. It is not an opportunity for me; it reduces my rights. We have had times when I have clause-by-clause consideration in different committees at the same time, and it's very difficult to be in two places at once. I would just put the protest on the record and move quickly to say that the purpose of my amendment, and it's enumerated as PV-1, Parti vert-1. I think when I first started presenting amendments people were worried if they had G for the Green Party, it would look like G for government. PV-1 is a motion similar to the one put forward by the New Democrats to extend the definition of “department” to include the minister's office. I have not made the effort to extend it to Prime Minister's Office as that would fall outside the scope of the act, but I believe this is inside the scope.

Thank you.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Just as an identifier, the amendment that just failed is identical to the next amendment, NDP-2. There's really no need to vote on that. Are there any comments?

Shall clause 3 carry?

(Clause 3 agreed to)

(On clause 4)

The Chair: Next up is Mr. Rankin.

Mr. Murray Rankin: Thank you.

NDP-3 is an amendment that would propose to extend the coverage to the Prime Minister's Office and parliamentary entities. The primary thrust of it is proposed section 3.3, which would define the Prime Minister's Office in the same manner as if it were a government institution. I think this is consistent with the clear promise made by the Liberal Party when they were running for office, and this is simply to give credence to their promise through legislation.

● (1615)

The Chair: Thank you, Mr. Rankin.

Once again I have a ruling. Bill C-58 creates a new part 2 in the Access to Information Act for specific entities, creating two distinct regimes. The amendment seeks to import into part 1 entities for which part 2 is created. As *House of Commons Procedure and Practice*, Second Edition, states on page 766: "An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, having two distinct regimes for distinct entities is a fundamental principle of the bill. I therefore rule the amendment inadmissible.

Mr. Murray Rankin: Mr. Chair, I don't understand why, if the government could have chosen to put this in part 1, they chose to put it in part 2. We get boiler plate routine disclosure from offices like the Prime Minister's Office, not what people might request, not like journalists and others who told us about the sponsorship scandal precisely because they could apply and seek records might request. Simply putting it in part 2 therefore seems to me to be a way of end running the requirement.

I don't see why it is beyond the scope or principle of the act to move something from part 2 to part 1. With respect, I disagree with the chair's ruling.

The Chair: Just so you know what the procedure is, if the ruling of the chair is disagreed with, the committee will vote on whether to sustain the ruling of the chair. A simple majority of committee will decide whether or not it's sustained again or passed.

Is that what you wish, Mr. Rankin?

Mr. Murray Rankin: That is correct. I would ask for that.

The Chair: The question is whether the chair's ruling should be sustained.

(Ruling of the chair sustained)

(Clause 4 agreed to)

(On clause 5)

The Chair: Mr. Erskine-Smith, on the amendment to clause 5.

Mr. Nathaniel Erskine-Smith: I'll move this, but frankly it's not the most important thing. We did hear some testimony in relation to Info Source and the importance of keeping Info Source.

This amendment would keep a digital version of that, given we heard testimony that it's antiquated and the written version is unused. I don't want to place too much emphasis on this.

I will move this for debate, frankly. I don't think this is the solution to access to information necessarily, but given that we had it drafted and submitted it, we might as well have a conversation about it.

The Chair: We'll open it up for debate, then.

Mr. Rankin.

Mr. Murray Rankin: I would support the amendment. I think it's the right thing to do.

It was shocking that Info Source, which has been a valuable source for so many years to Canadians, was thrown in the garbage can through this bill. To bring it back in a digital form makes eminent sense.

The Chair: Okay. We'll move to a vote on the amendment, then, if that's all the comments we have.

Okay, it's a tie.

Mr. Nathaniel Erskine-Smith: It's only Info Source.

An hon. member: It's not a tie. He can't vote.

The Chair: That's correct. Mr. Deltell doesn't have a vote on committee.

Thanks, Mr. Deltell. Nice try.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: The amendment fails.

● (1620)

Mr. Nathaniel Erskine-Smith: I expected as much.

(Clause 5 agreed to)

(On clause 6)

The Chair: On the second amendment, LIB-2, Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: I won't be moving that one. I prefer that my colleagues—

The Chair: We have a Liberal amendment. Who will choose to move that amendment?

Mr. Nathaniel Erskine-Smith: I'm not moving it.

The Chair: Okay, thanks everybody.

We have the next amendment from the NDP.

Mr. Rankin.

Mr. Murray Rankin: Chair, this is NDP-4.

The objective of this is to take out the requirements that this bill would impose upon requesters to identify the specific subject matter of their request, the type of record, and the period for which the record pertains. Obviously, as in the words of the commissioner, it is one of the most regressive amendments imaginable. Currently people have the ability to apply for information that they want, and in sufficient detail to let an experienced employee identify the record, with reasonable effort, who has a duty to assist individuals.

This amendment would take us back to where we've been for the last 30-plus years and away from a world where you have to know what you want before you look for it.

I point out once again, Chair, the testimony to this committee by our Information Commissioner, that the sponsorship scandal would never have been identified if this section were in place.

The Chair: Thank you, Mr. Rankin.

Is there debate?

Yes, Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: Can I put a question to the folks at the desk?

The Chair: Yes.

Mr. Nathaniel Erskine-Smith: My colleague Mr. Saini, I think has an important amendment to proposed section 6.1 that I look forward to supporting.

If new paragraph 6.1(1)(a) is removed, that perhaps resolves some concern that we've heard. If that is removed, my question is this. In relation to proposed clause 6, which we're dealing with now, I understand already in the act it says that the request shall be made in writing. I understand if it were not made in writing, the department could refuse to process that request.

