



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

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

---

ETHI • NUMBER 082 • 1st SESSION • 42nd PARLIAMENT

---

**EVIDENCE**

**Wednesday, December 6, 2017**

—  
**Chair**

**Mr. Bob Zimmer**



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

Wednesday, December 6, 2017

• (1540)

[English]

**The Chair (Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC)):** I call to order meeting 82 of the Standing Committee on Access to Information, Privacy and Ethics.

Pursuant to Standing Orders 110 and 111, we are examining the certificate of nomination of Nancy Bélanger, whom we've met before, to the position of Commissioner of Lobbying, referred to the committee on Thursday, November 30, 2017.

Welcome, again, to the committee, you have 10 minutes.

[Translation]

**Ms. Nancy Bélanger (Nominee for the position of Commissioner of Lobbying, As an Individual):** Thank you.

[English]

Mr. Chair and members of the committee, I'm truly honoured to be here today and humbled to be nominated for the position of Commissioner of Lobbying. I have often appeared before committees, including this one, but certainly not in this chair.

I am pleased to have this opportunity to discuss my candidacy for this position. The role of the Commissioner of Lobbying is an important one. It is defined by statute, the Lobbying Act. Its ultimate goal is to increase the confidence of Canadians in the integrity of decision-making by public office holders. It does so by recognizing that lobbying is a legitimate activity, but it must also be transparent.

First, let me briefly introduce myself and outline how my career has helped me to prepare for this role.

[Translation]

I was born and raised in New Brunswick. Most of my education was at the University of Ottawa. I wanted to study in both official languages and pursue a career in public law. That is why I completed a Bachelor of Social Science degree, with a major in political science and criminology, and a Bachelor of Laws and Master of Laws. I have been a member in good standing of the Law Society of Upper Canada since 1995.

Ottawa is also where I met my partner. We have outstanding young teenagers who keep me grounded.

[English]

I have had the privilege of working in the public service for over 20 years, and have met and worked with countless highly skilled and

dedicated professionals. As you will observe from my curriculum vitae, I started my career as a lawyer with the Department of Justice. I moved on to work at the Federal Court, the Immigration and Refugee Board, and for the last 10 years, with two agents of Parliament: the Conflict of Interest and Ethics Commissioner and the Information Commissioner.

The positions I held with these organizations increased in responsibility. Very early on in my career I became a manager, my first real passion. I lead by example, and strongly believe that communication is paramount. I motivate and engage employees so they feel valued and supported in their daily work while achieving their career aspirations. In turn, I am very thankful for the dedication and support that my colleagues and employees have given me over the years.

Having served almost exclusively with institutions that are independent from government, I profoundly understand the need to live by and perform my duties with the highest standard of integrity and impartiality. I also understand the important role of agents of Parliament vis-à-vis Parliament and Canadians.

The Office of the Commissioner of Lobbying supports the integrity of public officials' decision-making by ensuring that those who lobby them are behaving in an ethical and transparent manner.

[Translation]

This mandate is threefold

First, maintaining a registry that contains and makes public the registration information disclosed by lobbyists. In this respect, the registry is an essential tool for ensuring that lobbying activities are transparent. It therefore needs to be technologically up to date, effective and accessible.

Second, the commissioner must develop and implement educational programs to foster public awareness of the requirements of the act. I welcome this responsibility. I have had many opportunities to give presentations to a variety of stakeholders. Awareness activities play an important part in ensuring that all stakeholders, in this case lobbyists, their clients, and public office holders, understand their obligations and requirements under the act.

•(1545)

And lastly, the commissioner must ensure compliance with the Lobbying Act and the Lobbyists' Code of Conduct by conducting thorough reviews and investigations. As a jurist, I have extensive experience in interpreting legislation and codes. I am also very familiar with investigation processes that are subject to the rules of natural justice and procedural fairness. I believe that it is always appropriate to examine and re-evaluate practices in order to ensure that the act is understood and implemented effectively.

[English]

Ultimately, my experience working with agents of Parliament in the areas of transparency, conflict of interest, and ethics would enable me to bring this acquired knowledge and expertise together under one mandate. I want to acknowledge the outstanding work of Commissioner Shepherd during her tenure, and that of the dedicated professionals in her office. Should I have the privilege to be appointed as Canada's next Commissioner of Lobbying, I would build on her accomplishments with the continued support of this team.

My plan would be to enhance the profile of the office through maximized awareness and outreach initiatives with stakeholders including the Canadian public. Not only should lobbyists or future potential lobbyists instinctively have a good command of their obligations, but Canadians should also be aware of the role of the office in supporting the integrity of decision-making by public office holders.

[Translation]

I believe that I have the experience and the ability to carry out the significant responsibilities of the Commissioner of Lobbying. I am ready to meet this challenge.

[English]

Should the committee and Parliament entrust me with the honour of being the next Commissioner of Lobbying, I will continue to abide by the highest level of integrity and professionalism, perform my mandate to the best of my abilities, and provide my unwavering commitment to service that you, our Parliamentarians, and all Canadians deserve.

I thank you, Mr. Chair, and members of the committee for considering my nomination.

[Translation]

I will be pleased to answer your questions.

[English]

**The Chair:** Thank you, Ms. Bélanger.

Madame Fortier, you have seven minutes.

[Translation]

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

Ms. Bélanger, thank you for being here today and answering our questions.

As the new commissioner, if everything goes according to plan, how will you make your mark? In what way will you be different from previous commissioners? What will you bring to the role of Commissioner of Lobbying?

**Ms. Nancy Bélanger:** I take this role very seriously. I had the opportunity and the privilege of working with two commissioners, the Information Commissioner and the Conflict of Interest and Ethics Commissioner.

Personally, I think that I could leave my mark in the context of the three existing mandates, but particularly in connection with the one that relates to fostering awareness. I believe that Canadians are not quite familiar with the work of the Commissioner of Lobbying, and this will give me an opportunity to improve their knowledge of the role of the commissioner, to bring out the importance of lobbying, and to increase their trust in those who make the decisions, that is to say public office holders.

If I become the new Commissioner of Lobbying, I believe that at the end of seven years, I will have broadened the mandate of the Office of the Commissioner and increased the knowledge of Canadians about the office.

**Mrs. Mona Fortier:** What will your priorities be during the first year of your mandate? Could you name two or three priorities?

**Ms. Nancy Bélanger:** Upon my arrival, one of my priorities will certainly be to become more familiar with the current priorities of the Office of the Commissioner. My purpose is not to disrupt everything.

Another priority will be to establish my credibility, since the people who currently work at the Office of the Commissioner of Lobbying do not know me very well. In fact, they only know me by reputation. The lobbyists do not know me, and so I must establish a relationship with them.

Then I will have to get to know the high-profile files, that is to say the files the media talk about, before dealing with them.

During the first year of my mandate, I will make sure I understand the team and the requirements well, in addition to continuing to discharge the mandate well.

•(1550)

**Mrs. Mona Fortier:** As you probably know, the next parliamentary review of the Lobbying Act will take place during your mandate. Do you have suggestions or ideas you could share with us today, in this regard?

**Ms. Nancy Bélanger:** I read the report of the committee and I am also very familiar with the recommendations of the current commissioner. I believe it would be quite irresponsible of me to put forward recommendations. That said, one of my priorities will certainly be to see what has been done and what was recommended, in addition to bringing a new perspective on the requirements of the act and seeing what could be improved. I may also consult the team, the lobbyists and public office holders to understand what works and what does not.

So that will be one of my priorities, since that process will begin momentarily.

**Mrs. Mona Fortier:** You mentioned earlier that your experience at the Office of the Information Commissioner of Canada would help you play your new role. What skills do you think you acquired in that office that will serve you in your role as Commissioner of Lobbying?

**Ms. Nancy Bélanger:** That is a good question.

Since I have worked with two officers of Parliament, I am very much aware of the need to be impartial, to be fair and to have very high ethical standards.

I am also very conscious of the need to be very precise in the analyses we perform, because people's reputations are at stake. We have to pay close attention to that.

Over the years, I understood that one does not do this kind of work alone. You absolutely have to work with a team and have your employees' support. That is something I learned over the years, and not only at the Office of the Information Commissioner.

**Mrs. Mona Fortier:** I have one last question.

You may already have some idea of the exemplary practices, here or elsewhere, that you will want to implement in this new position. Have you already identified one or two of these practices?

**Ms. Nancy Bélanger:** Do you mean exemplary practices in my work?

**Mrs. Mona Fortier:** I mean exemplary practices in your role of Commissioner of Lobbying and in the context of the Lobbying Act. Have you seen exemplary practices in other provinces or elsewhere in the world that you would like to implement in your new role?

**Ms. Nancy Bélanger:** Certainly. I am not an expert on lobbying since I am not yet in the position, but I certainly know that as an officer of Parliament, you have to create a network of people who do the same kind of work in order to be well informed and have all of the necessary information to do the job well.

Personally, I am very open to advice, and I listen a great deal. I will continue to do what has taken me this far. If I become Commissioner of Lobbying, I will continue in the same vein.

**Mrs. Mona Fortier:** I thank you very much for answering my questions. I am sure my colleagues will have other questions for you.

**Ms. Nancy Bélanger:** Thank you.

[English]

**The Chair:** Thank you, Ms. Fortier.

Next up, for seven minutes, is Mr. Kent.

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

Thank you for attending so soon after your most recent visit.

**Ms. Nancy Bélanger:** Thank you.

**Hon. Peter Kent:** Congratulations on the appointment.

I'm sure you read the minutes of your predecessor's last visit with us, on the day before your nomination was made. You are very early in the reading-in to the operations and the realities of the department.

• (1555)

**Ms. Nancy Bélanger:** Yes.

**Hon. Peter Kent:** I asked Ms. Shepherd about a recommendation made by Ethics Commissioner Mary Dawson—the other side of your portfolio, as it is. She thought that the two offices should somehow be merged at some point in the future.

I wonder if it's too early to ask whether you have any thoughts on that, regulating the lobbied and the lobbyists.

**Ms. Nancy Bélanger:** It is likely too early, but I will tell you that I am very much aware of Commissioner Dawson's recommendation. I am also aware of Commissioner Shepherd's not necessarily being in agreement with that. Here I am, being nominated for Commissioner of Lobbying and not Conflict of Interest and Ethics Commissioner, and it is still two offices.

What I will say about that, though, is that it would be unreasonable for me to do so, but it is Parliament's will to decide what they want to do and how they want to address the issue. If Parliament wants me to look into the matter, I will. I will certainly look at the pros and cons, and the benefits.

Having worked at the Conflict of Interest and Ethics Commissioner's office, and now having this possible opportunity—and I will have said this in my interview—I think there are opportunities for the two offices to possibly work together with respect to awareness and outreach activities so that everybody is on the same page as to what is acceptable and what is not, and what lobbying can or cannot do. I think there are opportunities there to work together, but currently still under two different mandates.

**Hon. Peter Kent:** In the same way from the commissioner's office that you're leaving, there were issues of co-operation or disagreement between privacy and access to information.

**Ms. Nancy Bélanger:** Yes, absolutely.

**Hon. Peter Kent:** Again, your predecessor has suggested that it might be advisable in the future to have, besides the statutory penalties, administrative penalties as an effective tool for minor cases of discipline. Is it too early to ask you about your thoughts in that area?

**Ms. Nancy Bélanger:** I can give you my opinion on that only because when I was with the Conflict of Interest and Ethics Commissioner, there were administrative penalties there. I do believe it can act as an incentive. Right now the powers under the Lobbying Act are quite limited. It's really, at the end of the day, public shame. She issues a report and tables it to Parliament and that's it, unless she has referred it to the RCMP and in fact they pursue a criminal action and then there's an offence.

I would think that administrative penalties would be possibly a good thing but maybe not just that. There might be other avenues. There might be a spectrum that could be imposed, and on that I would like to take the time to reflect so that I could possibly provide advice during the next five-year review.

**Hon. Peter Kent:** Commissioner Dawson has often commented that the rather modest administrative penalties are to encourage compliance rather than to actually penalize. I guess it would depend on the amount.

**Ms. Nancy Bélanger:** On the amount...absolutely, yes.

**Hon. Peter Kent:** In the OCL's 2017-18 departmental plan, again, Commissioner Shepherd said that she planned to make greater use of technology to improve client service. I would anticipate compliance.

**Ms. Nancy Bélanger:** Yes.

**Hon. Peter Kent:** I'm just wondering about your thoughts and your experience, your background....

**Ms. Nancy Bélanger:** I agree. I think we need to be in the modern age. Everybody uses gadgets. I understand that in the last year—and I have read as well the same material—that it is now possible to register through iPad and your cellphone. She has done fantastic work with relation to the registry. It is quite a useful tool. I think what I would likely have to do is to maintain that.

I don't know if there's much more that needs to be done. I would have to be debriefed by the team on that. I would like my focus to be more a little bit on the other section of the mandate, which is enhancing awareness and outreach activities.

**Hon. Peter Kent:** Through multimedia, through...?

**Ms. Nancy Bélanger:** Absolutely, through multimedia and using all the tools at our disposal and making sure that people out there... and that it doesn't cost too much, obviously, attending conferences, etc. Yes, using social media, using those tools to educate.... That's what people use today, so we need to use those tools.

•(1600)

**Hon. Peter Kent:** What are your thoughts at first glance on the still fairly new code of conduct that Commissioner Shepherd introduced? Hackles were raised at first word but there seems to be some acceptance today. I'm just wondering what your thoughts might be.

**Ms. Nancy Bélanger:** Certainly, the code of conduct is key. It's important. There needs to be one and the act provides that there should be one. The code of conduct was written back in 2015, and since then she has issued quite a number of guidance documents to assist lobbyists. It's from 2015. It may not be my priority in the first year but certainly I will make sure to review it and possibly ask lobbyists what they think and whether it is accessible and easy to understand. Then I'll go from there to try to possibly improve it.

**Hon. Peter Kent:** My last question is on the flexibility that we sometimes see of former office-holders not registering as lobbyists but being consultants or advisers within a firm of lobbyists. I wonder what are your thoughts there on where to draw the line.

**Ms. Nancy Bélanger:** There is a prohibition for former designated public office holders to lobby. They can't do it. There is the little 20% if you're with a consultant. My thoughts on that is the law is the law. I'm here to regulate the law, apply the law. Unless the law changes, that's what it's going to be.

**Hon. Peter Kent:** Thank you.

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

For the next seven minutes, we'll have Mr. Cullen.

**Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP):** Thank you very much, Chair.

Good afternoon, how are you, Madam Bélanger?

**Ms. Nancy Bélanger:** Fine, thank you.

**Mr. Nathan Cullen:** Congratulations.

**Ms. Nancy Bélanger:** Thank you very much.

**Mr. Nathan Cullen:** I want to read out the section under the Lobbying Act through which you were appointed, or to this point of the process:

The Governor in Council shall, by commission under the Great Seal, appoint a Commissioner of Lobbying after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

That's the law.

I've known you a bit. I like you. You seem very well-qualified. Don't take any of the concerns personally.

It's the appointment process that we're concerned with. For your information, and for the committee's understanding, we received a letter from the Prime Minister's Office with just your name on it, and it said, "We're consulting. This is the only person on the list, and this is what's going to happen next," which is what we're in now, and then eventually if we pass this stage, we move to Parliament.

My concern is, under that process, if that's consultation...I don't know. It seems a strange definition of it as it creates a challenge for the opposition parties, which by law were meant to be consulted. The law talks about consultation, and what most Canadians would think of as consultation is a conversation. The government changed the process, so that you submitted your application.

**Ms. Nancy Bélanger:** Yes.

**Mr. Nathan Cullen:** Can you tell me when you made that submission?

**Ms. Nancy Bélanger:** Yes, absolutely. I can give you all the details you want about what I went through. Back in early July, I received a call from Boyden Canada, which simply asked me whether I was going to consider applying both for the Information Commissioner's position and the Lobbying Commissioner's position.

**Mr. Nathan Cullen:** Both are becoming vacant.

**Ms. Nancy Bélanger:** I was asked whether or not I was going to consider applying to those two. I was advised by the person who called me that work was being done, and that based on my reputation, my name came up as someone who could be eligible to do either position.