That being the case, what's the difference between that requirement and the requirement "shall set out the following information": (a), (b), (c). If (a), (b), (c) are not met, isn't it the same thing as an oral request and the department will simply be able to decline it? If not, maybe you could clear up that ambiguity.

The Chair: Mr. Erskine-Smith, who are you asking specifically? Is it anybody in the group?

Mr. Nathaniel Erskine-Smith: Yes, whoever might answer my question.

The Chair: Okay.

Go ahead.

Ms. Ruth Naylor (Executive Director, Information and Privacy Policy Division, Chief Information Officer Branch, Treasury Board Secretariat): In fact, we have counsel here today, so if you give me a second, we'll get you an answer for that. I just want to make sure that we have the best answer possible for you.

Mr. Nathaniel Erskine-Smith: Okay.

Ms. Ruth Naylor: Thank you for your indulgence, Mr. Chair.

The best answer we can give you is that the duty to assist would require the ATIP coordinator to clarify with the requester, to try to get as much information as possible there, and then they'd have an obligation to proceed with the best information they have.

Mr. Nathaniel Erskine-Smith: I understand that to be the case, but if proposed paragraphs 6(a), (b), and (c) are not met, then they can decline the request.

Ms. Ruth Naylor: If the request would be impossible to fulfill, but.... There's already policy direction, which would pertain in the new world as well, which would say that if you have enough information to fulfill the request, the request has to be fulfilled, but—

● (1625)

Mr. Nathaniel Erskine-Smith: Correct me if I'm wrong—I'm sorry for this—but that policy guidance doesn't overrule legislation. If the legislation specifically says that what is in proposed paragraphs 6(a), (b), and (c) "shall" be provided, that actually overrides any policy guidance. It has to. A department could, in accordance with this legislation, say no to a requester if the request doesn't meet 6(a), (b), and (c), irrespective of anything in proposed section 6.1.

I just want to make sure. Is that correct?

Ms. Ruth Naylor: The policy guidance helps an institution interpret the legislation, so that interpretation would still be the case, which is that as long as there is then.... These pieces of information are requested, and as long as there is "sufficient detail to enable an experienced employee of the institution to identify the record with a reasonable effort", our policies would say to proceed with the request.

Mr. Nathaniel Erskine-Smith: If (a), (b), and (c) are all provided?

Ms. Ruth Naylor: Yes, to the best of the requester's ability. Yes.

The Chair: Mr. Rankin.

Mr. Murray Rankin: With great respect, it doesn't say that. It says they "shall set out the following" three things. That's the additional change.

The policy guidance, which may or may not be the case tomorrow or the day after or five years from now, may say something different. We're here to pass legislation, and those are three mandatory requirements, as plain as can be. They amend a section that simply says all you need to do is make a request "in writing" and let somebody who has control of the record and is an experienced person identify the record "with reasonable effort". That's how it has been for some 30 years.

This is clearly a regressive step. It doesn't say "may". It requires you to do the three things that are listed. Policy guidance comes and goes.

The Chair: Mr. Baylis.

Mr. Frank Baylis: If I understand it, and if we take a real-world example, the idea behind this change was to make the departments more efficient, and when you look at it, it's a very reasonable three things that they're asking for. However, this being said, there might be certain instances where the requester is not able to provide those. We accept that.

If that happens, would it not fall, then, to the duty to assist, wherein the person receiving this request would say that it's not meeting the criteria, but they have a duty to assist; *ergo*, they know what the person is looking for, and they're looking for such-and-such a document. The person can then inform them to write it down on their request and then will be able to provide it for them.

Would the duty to assist be such that if an incomplete request is there, the person receiving that request must assist that person by requesting to fill in the data? They cannot use it.... As to what my colleague Nathaniel said, it is our intention to remove the right to deny that request based on if they don't have the full information. If we take that part away in our next step, the department cannot use the fact that it's incomplete to deny the request.

Ms. Ruth Naylor: That's correct. The duty to assist would require the institution to work with the requester to try to fill in any blanks.

Mr. Frank Baylis: That duty to request is part of the law, right? That will not change.

Ms. Ruth Naylor: That is already in the Access to Information Act.

Mr. Frank Baylis: That's not going to be an interpretation document that someone could change a couple of years from now. That is mandated.

Ms. Ruth Naylor: Yes, in subsection 4(2.1). It's set out in the law now.

Mr. Frank Baylis: Yes, so the valid concern that Mr. Rankin is raising would not in fact play itself out. As he mentioned, the sponsorship scandal could not have been done, but in this case, because of the duty to assist and the fact that a request is incomplete cannot be used as a reason to deny the request, it could work its way through the system nonetheless. All this would actually do is help us to be more proficient and effective in other requests.

Ms. Ruth Naylor: That's the intent of asking for that information from requesters, and without proposed paragraph 6.1(1)(a), that situation that you're asking about—

Mr. Frank Baylis: If we remove proposed paragraph 6.1(1)(a)—

Ms. Ruth Naylor: Then that's correct.

The Chair: Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

Certainly, looking at the testimony from the Information Commissioner, this section was found to be most objectionable. I'm looking for which Liberal amendment is a government amendment, as opposed to a Liberal amendment, which is going to be defeated. Perhaps if someone could direct me to which one you believe will modify section 6 so that we don't have the impact that, unless someone essentially knows everything about the record they're curious about before they ask for it, they stand at risk of being denied.

The Information Commissioner said that records may change from a handwritten form to a digital form and back again. People may not know the exact date.

I want some clarification before dispensing with this, and my amendment will fall in the same category. Which amendment is essentially now a government amendment attempting to fix this problem?