**Mr. Nathan Cullen:** That was July of this year.

**Ms. Nancy Bélanger:** It was July 2017, yes. The deadline to apply for the position was July 14. I applied July 12.

•(1605)

**Mr. Nathan Cullen:** Just in time.

**Ms. Nancy Bélanger:** I actually thought about this seriously. I understand the importance of this role, and I would not have applied if I didn't think I could do it. When I applied on July 14, I only applied for the position of Information Commissioner.

I have my dates in front of me here, because I expected you were going to ask. On August 10, I was invited for an interview to be held on August 16 for the position of Information Commissioner. I went through the interview on August 16. At the end of the interview, I was asked and was told by Janine Sherman, who is deputy secretary to the cabinet—

**Mr. Nathan Cullen:** Did she conduct the interview?

**Ms. Nancy Bélanger:** No, there was a committee of four, and she was the chair of the selection committee. She asked me at the end whether or not I would consider putting my name forward for the Commissioner of Lobbying. This is August 16, and I was told that this was asked of all candidates that were being interviewed. The next day, August 17, I got a call to say that my interview had gone extremely well, and that the committee wanted my references.

**Mr. Nathan Cullen:** Were you told for which position?

**Ms. Nancy Bélanger:** Yes, for Information Commissioner, because I had not done an interview for the Lobbying Commissioner yet.

**Mr. Nathan Cullen:** We're still on that track. Okay.

**Ms. Nancy Bélanger:** On August 17, on the same call, I was asked to attend an interview on August 28 for the Lobbying Commissioner position, which I attended. I went through two interviews within 12 days.

**Mr. Nathan Cullen:** For two different positions....

**Ms. Nancy Bélanger:** I can explain to you why as well, if you're interested, I only applied for one.

**Mr. Nathan Cullen:** No, that's okay.

**Ms. Nancy Bélanger:** On September 5, I did the psychometric test by Dr. Gilmour, and then I received a call on November 14 from the chief of staff from the President of Treasury Board. It was a 25-second call to see if I was still interested in the Lobbying Commissioner position, because my name would likely be put forward. I did not know if it was just my name or other names, because it was that quick. The following week, on November 22, I was advised that my name would be on the letter. Again, I did not know if it was just me or if other names—

**Mr. Nathan Cullen:** It was just yours.

**Ms. Nancy Bélanger:** —would be sent for consultation, and things flew from there.

**Mr. Nathan Cullen:** Thank you.

**Ms. Nancy Bélanger:** You're welcome.

**Mr. Nathan Cullen:** I've learned more in the last two minutes than I have in two years as to how the process actually works in nominating officers of Parliament. That was very illuminating.

**Ms. Nancy Bélanger:** When I applied, I applied online to the PCO, the same....

**Mr. Nathan Cullen:** One thing we know, from your time with ethics, and according to Ms. Dawson, is that under that act there is no obligation to continue investigations from one commissioner to

the next. Is that your understanding under the Lobbying Act as well? There are ongoing investigations right now. Are you by law required to continue those investigations, or is it up to your discretion, from your understanding?

**Ms. Nancy Bélanger:** From my understanding, I don't think it would be at my discretion.

If an investigation has begun, in my opinion, it should continue. What it will likely mean—and this is putting on my lawyer's hat—is that if there are findings of credibility in relation to the investigation, some interviews might have to be held again in light of the fact that the commissioner making those findings would at least have to have met the individuals at issue.

Stopping an investigation and having to start from the beginning, I doubt it.

**Mr. Nathan Cullen:** Or stopping it altogether...?

**Ms. Nancy Bélanger:** I would assume they would continue, but maybe I'm completely wrong on that. I hope not.

**Mr. Nathan Cullen:** According to Ms. Dawson, under that section of the law, under ethics, there isn't an obligation for a new commissioner to continue old investigations.

**Ms. Nancy Bélanger:** Okay.

**Mr. Nathan Cullen:** It is a bit unclear under lobbying. We have two from 2014, both on the Prime Minister, that are continuing. That's when the case was first raised.

It's a natural concern to ask, is it going to take longer? It sounds as if it may have to. If primary witnesses have to be heard from, you need to hear from them. It's hard to just go from notes. Does the law require you to? Hearing your opinion about that, at your discretion, if there is some, I think is comforting to me and perhaps to others as well.

Thank you.

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

Next up, for seven minutes, is Mr. Erskine-Smith.

**Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.):** Thanks very much and congratulations.

**Ms. Nancy Bélanger:** Thank you.

**Mr. Nathaniel Erskine-Smith:** It occurs to me that if I were to give Mr. Cullen one name and ask for his feedback on that one name, and take that feedback seriously, that could be considered consultation—but that might just be me.

You mentioned greater use of technology and outreach. It occurs to me that attending conferences, speaking to lobbyists who definitely want to hear what you have to say, that outreach is very important. It occurs to me it might be a challenge to reach the broader Canadian public on a topic like this. It's a challenge sometimes for us to reach the broader Canadian public.

Is that a challenge? Do you see other challenges? What do you see as the challenges of this role over your mandate?

**Ms. Nancy Bélanger:** There are a few challenges.

Obviously outreach is going to be an important one for me. The lobbyists don't know me. One of my challenges will be to settle my credibility and instill a trust and a conversation, demonstrating that I'm here to do the mandate and do it right.

Another challenge likely will be walking into an office with a \$4.4-million budget. It's relatively small, so I'll be looking for ways to make sure that we meet all these obligations within budget. Commissioner Shepherd has always said that she led a lean and effective office. I believe her, and hopefully, I will continue in that strength.

Coming into office, as well as settling my credibility with the team, with the employees.... It's small. It's 28 employees. I will meet with them individually, and I will make sure we continue to meet the mandate.

The five-year review will certainly be on the top of the list, and defending the ongoing litigation as well.

• (1610)

**Mr. Nathaniel Erskine-Smith:** It's certainly making sure that the office complies quickly with access to information requests.

**Ms. Nancy Bélanger:** Absolutely, but that's my old hat.

**Mr. Nathaniel Erskine-Smith:** I see you've been counsel at a number of different places. Would you point to anything else in your background that makes you suitable for this role? Highlighting your legal experience is the most important.

**Ms. Nancy Bélanger:** In addition to being a legal counsel, I am a mother. I can tell you that is probably where I've learned most in life—being a mother.

**Mr. Nathan Cullen:** Getting lobbied.

**Ms. Nancy Bélanger:** Getting lobbied very frequently, yes, absolutely. That was a good one.

I have also had the experience of going to an international school. I left New Brunswick when I was 17 and went to Pearson College in B.C. I lived with students from across the world, with roommates who had never seen a light-switch, and it opened my eyes to understanding and absolutely being welcoming of all, and I think that makes me who I am. That experience really was fantastic for me.

**Mr. Nathaniel Erskine-Smith:** Thanks for that.

You've noted that we're beyond the five-year review. I mean Parliament, of course. That's for us, the study to meet that five-year review in the act.

You're going to be new to the role. Asking you questions today in relation to a future study doesn't particularly make sense in terms of substance, but in terms of process, when do you envision being able to come before this committee, having been briefed, and able to provide us with substantive views in relation to the 2011 recommendations or additional recommendations?

**Ms. Nancy Bélanger:** I'll make sure I'm ready when I know that the process is starting. That will likely be one of the things I'll be looking into right away. I've started reading up on the commissioner's recommendations as well.

**Mr. Nathaniel Erskine-Smith:** Would the spring be too soon?

**Ms. Nancy Bélanger:** I think that would likely be fair. The spring would be fair.

**Mr. Nathaniel Erskine-Smith:** I only have one other question. As an officer of Parliament, you are ultimately acting alongside parliamentarians in hoping to hold the government to account.

**Ms. Nancy Bélanger:** Yes.

**Mr. Nathaniel Erskine-Smith:** Is there anything in your background, anything in your history, or anything in your past experience that you think would preclude you from adequately holding the government to account and scrutinizing the government in this position?