● (1630)

The Chair: Do you want to respond, Mr. Erskine-Smith? You're next on the order. Would Mr. Baylis like to respond? It's up to you.

Mr. Frank Baylis: That's a valid question, because the next amendment coming up is on proposed paragraph 6.1(1)(a), I believe. There was, in what was originally put forth, the opportunity to deny this request if it wasn't complete, but it is our intention in the next step to remove that ability to use it as a denial. If we didn't remove that, then the concerns that Mr. Rankin brought up would be valid, because it could be used as an opportunity to deny the request. If we make this change coming up next, then it cannot be used as a way of denying the request.

The Chair: Go ahead, Ms. May. Do you want to respond? You asked the question.

Ms. Elizabeth May: I just want to clarify which amendment is it that you believe does that.

Mr. Frank Baylis: The next amendment that we're going to propose. It's coming up, LIB-3.

Ms. Elizabeth May: Okay, so we move to....

The Chair: Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: I think Frank raises a really good point about refusal.

I just want to work through this. If we amend proposed section 6.1, as my colleague Mr. Saini has in amendment LIB-3, that will remove proposed paragraph 6.1(1)(a), and it would give the Information Commissioner the authority to grant departments the ability to refuse, which is an additional protection.

That authority doesn't relate to section 6 at all, so my understanding is—and correct me if I'm wrong—if someone doesn't make a request in writing, that request doesn't need to be fulfilled. Is that right? If that's the case, what's the difference between that requirement and the requirement for proposed paragraphs (a), (b), and (c)? Why is one sufficient to refuse a request, and the other is not, based on how this legislation is drafted?

Ms. Ruth Naylor: The best answer I can give you to that is that the need to receive a request in writing is necessary administratively for the system to operate. If the requester provides (a), (b), and (c) to the best of their ability, an institution is going to be required to respond to that request.

Mr. Nathaniel Erskine-Smith: Required by policy advice or by legislation?

Ms. Ruth Naylor: Required by policy advice in addition to what we see set out here. There are supporting documents that give direction to institutions on how to apply the act.

Mr. Nathaniel Erskine-Smith: If the next government changes that policy advice, and this legislation stands, an individual can have their request rejected if they don't meet (a), (b), and (c) as this legislation is written.

The Chair: Mr. Kent.

Hon. Peter Kent: I'd like to refer again to the commissioner herself, who said that these requirements, as Mr. Rankin pointed out.... Again, given the judgment of the day, it doesn't matter what may be intended, but the commissioner herself said these three conditions would have blocked Canadians' knowledge of the sponsorship scandal.

I think the amendment to assist is certainly a worthy one, but these three paragraphs, (a), (b), and (c), could also be removed if the intention is as the government claims.

The Chair: Mr. Baylis.

Mr. Frank Baylis: To Mr. Kent's point, proposed paragraph 6.1 (1)(a), and this is the document as it was presented—and the Information Commissioner is correct—states very clearly that, if the request does not meet the requirements set out in section 6, it can be used to deny access. That's stated very clearly. That being the case, our government agrees with the Information Commissioner. It's going to remove proposed paragraph 6.1(1)(a) so that it cannot be used to deny access.

We intend to balance efficacy by asking for this information. Nonetheless, if it's not provided, it cannot be used to deny access.

The legal right and requirement of duty to assist would be such that even an incomplete section 6 would be assisted to be complete to move forward.

● (1635)

The Chair: Mr. Rankin.

Mr. Murray Rankin: I think it is positive that the government is prepared to delete this odious section that allows the government to reject requests simply because they lack the specific subject matter, the type, or the period. I think that is progress.

First, on this notion that somehow we could be happy that there's a duty to assist, I would point out that the remedy is a little bit indirect. If a public servant doesn't make every reasonable effort to assist the person with the request, the remedy is probably a disciplinary matter. I suspect it would be something indirect like that. Meanwhile, people aren't getting the records they requested and information delayed is information denied. Looking at that as the hook to say that everything is fine now is something I don't understand.

Second, these things you are now requiring—identify the subject matter, the type of record, and the period—are obviously to assist the public servant in discharging his or her responsibility to identify the record, but the section that's going to remain, 6.1, deals with the problem of large volumes or frivolous or vexatious requests, or people who've already been given the record. In keeping those things, it's hard for me to understand why you still need to have the things in paragraphs (a), (b), and (c), which put an obstacle in front of the right to know. They add nothing except an obstacle for reasons I do not understand.

The Chair: Mr. Baylis.

Mr. Frank Baylis: I have two points to answer Mr. Rankin.

First, if you have an incompetent bureaucrat, they may be incompetent, quite frankly, in their duty to assist. They may have all the information and be incompetent in finding it. I don't think it's useful to criticize a bill because the people who are going to implement it might be incompetent. They might be incompetent in any number of ways. But that's not our role here. Our role is to write proper bills with the assumption that the bureaucracy is competent. So your argument does not hold water.

The second point is about the request for this information. We also heard clearly that timeliness is important. We heard time and time again that the speed of answering requests is important. Now, what's being asked for in section 6—which is not mandatory in being able to deny a request—is to specify the subject matter. What are you looking for, and what is the subject matter? What is the record you're looking for and the period? These are simple things. If you're not able to provide that, through the duty to assist, you'll be assisted in providing it. You could say that the guy helping may not be that good at helping. Okay. The guy looking may not be that good at looking. There are any number of reasons that bureaucracy may not work properly, but that's not how you address the bill.

The Chair: Mr. Rankin.