**Ms. Nancy Bélanger:** Absolutely not. Not that I know of, anyway.

**Mr. Nathaniel Erskine-Smith:** Thanks very much.

**Ms. Nancy Bélanger:** You're welcome.

**The Chair:** Next up for five minutes is Mr. Tilson.

**Mr. David Tilson (Dufferin—Caledon, CPC):** Thank you, Mr. Chairman.

Ms. Fortier, I think, was asking questions about what your thoughts are for the future, and I understand that you'd rather wait to talk to people about that, but you must have some philosophy about certain things.

The thought has occurred to me about office-holders and the role of office-holders that there doesn't seem to be any role of office-holders. Lobbyists must register. We meet lobbyists all the time. I meet people who come in. I have never seen them before and I never see them again. I have no idea who they are.

**Mr. Nathaniel Erskine-Smith:** Your assistant hopefully knows.

**Mr. David Tilson:** Well, that's an issue. There does not seem to be any role of lobbyists. Should there be?

**Ms. Nancy Bélanger:** I didn't get the last. Should there be...?

**Mr. David Tilson:** Should there be a role for lobbyists under the Lobbying Act? For example, should there be an obligation of office-holders, members of Parliament, to determine whether or not someone is legitimately there as a lobbyist?

• (1615)

**Ms. Nancy Bélanger:** I will first start by saying that I think lobbying is absolutely required. It is a legitimate activity. I think Canadians should feel absolutely better served, knowing that lobbyists are approaching all of you who are making decisions with the options—

**Mr. David Tilson:** I have no dispute about that.

**Ms. Nancy Bélanger:** I'm going to make it to your point.



The Lobbying Act requires lobbyists to register. There is not an obligation, but in the act, there is a requirement for the commissioner to verify with you, public office holders, that the information that lobbyists put on the registry is accurate. If you have never been approached yet, I'm going to be there, possibly in a month from now, but the role of the public office holder is to inform the Commissioner of Lobbying whether the information is accurate. The importance of this is to ensure that Canadians know that each and every one of you who make decisions are making them in the public interest, impartially, objectively, and because the activities that you've been lobbied about are transparent.

Your role will be to respond to the Commissioner of Lobbying, should she ask you whether or not the information is accurate, and that is in the legislation.

**Mr. David Tilson:** I look forward to your call, because I've never had one.

**Ms. Nancy Bélanger:** Wonderful. Okay.

**Mr. David Tilson:** I see a lot of lobbyists.

My other question follows along with what Mr. Cullen was asking on the issue of investigation. You indicated that it appeared to be discretionary as to whether or not a new commissioner could proceed with an investigation.

**Ms. Nancy Bélanger:** I did not say it was discretionary, quite the reverse. I think that if an investigation has begun and it's a mandatory investigation, it should continue. I'm not sure that I would have the discretion to stop it.

**Mr. David Tilson:** Do we have your commitment that if you are appointed you will do that?

**Ms. Nancy Bélanger:** What I will commit to is making sure that I have the authority to continue, and if I do, I will.

I would have to look into whether or not there's a legal issue, and I have not looked into that matter. I don't want to act illegally either, so if I'm not authorized to continue, I won't. If there is nothing stopping an investigation from continuing, there is no reason in my view to stop it.

**Mr. David Tilson:** So if there's nothing to stop you from doing that—

**Ms. Nancy Bélanger:** I will continue the investigations that are ongoing.

**Mr. David Tilson:** Do we have your commitment to do that?

**Ms. Nancy Bélanger:** Absolutely.

**Mr. David Tilson:** Thank you, Mr. Chairman.

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

Next up for five minutes is Mr. Baylis.

[*Translation*]

**Mr. Frank Baylis (Pierrefonds—Dollard, Lib.):** Good afternoon, Ms. Bélanger.

[*English*]

You said in your opening statement that you have young teenagers who keep you grounded. If you can explain how that's done....

**Voices:** Oh, oh!

**Mrs. Mona Fortier:** We'd like to know.

**Mr. Frank Baylis:** I'm more than interested, because I've had three teenagers and they've done a lot to me, but—

**Ms. Nancy Bélanger:** Are you serious with your question?

**Mr. Frank Baylis:** I can't think of any better lessons, so go ahead.

**Ms. Nancy Bélanger:** I'll tell you how they keep me grounded.

I've had demanding work. I've had a heavy workload during most of my career, and my children have kept me level-headed, kept me grounded. What we do is important work, but when I'm watching their soccer games and their hockey games, I'm with them. I'm trying not to think of work and letting it affect me. That's how they keep me grounded and sane.

**Mr. Frank Baylis:** They keep you in the real world.

**Ms. Nancy Bélanger:** They keep me in the real world, yes.

**Mr. Frank Baylis:** Very good.

You mentioned that it's important that you maintain an independence from the government, and that allows you to speak impartially. Can you elaborate a bit on that?

**Ms. Nancy Bélanger:** Certainly. I will simply not be influenced by government action.

Since 2000, I have been a public servant but only worked with institutions that were independent of government; in other words, institutions that were reviewing the actions of government.

**Mr. Frank Baylis:** You have pretty good experience—

**Ms. Nancy Bélanger:** Oh, absolutely.

**Mr. Frank Baylis:** —in being attached, a part of the government, but apart from the government at the same time.

**Ms. Nancy Bélanger:** Yes, they paid my salary, but my work has always been to ensure that the advice I gave and the way I performed my own duties, and the way I treated my staff and everything else, was impartial, not being influenced by the government of the day, by policies.

● (1620)

**Mr. Frank Baylis:** Your previous work, both in the Office of the Conflict of Interest and Ethics Commissioner and then in the Information Commissioner's office was very similar types of work. They're both government institutions, but it's to kind of oversee the government. Being impartial and not being pulled in is critical.

**Ms. Nancy Bélanger:** I would argue that they're not government institutions.

**Mr. Frank Baylis:** Fair enough.

**Ms. Nancy Bélanger:** The offices are clearly not government. It's just that the rules applying to employees are public servant rules.

Yes, my role was similar. In both situations, I was general counsel. In the Information Commissioner's office just last August, I was appointed deputy commissioner as well as public affairs. I had been working for the last two years being responsible for parliamentary relations, communications, and the commissioner sort of gave me the title of deputy commissioner.

**Mr. Frank Baylis:** What would be some of the key things that you learned over that period? You've had a pretty strong career in this type of environment—I won't call it government, whatever you call it—this quasi-government environment.

What would be some of the key lessons that you learned that you're going to bring to this new position?

**Ms. Nancy Bélanger:** It's always treating people with respect, being fair, listening. There are a lot of opinions. There's a lot of advice.

You know, you have a fact situation, and everyone sees the situation differently. To leave your personal judgment aside and analyze it fairly, and always, always be aware, to me, that is important. These decisions that you make affect the reputations of people.

These are important positions, and they need to be done above board and always with the highest level of integrity and impartiality. That's really the key.

**Mr. Frank Baylis:** It's a pretty powerful position and you have to respect that position.

**Ms. Nancy Bélanger:** Yes, absolutely.

**Mr. Frank Baylis:** You cannot abuse that power or get sucked into something.

**Ms. Nancy Bélanger:** No, you can't get sucked in. You have to have the courage not to be sucked in. You have to remain neutral and impartial. You listen to the advice, but at the end of the day the buck stops with you, and then you have to make sure you make the right decision.

**Mr. Frank Baylis:** That leads me to another point that you brought up, which is about informing the public. They're not so informed about the role, and you said that would be one thing you'd look at doing.

How would you look to do that?

**Ms. Nancy Bélanger:** First of all, I need to understand exactly who the stakeholders are. Obviously, the parliamentarians are stakeholders, the lobbyists are stakeholders, and I don't know them. I will have to work with the office to see what kind of outreach they already have in place and how we can expand that. I will certainly make sure that I meet with them, that I listen and get their take on what's going right or not so right, and make sure that we promote the work of the office.

I think we need to be out there. I'm even thinking we need to be even at the university level. It's complicated legislation. There are a lot of things that they need to know about, and I don't know that, instinctively, they do, so we have to reach out to lobbyists. Canadians need to understand that lobbying is okay; it's a good thing. I find that every time we hear the word "lobbyist", there's almost a negative connotation to it, which shouldn't be happening.