Mr. Murray Rankin: You're the one, with respect, who said we should look to the duty of assistance by public servants to backstop this regressive measure, which was described as such not by me but by the commissioner. The duty to assist is only as good as the individual who is there. That individual may consistently thwart requests, I don't know. All I know is that the remedy will be so long in the disciplinary process that *The Globe and Mail* reporter who sought that article may have long since moved on. So I don't accept that.

Also, to suggest that the type of record and the period being requested is no big deal is wrong. It is a very big deal because you don't know. That's the point the commissioner made so powerfully before this very committee. You think you can rely on the good faith of some junior official who may not want the government to be embarrassed by the disclosure of records showing misspending or maladministration. That's the whole point of this bill. It's not to make things easy for the government. It's to give citizens what the courts have described as a quasi-constitutional right to know in our democracy. All this does, with great respect, is put obstacles in the way that are totally unnecessary and, as the commissioner said, "regressive".

The Chair: Ms. May.

Ms. Elizabeth May: I appreciate the latitude, Mr. Chair, because my amendments speak to this very issue.

The reason I asked earlier to be directed to the amendment from the government that attempted to solve the problem that was presented in clause 6 and identified so forcefully by many witnesses, including the Information Commissioner, was that LIB-3 does not do what I believe the Liberals think it will do.

If you read proposed section 6 by itself and you imagine statutory interpretation, you have mandatory requirements in several places. The request "shall" be made in writing. It "shall" set forth the following information and provide sufficient detail. There are a lot of requirements there.

I don't believe a government department will feel confident that it has to go to the Information Commissioner to get permission in order to say, "We've read the provision. We don't have to answer this request. It's very clear—black and white—that in requests for access to a record, the person requesting it shall do the following things mandatorily."

The section that follows, proposed section 6.1, which is the only section being amended at this point—and I hope you'll consider my amendments—does create a discretionary opportunity:

> The head of a government institution may, before giving a person access to a record or refusing to do so,

With that—before refusing to do so—the requirement of a head of government is discretionary. They "may" decide for these reasons.

There are absolute requirements for a person asking for the record under proposed section 6. They are required to have it in writing. They are required to speak to proposed paragraphs 6(a), (b), and (c) and to provide sufficient detail. Those are mandatory requirements of this act that I don't believe are obviated by the amendment put forward in LIB-3.

I think there's good intention here, so I hope perhaps we can work together and fix it.

● (1640)

The Chair: Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: I just have one other question. If proposed paragraph 6.1(1)(a) were to stay in the act, and the Information Commissioner were to have that discretionary authority to deny government institutions the ability to refuse, wouldn't that actually create more protection than deleting proposed paragraph 6.1(1)(a) and leaving proposed section 6 as is? At least then we're giving the Information Commissioner the authority to determine whether refusal can be granted, whereas right now, removing proposed paragraph 6.1(1)(a) and leaving in proposed paragraphs 6(a), (b), and (c), the Information Commissioner has nothing to say to it.

I could be wrong, but that would be my legal interpretation.

Ms. Ruth Naylor: Just to clarify, the requester has a right to complain to the Information Commissioner now, under the current proposed section 6, if they feel that an institution, inappropriately, is not responding to their request. A complaint could be made. Similarly, in the future, if the act is amended as proposed here, if an individual feels that an institution isn't fairly making a determination about how to respond to their request, they have a right to complain to the Information Commissioner. So the Information Commissioner would have oversight over any decisions here.

Just to give an example with regard to "type of record being requested", typically an institution is looking for something from the requester. Do you want all emails? Do you just want briefing notes? Are you looking only for the paper records that we have? Do you want us to search our emails? The institution is looking for enough information to provide the requester with what they need.

Now, if someone's unable to respond to that, the duty to assist doesn't resolve that, and there's a sense on the part of the requester that they're not getting the service they should be getting, they have an ability to make a complaint to the commissioner.

Mr. Nathaniel Erskine-Smith: I guess what I was trying to drive at was if we remove proposed paragraph 6.1(1)(a), the department can refuse if (a), (b), and (c) are not provided. You're saying they won't, but under the legislation they appear to be able to. But if we were to keep proposed paragraph 6.1(1)(a) and add that the Information Commissioner had the discretion to grant the ability to refuse, that would seem to be more protection.

Again, though, maybe I'm wrong.

Ms. Ruth Naylor: I won't speak to what's more protection or not, but I agree with you that this would be the effect of keeping both in. You're talking about a situation where the Information Commissioner must approve the use of proposed paragraph 6.1(1)(a).

Mr. Nathaniel Erskine-Smith: Okay. I think I understand. Thanks very much.

Ms. Ruth Naylor: Thank you.

The Chair: Is there any more debate on NDP-4?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Just for reference, Ms. May's motion is PV-2. PV-2 is identical to the NDP motion we just defeated, and therefore it's defeated.

Next is Liberal amendment 3.

Mr. Saini.

Mr. Raj Saini (Kitchener Centre, Lib.): I want to make sure that the department will have a very narrow power to decline a request to release information. I think this may answer some of the questions that have already been discussed.

● (1645)

The Chair: If adopted, amendments NDP-5, NDP-6, PV-3, and PV-4 cannot be moved because of a line conflict.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: We're going to go all the way down to LIB-4.

Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: This is to amend 6.1(1)(b). There was some concern about the specific language used, as to whether someone had already received the record. We went back, and the Information Commissioner had actually proposed different language in a previous report. That's the language I've used.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: We'll move to PV-5.

Ms. May.

Ms. Elizabeth May: This is based on the recommendation, again, from the Information Commissioner that we delete lines 26 to 31, which deal with records that were frivolous or a large number of records that would be unreasonable. Per the Information Commissioner's recommendation, this amendment is very straightforward. It deletes the lines that include "the request is for such a large number of records or necessitates a search through such a large number of records that acting on the request would unreasonably interfere" and so on.

Thank you.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is LIB-4.1

Mr. Saini.

Mr. Raj Saini: The amendment reads:

That Bill C-58, in clause 6, be amended by adding after line 34 on page 3 the following:

Limitation

(1.1) The head of a government institution is not authorized under paragraph (1)(b) to decline to act on a person's request for a record for the sole reason that the information contained in it has been published under Part 2.

The Chair: Is there any more to say, Mr. Saini?

We've all seen the amendment. We received it before the meeting.

(Amendment agreed to)

The Chair: Shall clause 6 carry?

Go ahead, Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: Ms. May had an amendment to delete 6.1(1)(c). I understand the reasons for doing so, but in some cases it may slow the machinery of government down unduly. I think refusal should be granted. My only concern is that there's no balance between the large number of records and the fact that it would undermine government operations and the public interest. I don't expect this to pass, but I would put it forward for debate. I would move that we amend 6.1(3) to read, "In exercising discretion pursuant to 6.1(1)(a), the Information Commissioner shall balance the reasons for non-disclosure against the public interest in the disclosure of any records".

Again, this is only because I think that Ms. May raised a real concern and it's worth discussing if that's a possible solution. I'm putting it on the floor now. I don't expect it to pass, but it's worth talking about.

● (1650)

The Chair: Okay, for the sake of the committee, Mr. Erskine-Smith, would you mind repeating it just a little more slowly so we can all—

Mr. Nathaniel Erskine-Smith: You have my copy.

The Chair: We can read it then.

I'll read out the amendment by Mr. Erskine-Smith: "In exercising discretion pursuant to proposed paragraph 6.1(1)(a)"—

Mr. Nathaniel Erskine-Smith: Sorry, it should be proposed subsection 6.1(1), not paragraph (a).

The Chair: That's clear as mud.

Mr. Nathaniel Erskine-Smith: We've deleted proposed paragraph 6.1(1)(a), so proposed paragraphs 6.1(1)(b), (c), and (d) remain, which will now be 6.1(1)(a), (b), (c). But they all relate to reasons for refusal, proposed subsection 6.1(1). So remove the reference to paragraph (a).

The Chair: Okay, let's do this again. Hopefully I have it right this time. It's a potential amendment to proposed subsection 6.1(3) and reads: "In exercising discretion pursuant to 6.1(1), the Information Commissioner shall balance the reasons for non-disclosure against the public interest in the disclosure of any records."

I can repeat that if you need me to.

Mr. Frank Baylis: Go slowly.

The Chair: I'll start from the beginning. It is proposed subsection 6.1(3): "In exercising discretion pursuant to 6.1(1), the Information Commissioner shall balance the reasons for non-disclosure against the public interest in the disclosure of any records."

Mr. Baylis.

Mr. Frank Baylis: Can you explain that so I can understand it?

Mr. Nathaniel Erskine-Smith: Sure.

Ms. May's one solution was to delete the part about the request being for such a large number of records. But if we're going to give the Information Commissioner discretion over this section.... That's a great thing, and I think it's a really important amendment that Mr. Saini moved. The only concern I would have with what was paragraph 6.1(1)(c) is that we're allowing for requests to be denied where there is such a large number of records that it would unreasonably interfere with the operations of government institutions, and I think we ought to put in writing that it's incumbent on the Information Commissioner, when doing a balancing act regarding what would interfere with government operations, to consider the public interest as well—for that and for any other decision to refuse.

The Chair: I'll open it for debate.

Mr. Murray Rankin: It's a very helpful suggestion. I support it.

The Chair: Mr. Rankin supports it.

All right. This is the amendment we're voting on.

Mr. Frank Baylis: Can we have a break before we vote? That's something I haven't thought about.

The Chair: How long a break are you suggesting, a minute or two?

Mr. Frank Baylis: Two minutes, just so I can understand it.

The Chair: I'll give you two minutes.

● (1650)

(Pause)

● (1655)

The Chair: I bring the meeting back to order.

Mr. Baylis, you said you were ready.

I'll note for the committee that when I say two minutes, I actually mean two minutes. I'll be more disinclined to give breaks again if people say they are ready and they're not. That's just a little warning.

We'll proceed to the vote.

Mr. Baylis.

Mr. Frank Baylis: Before we proceed to the vote, I just want to explain that after having this break, I'm going to vote against this, because it's my understanding this will actually curtail the latitude of the Information Commissioner by being specific on what she must take into account, whereas she currently can take that and anything else she so chooses into account. I'll be voting against it for that reason.

The Chair: Mr. Rankin.

Mr. Murray Rankin: Just because there's a statement that she must take take *x* into account does not mean she cannot take *y* and *z* into account.

The Chair: We'll move to the vote on the amendment.

(Amendment negatived)

(Clause 6 as amended agreed to)

(On clause 7)

The Chair: Mr. Rankin, on amendment NDP-7.

Mr. Murray Rankin: Thanks, Chair.

This is a really simple one. Section 11 of the act requires people to pay a fee, a tollgate fee on the public's right to know, of $5. It's a tollgate fee which costs the government, by testimony, if it's a cheque, $55 to process. While it seems bizarre in terms of the economics, it should also be seen as an obstacle that doesn't exist in most provincial freedom of information laws.

The amount of recovery is miniscule in the grand scheme of things, and all it can be is yet another obstacle to people's right to know. I point out that recommendation 14 of this committee was entirely consistent with removing the fee. I'm just proposing this in order to implement this committee's own recommendation.

The Chair: There's another ruling from the chair.