I'm going to try to work with experts in the field of communication and find a way to reach out and make sure they understand the role of the office.

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

We started a little late so I'm going to let it go. We have two questioners left for five minutes each. Actually, it's five and three, so five minutes for Mr. Kent, and then Mr. Cullen.

**Hon. Peter Kent:** Thank you very much, Chair.

Thank you for your clarity. I agree with Mr. Cullen's commendation on shedding a little light on the nomination process. I have one last question. You named the chair of the four-person screening committee.

**Ms. Nancy Bélanger:** Yes.

**Hon. Peter Kent:** I wonder if you could share with us the names of the other three individuals.

**Ms. Nancy Bélanger:** I will, absolutely.

There was Janine Sherman, who was the chair and PCO deputy secretary to the cabinet, senior personnel and public service renewal. There was Ms. Yaprak Baltacioglu. She's the secretary of the Treasury Board. There was Ms. Sabina Saini. She was, at the time, chief of staff to the president of the Treasury Board, Minister Brison. Also, there was Ms. Hilary Leftick. She was the director of appointments at PMO, or probably still is. There was also a lady by the name of Ms. Kathleen McKillop. She was the scribe taking notes.

• (1625)

**Hon. Peter Kent:** Thank you very much for that.

I have just two other questions. Over the years, this committee has recommended greater clarity on the interaction between lobbyists and public officials with regard to gifts of all sorts and sizes and value. As you know, on the ethics side, parliamentarians have been discouraged from accepting even little paper bags with retail products from the producers associations and so forth.

What are your thoughts on gifts or tokens of gratitude or friendship that a lobbyist...? Where should the line be drawn?

**Ms. Nancy Bélanger:** That's a good question, where the line should be drawn.

**Hon. Peter Kent:** Hockey tickets, dinners...?

**Ms. Nancy Bélanger:** From my years at the Office of the Conflict of Interest and Ethics Commissioner, gifts are probably the things that cause most public officer holders the most angst, including that office as well. It's not always easy to figure that out. On the lobbyist front, the rule right now is simply that lobbyists should not provide a gift that would put the public office holder in a situation where they feel like they owe.... There is no amount on the lobbying side of things. This is where, I think, there is absolutely an opportunity between the two offices to join fronts and try to explain to lobbyists and public office holders exactly what the rules should or shouldn't be.

At the end of the day, for me, it's all fact-based. You can give somebody something and the public office holder will not think twice about it, but if you give that same thing over and over, for five days in a row and you know that it's their favourite thing to get, maybe it creates a relationship where the public office holder will feel they owe this particular person something. It's very fact-based, the role that the public office holder has, the type of lobbying. Therefore, I can't give you a rule, but I certainly understand that this is an issue that will need to be clarified for all.

**Hon. Peter Kent:** Thank you.

Finally, this committee has recommended—and previous Treasury Board presidents have said that they accept the recommendation—that the commissioner ensure that monthly communications reports contain the names of in-house lobbyists who attend oral prearranged meetings, in addition to the senior reporting officer.

I'm just wondering whether you think that would provide greater transparency, on a monthly basis.

**Ms. Nancy Bélanger:** The monthly basis is already a requirement of the act. Right now, that needs to be the senior person but not necessarily the person who attended. To me, it sounds reasonable that you would want to know who was there, and that would certainly increase transparency, in my opinion, but that law hasn't changed yet.

**Hon. Peter Kent:** Sometimes the secondary attendees actually make the act.

**Ms. Nancy Bélanger:** Yes, absolutely. They are the ones making the act.

**Hon. Peter Kent:** Thank you very much, Mr. Chair.

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

Last up for three minutes is Mr. Cullen.

**Mr. Nathan Cullen:** Thank you, Mr. Chair.

We have an eloquently prepared motion by Mr. Erskine-Smith for the end of this, recommending your nomination. It's not personal; it's the process. I'll be abstaining on it. It's a challenge for us as we try to actually have a good consultative process. There isn't one right now.

This is a personal question that you can choose not to answer. With the other watchdogs, officers of Parliament you have served with, would you name one who has been a mentor in the way they perform their duties as an officer of Parliament, somebody you have watched perform the role you may be taking on and whom you seek to emulate in the way you go about your business?

**Ms. Nancy Bélanger:** I have worked with both Mary Dawson and Suzanne Legault. I think they are very different agents of Parliament, and I have learned from both of them. They both have taught me a lot, and I respect them both.

**Mr. Nathan Cullen:** Scenarios are how I think about things in trying to understand the law—what activities are trying to be curbed and which ones are permitted.

Where I live, there are a number of fishing lodges, some of them very high-end. Six months ago, I got an invitation from a fellow who owns one of them to bring my kids fishing, which sounds pretty

innocuous until you realize that a four-day fishing trip at his lodge for a family would literally be in the tens of thousands of dollars.

I said no. Then I contacted some of the offices and asked if this would be permitted. They said, "As long as you weren't lobbied." I asked how I would know before going if the owner wanted to talk about fishing policy or federal involvement in his business. Until after the fact and until I had actually already accepted the gift—which I would have to declare, of course—how would I know?

I've never really understood the difference between accepting a gift like that and somebody just giving you money for the equivalent of the gift. Everyone would understand that it would be totally inappropriate if, instead of offering me a \$20,000 fishing trip, someone just walked down, gave me \$20,000, and said, "How 'bout those fish?"

Do you see the conundrum for some office-holders and the distinction that the public doesn't understand as to why it would be acceptable for me to have gone with my kids, with this vague notion of not getting lobbied and then everything being okay? How would you advise me?

• (1630)

**Ms. Nancy Bélanger:** I likely wouldn't be advising you under the title of Commissioner of Lobbying. I think it's the Office of the Conflict of Interest and Ethics Commissioner that would be advising. I would be advising the lobbyists.

**Mr. Nathan Cullen:** You would be advising the lobbyists if they were to offer such a gift.

**Ms. Nancy Bélanger:** I would be advising the lobbyists and, quite frankly, I'm not prepared to go into a....

If you obtained advice in those conversations, then I would be giving it to the lobbyist, as the Commissioner of Lobbying.

**Mr. Nathan Cullen:** What advice would you give the lobbyist?

**Ms. Nancy Bélanger:** I will evaluate that if ever I am Commissioner of Lobbying. I'm sorry. I don't think I really should be getting into that.

**Mr. Nathan Cullen:** I like hypotheticals.

**The Chair:** Thank you, Mr. Cullen. I know you had a lot more.

I just wanted to say, Ms. Bélanger, that you brought up the qualification of being a parent of teenagers, and I think that's probably one of your best credentials to do your job.

**Mr. Nathan Cullen:** I really wasn't so sure until that moment.

**The Chair:** It was a good answer.

We have a motion before the committee that Mr. Erskine-Smith would like to bring forward at this time.

**Mr. Nathaniel Erskine-Smith:** You all have it before you. I'm sure Mr. Cullen really wants to vote for it and just won't. The motion is that the committee has considered the nomination of Ms. Bélanger for the position of Commissioner of Lobbying of Canada; that we have considered the proposed appointment; and that we recommend that she be confirmed by the House of Commons as Canada's Commissioner of Lobbying.

**The Chair:** Is there any further debate?

Go ahead, Mr. Cullen.

**Mr. Nathan Cullen:** If I'm allowed, I'd just like to put this into the record of the debate, since it's outside of the personal. I quite like Ms. Bélanger and she comes recommended. It is only on the process.

As I read the subsection of the Lobbying Act:

The Governor in Council shall, by commission under the Great Seal, appoint a Commissioner of Lobbying after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

The challenge for me is that, literally, the only consultation we had was a letter with a single name on it—Ms. Bélanger's, in this case. Where I come from, that's just not consultation, so it's difficult to vote for or against a process that is clearly in contravention to the spirit and, I would argue, the actual rule of law in this particular case.

Thank you.

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

**Mr. Nathaniel Erskine-Smith:** In substance, she's an excellent candidate regardless.

**The Chair:** Is there any further discussion or debate?

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

**The Chair:** Congratulations, Ms. Bélanger.

**Ms. Nancy Bélanger:** Thank you. I appreciate it.

**The Chair:** We have business to attend to still, folks. We're going to suspend briefly for five minutes and then we're going to go to the standing order following that.