Bill C-58 makes adjustments to section 11 of the Access to Information Act, which deals with fees. The amendment seeks to repeal section 11 of the act. As *House of Commons Procedure and Practice,* Second Edition, states on page 766, “An amendment to a bill that was referred to in committee after second reading is out of order if it is beyond the scope and principle of the bill.” In the opinion of the chair, Bill C-58 allows for modifications to the fees provisions of the act, but the scope and the principle of the bill don't go as far as to allow for a complete elimination of fees. I therefore rule the amendment inadmissible.

● (1700)

Mr. Nathaniel Erskine-Smith: If it were 25¢, that would be okay.

Mr. Murray Rankin: In other words, if the government had chosen to say the fee is reduced from *a* to *b*, or expanded from *a* to *b*, that would be fine, but because it chose to be silent on something that has for 30 years been seen as an obstacle, it's not within the scope and principle of an access to information act. I find that hard to believe.

The Chair: Would you like to challenge the chair, Mr. Rankin?

Mr. Murray Rankin: Yes.

The Chair: We have another challenge to the ruling.

The question is, shall the decision of the chair be sustained?

(Ruling of the chair sustained)

The Chair: Ms. May.

Ms. Elizabeth May: Thank you, Mr. Chair.

I don't find your ruling hard to believe, because that's why I proposed this amendment instead of the other one. I would love to eliminate all fees, but I was anticipating the ruling that you just made.

I've only suggested removing the additional payment in section 11, essentially eliminating subsection 11(2). I'd remind my friends on the other side of the aisle that the Liberal Party platform says, “We will make it easier for Canadians to access information by eliminating all fees, except for the initial $5 filing fee.” Even more wonderful, from our historical archives, is a private member's bill from 2014, Bill C-613. It was put forward by the member for Papineau, who said in his speech at the time that the act “would require that only the initial $5.00 request be paid by Canadians, with no additional fees added on later.”

We have the member for Papineau's private member's bill, and the pledge from the Liberal platform. It seems to me that subsection 11 (2) is in error, and the effect of my amendment would be to get rid of it.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We'll move to PV-7.

Ms. Elizabeth May: Not to take a lot time of the committee, but PV-7 has the same effect as PV-6 in eliminating the additional fee of $5.

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 7 agreed to)

(Clause 8 agreed to)

The Chair: Mr. Rankin on NDP-8.

Mr. Murray Rankin: Mr. Chair, in every access to information act, there is a statement of the public's right to know. Then there are exceptions to that rule that should be narrow, and then there is an independent umpire who decides whether the records should be disclosed if the government doesn't want to disclose them. This next set of amendments, in particular, NDP-8 to start, is about that exemption. The commissioner has said over and over again, as have other witnesses...and in many statutes across the land, they have what are called harms tests. Rather than simply a category of information that can be withheld whether there's a harm or not, the objective in my amendment is to add a phrase that would say the "disclosure of the information would be injurious to" a particular interest.

Now I realize that the threshold question for you, Mr. Chair, is whether or not these amendments, as the others I've proposed, are within scope. I, of course, will respect your ruling on this, but I will point out that this is consistent with what for 20-some years has been suggested by committees like this, that there be changes to these exemptions. This is how you swallow the rule of openness: you just have to make the exemptions broad enough that everything gets withheld. This is an effort to do what many commissioners have sought and what most legislation across the land does, which is provide a harms test, rather than simply a black hole into which the government can pour whatever it doesn't want disclosed.

● (1705)

The Chair: Thank you, Mr. Rankin.

Again, I have a ruling. The amendment seeks to amend a section of the Access to Information Act that is not amended by Bill C-58. As *House of Commons Procedure and Practice*, Second Edition, states on pages 766 and 767, "...an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill." It is therefore the opinion of the chair that the amendment and consequential amendments NDP-32, 34, and 37 are inadmissible.

Mr. Murray Rankin: That is consistent, Mr. Chair—

The Chair: Yes.

Mr. Murray Rankin: —with your earlier rulings.

The Chair: I like you, Mr. Rankin, but I have a job to do, so we'll move on to NDP-9.

Mr. Murray Rankin: It's a very narrow one. I'm not sure if it's going to be ruled in order in light of what you've just said. Where currently the act says that you can withhold information "on strategy or tactics adopted...by the Government of Canada relating to the conduct of federal-provincial affairs", this would simply narrow it to say "federal-provincial negotiations". In a federation, to give you an example of what I just said before, there are certainly a lot of things that have to do with federal-provincial affairs, so you see why this can be abused. That's why so many commissioners have asked for it to be narrowed. This would merely affect those things where there are negotiations. Fair enough, there should be an exemption, I would submit, for that, but this is an example of where the exception can swallow the rule. I was hoping that this committee would be consistent with its predecessors and try to improve it for Canadians.

The Chair: Thank you, Mr. Rankin.

Once again, for the same reason.... Do you want me to repeat the reason why not every time? Anyway, I'll say it again.

As *House of Commons Procedure and Practice*, Second Edition, states on pages 766 and 767, "...an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill." It is therefore the opinion of the chair that the amendment is inadmissible.

Mr. Nathaniel Erskine-Smith: The next one might be out of luck, too.

Voices: Oh, oh!

Mr. Murray Rankin: Yes, I'm seeing a pattern develop here, Mr. Chair. I don't know if it's just me, but maybe it's an echo in the room.

The Chair: I'm an opposition member, too, Mr. Rankin, so there you go.

Mr. Murray Rankin: NDP-10 is another attempt to add an exception to provide for a requirement:

> The head of the Canadian Broadcasting Corporation may refuse to disclose any record requested...that contains information the disclosure of which could reasonably be expected to be injurious to the integrity or independence of the institution's news gathering or programming activities.

That would be the reason for it. I assume that you're going to rule it out of order, as with the others.

The Chair: That is a correct assumption, Mr. Rankin.

Do you want me to read out the reason? It's the same reason as we had before. I'm assuming that we want to keep moving, so it is ruled inadmissible, Mr. Rankin.

NDP-11 is next.

Mr. Murray Rankin: I'm feeling this may not go over very well either, Mr. Chair, but this is an exception, and I would ask that section 17 of the Access to Information Act be replaced by the following. The first part is the same:

> The head of a government institution may refuse to disclose any record requested under this Part that contains information the disclosure of which could reasonably be expected

Now here's what we would add:

> to threaten the safety or mental or physical health of individuals, or that could reasonably be expected to increase the risk of extinction of an endangered species or increase the risk of damage to a sensitive ecological or historic site.

I will point out that there's a section to that effect in the B.C. Freedom of Information and Protection of Privacy Act. It gives great comfort to indigenous Canadians that such a section is there. This act is silent. It's something that's been called for for a long time.

● (1710)

The Chair: Mr. Rankin, again, it's inadmissible based on the parent act principle, as mentioned before.

We will go to amendment NDP-12.

Mr. Murray Rankin: I assume it will suffer the same cruel fate, Mr. Chair, that the others have felt.

This is simply an effort to use the common law definition of trade secrets and take out paragraph 18(a), which has a lot of other reasons to withhold information that we think are unnecessary in light of the common law understanding of what a trade secret is. In other words, this is another way and an effort to provide more information to narrow the category of what can be withheld.

The Chair: Once again, it's ruled inadmissible based on the parent act principle, as mentioned before.

We'll move on.

(Clause 9 agreed to)

The Chair: NDP-13 has new clause 9.1.

Mr. Rankin.

Mr. Murray Rankin: This is another effort to narrow the material that can be withheld. It says the head "shall not...refuse to disclose a record if that record contains", and we would add:

> details of a contract or bid for a contract with a government institution.

There has been a lot of case law suggesting this part of the bill has been abused over the years. This is an effort to provide an ability to get the public's hands on the details of contracts or bids on contracts to make it clear that they're available, notwithstanding the general exception to the rule.

The Chair: Again, for the same reasons as mentioned before, it's ruled inadmissible based on the parent act principle.

Mr. Rankin.

Mr. Murray Rankin: I suspect NDP-14 will be likewise ruled inadmissible. It would deal with one of the most contentious and abused sections of every access to information act across the land, which is the policy advice exception. Records that are less than five years old can be withheld if they are "advice" to government. You can imagine how many records would fall into that category.

What we've tried to do here is add a harms test to each of the categories to ensure it's not abused. Only when the government can show a harm would they be able to hide behind policy advice. Then we add a long list of material that still would be available—factual reports, statistical surveys, environmental impact statements—that nevertheless would be disclosable even if they might be deemed policy advice. This again is something that this committee has long sought.

The Chair: Once again, that particular amendment is deemed inadmissible with regard to the parent act principle.

(On clause 10)

The Chair: We'll move on to NDP-15.

Mr. Murray Rankin: This may be another example. There are only a couple left, Chair, where we've tried to narrow the categories.

The legislation, Bill C-58, adds reference to disclosure where "solicitor-client privilege" is involved. This would be confirming that the commissioner has the ability to deal with matters of solicitor-client privilege, but also would add that the disclosure is withheld only if the:

> disclosure of the information could reasonably be expected to be injurious to the interests of the Crown.

There's a phrase lawyers use called "lawyer-washing", whereby you simply bring a lawyer into a meeting, call it solicitor-client, and that's the end of access.

This amendment is to say, yes, it's solicitor-client perhaps on its face, but only if it's injurious to a demonstrated interest of the crown would the information be withheld. I realize it's another effort to narrow the exemptions, and you consider that in your judgment to be contrary to the scope and principles of the act.

The Chair: This one is deemed admissible, so it's open for debate.

Mr. Murray Rankin: It is?

Voices: Oh, oh!

Mr. Murray Rankin: Whoa—let me start again.

It's consistent with all the other efforts I've made to make sure there's an injury test. I'm just hoping that people will see fit to amend it accordingly, because otherwise, as I said earlier, lawyer-laundering is a well-known fate in this country: bring a lawyer to a meeting, call it solicitor-client, and close the door.

The Chair: Is there any further debate? If not, I'll call the vote.

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 10 agreed to)

(On clause 11)

The Chair: On NDP-16, Mr. Rankin.

● (1715)

Mr. Murray Rankin: Okay, I got sort of lucky that time. Hopefully, I'll get a little luckier this time.

Section 24 of the act consists of a schedule of a lot of other acts that have non-disclosure clauses. Way back in the early 1990s, it was recommended that this section be repealed because the interests protected by that list of acts is actually protected elsewhere in the exceptions. I note that schedule II is growing. In 1983, there were 40 provisions and 33 statutes. As of 2014, there were 81 of these provisions and 58 statutes. So much for the right to know.

I'm hoping that this committee will go along with the Information Commissioner's recommendation in this regard and fix this problem.

The Chair: Mr. Rankin, this is another ruling from the chair.

Bill C-58 removes a moot subsection from section 24 of the Access to Information Act. The amendment seeks to repeal section 24 of the act. As *House of Commons Procedure and Practice*, Second Edition, states on page 766, "An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill."

In the opinion of the chair, due to the very technical modification it makes to section 24, the scope and principle of the bill don't allow for a complete elimination of the section. Therefore, I rule the amendment inadmissible.