We are suspended for five minutes.

•(1630) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1635)

**The Chair:** We'll call the meeting back to order.

Pursuant to Standing Order 108(3)(h)(vii), this is a briefing on net neutrality.

We'd like to welcome, again—no stranger to our committee—Mr. Michael Geist, Canada research chair in Internet and e-commerce law from the faculty of law at the University of Ottawa.

Welcome, Mr. Geist. You have 10 minutes.

**Dr. Michael Geist (Canada Research Chair in Internet and E-commerce Law, Faculty of Law, University of Ottawa, As an Individual):** Thanks very much. Good afternoon.

As you heard, my name is Michael Geist. I'm a law professor at the University of Ottawa, where I hold the Canada research chair in Internet and e-commerce law. I'm also a member of the school's

centre for law, technology, and society. My areas of specialty include digital policy and intellectual property and privacy. As you heard, I've appeared many times before this committee and as always, I appear in a personal capacity representing only my own views.

I'm grateful to the committee for its commitment to privacy and access to information and its interest in how the issue of net neutrality may affect these issues. I propose to begin this briefing with an introduction to net neutrality, followed by some comments on recent events and then considerations of the intersection between net neutrality, privacy, and access.

I'll start by noting that Canada seemed lost when it came to Internet policy a little over a decade ago. Regardless of party, this isn't a partisan issue. Government showed scant interest in the technicalities of Internet services and the CRTC stood idly by, as leading Internet providers limited speeds of some applications, a practice known as traffic shaping, and mused openly about new fees for the right to transmit content to subscribers.

Those Internet policies are unrecognizable today, as Canada has emerged as a world leader in supporting net neutrality. At its heart, net neutrality means that all content and applications should be treated equally and that the choices made by Internet users should be free from ISP or telecom interference. Policies don't guarantee Internet success. No law can do that, but it signals a clear commitment to placing consumers and creators in the Internet driver's seat.

The foundation of Canadian policy lies in four CRTC decisions that address practices, such as managing Internet traffic to limit speeds for some applications or creating pricing plans at a so-called zero rate, so that certain content doesn't count against monthly data consumption caps. CRTC policies now restrict these practices by recognizing that net neutrality preserves the common carrier approach for ISPs and encourages marketplace competition and innovation that's based on price, speed, and the quality of networks.

The CRTC's approach also allows Canadians to file complaints about net neutrality violations, which they've done on occasion. The CRTC would then proceed to investigate and, in some instances, conduct hearings into some of the broader implications raised by the concern. The policies also provide for greater transparency of network management practices, which requires ISPs to disclose how they manage their networks and what their practices will mean for consumers' Internet use.

In recent weeks, we've seen Canadian leaders and regulators make their support for net neutrality clear. For example, Navdeep Bains, the ISED minister responded to the U.S. developments, which I'll talk about in just a couple of minutes, by affirming that "Canada will continue to stand for diversity and freedom of expression. Our government remains committed to the principles of net neutrality". Canadian heritage minister Mélanie Joly has similarly endorsed net neutrality and emerged as a proponent.

It should be noted that some cultural groups have called on the government to abandon net neutrality by mandating preferential treatment for Canadian content. These recommendations have come as recently as last week. They were just posted online in the last day or two, as part of the CRTC consultation on the future of broadcasting.

However, Joly has affirmed that the principle remains at the core of Canadian cultural policy, noting that, "we will continue to champion the internet as a progressive force and an open space without barriers. As a government, we stand by the principle of net neutrality."

In the United States, this has been a highly politicized issue and we see changes from chair to chair at the regulator. The same is not true in Canada. Canada's commitment to net neutrality has been similarly endorsed at the regulatory level. We have a new CRTC chair, Ian Scott. Just last month, he told an industry conference:

As companies continue to innovate in their offerings to Canadians, the CRTC will continue to ensure that Canada's Internet neutrality provisions are respected. ... owners and operators of the country's communications may not discriminate against content based on its origin or destination.

That's the Canadian situation.

As you know, the FCC, the U.S. telecommunications regulator, plans to roll back net neutrality regulations, which has sparked an immediate backlash from the Internet community. There are fears that the decision will turn the Internet in the U.S. into a cable-like service, which is dominated by the carriers, where only deep-pocketed giants can afford to pay new fees to keep their content in the fast lane.

That U.S. order, which would also block U.S. states from implementing their own versions of net neutrality, is set for a vote next week.

Canadian consumers may be shielded from the net neutrality abuses rolled back in the United States in their home Internet use, but I think the effects of the U.S. decision may still be felt here. Since Canadian traffic often transits through the United States, there are some concerns that Canadian data could be caught by non-neutral policies.

•(1640)

Moreover, Canadian Internet services that are hoping to attract U.S. customers and subscribers may face the same demands for payments to have their content delivered on the fast track.

Since the NAFTA renegotiations include a chapter on digital trade, I believe that Canadian negotiators should be pushing for the inclusion of a strong, enforceable, net neutrality provision in that agreement. In fact, earlier this week, the lead Canadian negotiator,

Steve Verheul, told a Commons committee that Canada wants a net neutrality provision included in the digital trade chapter in NAFTA. I think that would be a good step, particularly if the provision has some real teeth.

Now it should be noted that there is a direct and important connection between net neutrality and privacy, and that's why this committee's briefing is apt. Canada has long recognized the dangers that would come from active monitoring of telecom and Internet users. Neutrality, whether in our telephone networks or our Internet networks, has always included a link to privacy.

For example, one of the early net neutrality concerns involved Internet telephony, voice over IP, services like Skype, that offer the prospect of cheaper, secure, encrypted communications in many instances. Yet some of the providers saw these services as a competitor, and there were reports of blockages or degrading of speeds to render the services less usable. That was true in the United States in a case known as Madison River, and true in Canada under some of the early net neutrality complaints. It's net neutrality rules that help ensure that doesn't happen.

Similarly, the first CRTC net neutrality decision, which was called "Internet traffic management practices" or how the ISPs manage their networks, included considerable discussion on carrier practices involving deep packet inspection, technology that allows them to examine the type of content that's running on their networks.

The technology raised significant privacy concerns, and the CRTC ultimately issued an order that "all primary ISPs, as a condition of providing retail Internet services, not...use for other purposes personal information collected for the purposes of traffic management and not...disclose such information." In other words, the net neutrality rules they established under that decision established additional privacy safeguards around the information that they might collect through deep packet inspection. That was from the very first key net neutrality decision.

I would argue that net neutrality also has a strong connection to access to information. Just this week we saw reports that Bell plans to ask the CRTC to create a website blocking agency, which would develop block lists without court review, which highlights, I think, how carriers may interfere with access to content.

In a recent submission to the CRTC released just in the last couple of days, Bell linked their perceived need for blocking of unauthorized streaming sites and downloading services with the success of its CraveTV service, arguing that blocking access to those sites would result in hundreds of thousands of new subscribers. I think that claim is debatable, but what it highlights, from my perspective, is that the incentives to block content in carrier self-interest, particularly for the very large, vertically integrated companies, is very real.

Indeed, the very first Canadian net neutrality case involved Telus, which infamously blocked access during a labour dispute to a site called for Voices for Change. Telus maintains that it hasn't repeated the blocking approach, but the fact that it did so, and believed that it could exercise the power to do so, demonstrates why there is a need for clear legislative safeguards against content blocking.

David Lametti, the Parliament Secretary to the Minister of Innovation, Science and Economic Development, yesterday in the House of Commons told the House that "net neutrality is the critical issue of our times, much like freedom of the press and freedom of expression that came before it."

I would say that, given the critical role played by the Internet in all walks of life and the exceptional power wielded by carriers, Mr. Lametti is right.

I look forward to your questions.

• (1645)

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

First up for seven minutes is Mr. Baylis.

**Mr. Frank Baylis:** Mr. Geist, before we dive into it, just to make sure we're all on the same page when we talk about net neutrality, it's the concept that bigger players can't use pricing or speed to preference this information over someone else's information. Is that correct? It's to make sure the playing field is level?

**Dr. Michael Geist:** Right. It certainly is about ensuring that the playing field is level. The concern isn't so much what a consumer pays for traffic. We all recognize, as consumers, that ISPs will sometimes charge different rates for different speeds. You can get unlimited service. You can get packages that have less than that. There's often that kind of differentiation.

The concern is that the carriers might try to differentiate between the content itself and charge for that.

**Mr. Frank Baylis:** So it's not about the speed itself. If I want to buy this speed or that speed, that's all fine, but everybody that comes into the pipe gets the same speed that I purchased. It allows companies to have their package deals, but they can't do it on content. Is that right?

**Dr. Michael Geist:** That's the case on the consumer side. There has been considerable thought and certainly suggestions that this may happen, that the ISPs might like to offer different speeds to the people who are providing the content itself. Think, for example, of a video provider, say Netflix. Lots of people subscribe to Netflix. I just mentioned Bell's CraveTV. One can imagine a scenario whereby Bell says another way that we might get people to subscribe is to ensure

that CraveTV moves faster than some of the competing video services. It's in our self-interest to do so.

What net neutrality ensures cannot happen is that they can't act in that self-interested way. They have to treat all content in an equal fashion. In the United States, with this decision, once it unfolds, there will be the prospect of—

• (1650)

**Mr. Frank Baylis:** We'll see. Let's stick to Canada for now.

Just conceptually so we all understand, net neutrality says if you're a big player or a small player, whatever Frank Baylis bought as his uptake speed, that's what he's going to get. If I get it for Netflix or if I get it from Joe Blow's hamburger shop, I'm getting the same speed, and they cannot differentiate between the two.

**Dr. Michael Geist:** That's right. The concern is that the large ISPs will try to extract additional revenues, not necessarily from subscribers—

**Mr. Frank Baylis:** But also from the other end.

**Dr. Michael Geist:** —but rather from the larger players. Although there is also, and I made brief reference to it, this notion of zero rating, the idea that you would offer certain content that would not count against the customer's data cap. The idea would be that this would create an incentive for subscribers to move to those.

**Mr. Frank Baylis:** There are all different ways that a carrier might use to tweak the system toward someone who's willing to pay more or to advance one version of content or another.

**Dr. Michael Geist:** Right.

**Mr. Frank Baylis:** Net neutrality, whether it's done that way or any of these ways, say you can't do that.

**Dr. Michael Geist:** It says you have to treat all content and applications in an equal, neutral fashion, regardless of where it originated.

**Mr. Frank Baylis:** That's net neutrality.

Let's talk about the philosophical reasons, and you did mention them: diversity, freedom of expression. What would happen if we didn't have net neutrality? Can you give us not the absolutely worst-case scenario but a negative scenario, something that wouldn't be good for Canadian consumers?

**Dr. Michael Geist:** I provided the video example, but we could take a real world commercial example, let's say, involving e-commerce sites. Everyone in the room, I'm sure, will be familiar with Shopify, one of Canada's most successful e-commerce platforms, and you have a lot of e-commerce companies running on that platform. What happens if one of the large carriers goes to a competing e-commerce platform and says they will ensure that all the stores on their platform go on a fast lane and all the stores on other services are consigned to a slow lane. That would put a major Canadian e-commerce company at a significant disadvantage, where its ability to attract new customers to host those stores would be undermined because their stores wouldn't be arriving as fast as some of the competition.

**Mr. Frank Baylis:** That's a good example for commercial activity. What about information, news, things like that?

**Dr. Michael Geist:** There too, I think, the concern is that we see today on the Internet this incredible diversity of content out there. It's always striking that the biggest proponents of net neutrality, especially among some of the successful Internet companies, weren't always big, successful Internet companies. In many instances, they were the small players trying to become the large players, and they often make the case, and I think justifiably so, that if they tried to emerge in a non-neutral world, one in which the established players at the time could have used either their deep pockets or economic might, or whatever advantages they have, to consign them to a slow lane or make it more difficult for them to compete in the marketplace, they might have not emerged successfully.

The ability of the public to access, and for some of these newer news services to emerge, raises some of those same kinds of challenges.

**Mr. Frank Baylis:** You could theoretically in the worst-case scenario, and I'm not saying Canada would get there if we didn't have net neutrality, but you have authoritarian states that purposely say they don't want this kind of information going to their citizenship. You could theoretically have it so slow or so difficult that you're not blocking it, but as you said, à la Telus, you could block or you could get to this. Would that be the worst-case scenario?

**Dr. Michael Geist:** I think blocking would be the worst-case scenario, and as I've said, proposals are about to be put forward about content blocking agencies, so that worst-case scenario may become real relatively soon.

**Mr. Frank Baylis:** It could happen.

**Dr. Michael Geist:** I think that ability to slow down does have an impact though, so I made reference, for example, to the very early case with deep packet inspection at the CRTC. At that point, a lot of people were using things like BitTorrent to access sometimes authorized content and sometimes unauthorized content by dramatically slowing down the ability to access some of that content, which you ultimately found was very tough to compete with. If you were an independent documentary filmmaker and you were using BitTorrent as your mechanism to try to distribute your content to others essentially on a free basis, you'd find that your content might be slowed by some of the throttling that was taking place, and it's very tough to compete with services that aren't facing some of those same restrictions.

● (1655)

**Mr. Frank Baylis:** To summarize, you're a very strong proponent of net neutrality, both from an economic perspective—to be fair to all companies—but also for the citizenry's access to information, that it not be decided what you get to read or not read depending on some big corporation.

**Dr. Michael Geist:** Absolutely.

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

Next up for seven minutes is Mr. Kent.

**Hon. Peter Kent:** This is a huge topic. Isn't it possible that, as this conversation goes on and as—in Canada at least—the regulator and governments defend the principle of net neutrality, those who would corrupt or avoid it might do what we saw in cable over the years, where we got into bundling practices and negative options?

We could end up bundling technology requirements. A service provider might find ways of requiring you to buy a better modem to handle the higher speed. They might get around it in other ways. Is that an evolving possibility?

**Dr. Michael Geist:** Providers are going to try to compete in a myriad different ways, and they do. Sometimes that involves bundling, and it's why, in the wireless space, some of the newest players have really struggled to establish the kind of market share that successive governments had hoped they would in terms of trying to inject more competition into the wireless space.

One of the reasons is that when you have a large player that's able to offer up a quadruple or quintuple bundle, where they're selling you home phone services, cable TV services, Internet services, wireless services, and now various Internet-of-things device types of services with your watch or a range of other sorts of things, you often feel that you get locked into a particular provider.

There is no question that they will often use those advantages to their advantage. What distinguishes net neutrality is that it gets into this issue of how they manage the network and some of the freedoms we were just talking about that come out of that Internet. The safeguards that are needed there are critical.

That's not to say there isn't necessity for some regulations and safeguards in some of these other issues too. In the last couple of days we've had the CRTC ruling that moved to ensure that people can now unlock their phones with no fees. That's clearly designed to give people greater flexibility to move between providers, so they're not locked in as they have been for so long.

**Hon. Peter Kent:** In defending the principle of net neutrality, specifically in Canada, are Canadians who want content coming through U.S. providers that will not be regulated any longer going to pay a price in terms of not being able to access or being victimized by such discriminatory...?

**Dr. Michael Geist:** There are risks. I mentioned at least one that has already come up in the questions, which is that prospect of what happens when Canadian businesses try to compete in the U.S. market.

At a consumer level, their direct interaction with their ISP should not face a non-net neutral approach. It certainly should be the case that my service and your service at home treat all content equally. Where Canadians—and I would argue this is true for people around the world—will ultimately feel the pinch of this is where new services and new opportunities perhaps fail to emerge in the United States because they're simply unable to get off the ground in a really effective fashion due to their inability to pay for that fast lane.

What that system does for the benefit of the large carriers is really preserve the winners today at the expense of potential new innovators tomorrow.

**Hon. Peter Kent:** How do regulators enforce the law? How can they detect breaches of net neutrality?

**Dr. Michael Geist:** That's a great question. That is a shortcoming of our system. The system at the moment requires individuals to file complaints with the CRTC. Many people who find that services might be running slowly or are unable to access something often will not have the technical wherewithal to try to identify precisely why that's taking place. Sometimes it has nothing to do with net neutrality; their computer is slow, or their router is slow. There could be a range of different reasons for it.