We'll move on.

(Clause 11 agreed to)

The Chair: Next is NDP-17.

Mr. Murray Rankin: I believe NDP-17 is consistent with the Information Commissioner's recommendation and the amendment simply would say:

> if, under subsection (1), a part of a record is, for the purpose of being disclosed, severed from a record that is otherwise subject to solicitor-client privilege, the remaining part of the record continues to be subject to that privilege.

It's an amendment to section 25.

The Chair: Thank you, Mr. Rankin.

Unfortunately, again, it's inadmissible based on the parent act principle.

Mr. Murray Rankin: Chair, the good news is that I can withdraw NDP-18 because it's essentially a duplicate of the other one.

The Chair: NDP-18 has been withdrawn, so we'll move on to NDP-19.

Go ahead, Mr. Rankin.

Mr. Murray Rankin: This amendment is relatively straightforward. We are suggesting that section 26 be replaced with the following.

There is a requirement where, if an institution believes that material is going to be published by the government, and currently it says within 90 days, then they can withhold it. We're suggesting that that be limited or reduced to 60 days.

Proposed section 26.1 would say that, if the Information Commissioner recommends after an investigation, the head may disregard an access request that's contrary to the purposes of the act, which is again, something recommended by our Information Commissioner.

The Chair: Again, Mr. Rankin, amendment NDP-19 is ruled inadmissible based on the parent act rule.

We have another amendment.

Mr. Erskine-Smith or is it Mr. Baylis?

Mr. Frank Baylis: I have an amendment, LIB-4.2, new clause 11.1. Section 26 of the act is replaced by the following:

> The head of a government institution may refuse to disclose any record requested under this Part or any part of a record if the head of the institution believes on reasonable grounds that the material in the record or in part of the record will be published by a government institution, agent of the Government of Canada or minister of the Crown—other than under Part 2—within 90 days after the request is made or within any further period of time that may be necessary for printing or translating the material for the purpose of printing it.

The Chair: Thank you, Mr. Baylis.

Is there debate?

Mr. Murray Rankin: Through you, Chair, just to understand what this does that's different from the current section 26, what is the effect of this change? Is it just to reference part 2 now? Is it just a technical amendment, or is it a substantive change that is intended?

● (1720)

The Chair: Mr. Baylis.

Mr. Frank Baylis: I'm going to attempt to answer Mr. Rankin's question.

It's a clarification, so that if there is an ATIP under part 1, the government could not use this section to not publish information. It's a clarification on that aspect of it. The government could not use part 2 to stop something in part 1.

The Chair: Is there any further debate?

(Amendment agreed to)

The Chair: Shall clause 12 carry?

(Clause 12 agreed to)

(On clause 13)

The Chair: Mr. Dubourg.

[*Translation*]

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

I propose:

> That Bill C-58, in Clause 13, be amended by adding after line 28 on page 5 the following:

[*English*]

The Chair: Mr. Rankin.

[*Translation*]

Mr. Murray Rankin: Once again, what is the purpose of this amendment?

Mr. Emmanuel Dubourg: It is a consequential amendment to what we did earlier.

Mr. Murray Rankin: So it is a technical amendment?

Mr. Emmanuel Dubourg: Yes, exactly.

[*English*]

The Chair: Is there any further debate?

(Amendment agreed to)

The Chair: We'll move to NDP-20.

Mr. Rankin.

Mr. Murray Rankin: This amendment is an effort to, again, give effect to the Information Commissioner's recommendations that she shall receive and investigate complaints, and shall be the one who decides that an access request should be disregarded as being contrary to the purposes of this part.

It would give the power to refuse to the Information Commissioner, not the government institutions. That was the objective.

(Amendment negatived [See *Minutes of Proceedings*])

● (1725)

The Chair: Ms. May on PV-8.

Ms. Elizabeth May: Thanks, Mr. Chair.

Again, this is based on the testimony from the Information Commissioner. I just want to say, parenthetically, I've never seen testimony so strong from any officer of Parliament on any bill that was within their area of competency, as was the complete and very clear evidence of Suzanne Legault as Information Commissioner.

One of the areas that she marked in her submission as regressive was the section that engages the Privacy Commissioner in investigations. I know you'll remember her evidence that this is creating an unnecessary procedural burden to the Information Commissioner's investigations, that it is unnecessary, duplicative, and burdensome.

What my amendment proposes to do, which you'll find as PV-8, on page 6, is take out lines 20 to 22, to remove any implication of the Privacy Commissioner in the decision under 13(5) under “Notice”.

The Chair: Thank you, Ms. May. I'll just make a note.

Consequential to PV-11, the vote on PV-8 will apply to PV-11 and other consequential amendments, PV-9, PV-17, and PV-18.

Also, PV-8 is identical to NDP-21. Therefore, NDP-21 and related amendments, NDP-23, NDP-25, NDP-35, and NDP-36, cannot be moved after a vote on PV-8.

Does that make sense? I trust it does.

We're getting right down to the wire, folks, for time. It would be nice to get a couple more done before we rise. We'll do this quickly.

Is there any debate? No.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Okay, NDP-21 is already negatived.

Shall clause 13, as amended, carry?

Mr. Murray Rankin: Sorry, I just didn't understand what you said there, Mr. Chair.

Are you saying that NDP-21 is out of order?

The Chair: Mr. Rankin, yours was identical to Ms. May's. That's why it was defeated.

(Clause 13 as amended agreed to)

The Chair: With that, we are at 5:28 p.m.

We will carry on next time.

Thank you to the folks down at the end for helping us out today.

We'll see you on Wednesday.

The meeting is adjourned.