By putting the onus on the public to identify these issues.... You've put your finger on an area we could certainly improve, which is doing a better job of enforcing the net neutrality rules. At the moment, it's a system whereby the CRTC will wait for complaints but does not proactively audit or examine any of the practices to ensure they're compliant with the law.

• (1700)

**Hon. Peter Kent:** Should there be better education by the CRTC, by providers?

**Dr. Michael Geist:** I don't think we're ever going to get to the point where the majority of Canadians are able to turn into their own geek squad, where they can figure out precisely why something is running slowly, nor should they be expected to.

I think if we value net neutrality, and as mentioned we've heard consistently that we do, it's reasonable to expect that the CRTC more proactively audit in circumstances. We do that in the context of privacy, when we've given the Privacy Commissioner the power in PIPEDA to deal with complaints but also to proactively audit organizations. It seems to me it would be quite reasonable for the same approach to be taken here, where the CRTC proactively audits in some circumstances to ensure that network management meets the requirements under the law.

**Hon. Peter Kent:** Your recommendation of a net neutrality chapter in a future—if we get a future—NAFTA agreement, how realistic is that? How much of a priority should it be?

**Dr. Michael Geist:** I would say a couple of things. First, a provision in the larger chapter is more realistic than you might think. The challenge will be whether or not it has any teeth.

The digital trade chapter in NAFTA is, we are told, modelled on the TPP e-commerce chapter. They've renamed it digital trade, but it's basically or in many respects the same chapter. There was a net neutrality provision included in the TPP. It was very weak. That's why I would say that having general language doesn't achieve very much; it isn't all that helpful. Having something a little stronger would be quite helpful.

I would also note...and this comes directly out of the lead negotiators' discussion this week. They've made pretty good progress on digital trade with a couple of issues that are outstanding. We're looking for net neutrality. They're looking for an Internet intermediary safe harbour provision, similar to what they have in the United States, which also protects freedom of expression. I actually think it's long been a missing provision in Canada. It's the sort of thing that it would be to our advantage to craft a responsible provision consistent with what they're asking for.

I actually think there is room to negotiate and meet both our needs in that particular chapter.

**Hon. Peter Kent:** Thank you.

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

Up next for seven minutes is Mr. Cullen.

**Mr. Nathan Cullen:** Thank you, Professor Geist, for being here. This is very informative.

It was President Trump who appointed Chairman Pai. Is that right?

**Dr. Michael Geist:** It was.

**Mr. Nathan Cullen:** Chairman Pai worked for Verizon as a lawyer who sued the FCC and is now the head of the FCC.

**Dr. Michael Geist:** Yes.

**Mr. Nathan Cullen:** Okay.

Verizon blocked Google Wallet at one point, a competitor in some fashion. They simply said that if you're on the Verizon network and you try to access your Google Wallet, you just can't.



I liked your hopefulness that a president and a Congress that just took what I would say is a pretty radical direction in terms of their digital economy—and highly protectionist—is now going to include a piece in a chapter in a negotiation over which they have a whole bunch of radical anti-trade agenda items.... I like your hopefulness, but I don't share it based on what I've seen so far.

I have a question for you. I think neither of us are trade lawyers. Does this not strike you as a non-tariff trade barrier? If you have a Canadian Shopify or if you have a Hootsuite that is slowed down and effectively blocked from expanding their business into the U.S. because there's a competitor with a similar application but is an ISP provider, a critically integrated company that just simply says that if you're trying to get on your Hootsuite, you just can't, or it takes forever, or it just never loads, is that not another way of throwing up a trade barrier in the digital world?

**Dr. Michael Geist:** Yes. That's an interesting point.

To come back to the trade issue, certainly taking a look at what we've seen most recently, it's easy to be pessimistic for sure. I do think that the backlash we've seen in the United States and the support for net neutrality that still exists amongst many in Congress, and there's always the prospect of political change—

**Mr. Nathan Cullen:** That's a different federal agency.

**Dr. Michael Geist:** As these negotiations unfold, you never know.

I think you've highlighted a really interesting issue that extends beyond just neutrality. That is the extent to which we do see digital policies potentially characterized or actually having the effect of a trade barrier. That same discussion has come up quite frequently in the privacy context, where the argument has at times been that certain privacy protections can be viewed or restrictions on data transfers can be viewed as similarly creating trade restrictions.

You might make the same argument even with the reference that I just made around safe harbours, where the inability for large intermediaries to have the same safe harbours that they have at home creates challenges for them in terms of their ability to do business elsewhere.

• (1705)

**Mr. Nathan Cullen:** In these trade negotiations that we're having, not just with the United States but with the TPP region, with China, if the current form of protection of net neutrality is, as you've described, weak, one could imagine not just anti-competitive practices from our trading partners where they block Canadian digital commerce from taking place, but also political blocking. We know the frustrations for human rights activists in China. Try googling “Tiananmen Square” if you're in Beijing. There's a government policy there.

If we're not insistent on net neutrality both as a commercial and a political interest, if you're describing the current TPP chapter as weak, is the EU? Where would we look to in terms of protection of net neutrality in a trade negotiation that we could hold up as a high standard for Canada to try to meet?

**Dr. Michael Geist:** I don't think we can yet.

**Mr. Nathan Cullen:** We can't. Can even the Europeans?

**Dr. Michael Geist:** No.

**Mr. Nathan Cullen:** Portugal got out of it.

**Dr. Michael Geist:** There isn't a digital e-commerce chapter in CETA, for example.

TPP was really the first to try to do this, although it is worth noting that the World Trade Organization discussions that are set to take place in Argentina next week include a focus on whether the WTO will become more engaged in e-commerce. We are starting to see this issue expand.

**Mr. Nathan Cullen:** It could be good or bad.

**Dr. Michael Geist:** The fact that they are excluding some major digital civil liberties groups suggests it's pretty bad.

**Mr. Nathan Cullen:** Who is?

**Dr. Michael Geist:** Argentina, as part of the WTO discussions, but that's an aside.

**Mr. Nathan Cullen:** It's an aside, but it's not. Part of net neutrality is based on that philosophy of what the Internet is supposed to be: the free exchange of thoughts, even thoughts uncomfortable for the government wherever the government takes place.

**Dr. Michael Geist:** Right. We're in agreement.

I would note that I don't think it's net neutrality alone that addresses some of these issues.

I'm particularly focused on the double-edged sword of open Internet provisions around data transfer and data localization, which are included also in TPP and which the U.S. wants. Data transfer issues and data localization are good examples of the types of things that in the right hands can be really useful to help protect privacy. We want to ensure in Canada, for example, that if the B.C. government wants to establish certain privacy protections for health data, they ought to be able to do that and require that it be kept within the jurisdiction.

**Mr. Nathan Cullen:** The servers would be in Canada and that kind of thing.

**Dr. Michael Geist:** Exactly.

The problem comes down to some of the regimes that you were just referencing who might use some of those same kinds of provisions to say, “We're actually going to mandate that the data is localized here.” Their purposes are not to protect user privacy—

**Mr. Nathan Cullen:** It's to protect themselves.

**Dr. Michael Geist:** —but for censorship purposes or other kinds of purposes.

The challenge becomes, how do we establish the privacy safeguards with these provisions while not losing the benefits of open Internet provisions in these same agreements?

**Mr. Nathan Cullen:** I want to get back to the impact on Canadian consumers of where the FCC is going.

Their vote is soon, is it not?

**Dr. Michael Geist:** It will be next week.

**Mr. Nathan Cullen:** Next week... Oh, boy.

In your estimation, is it likely to pass?

**Dr. Michael Geist:** Yes.

**Mr. Nathan Cullen:** One chairman has said that they're not happy, but the rest who were appointed are following orders.

The question around Canadian consumers is both on data streaming because of our interconnectivity, as well as American sites that Canadians access. Suddenly with those sites, because of some future not a trade war but a competitive war between two companies, often a large one and a small one, won't we see both the potential of traffic streaming through the U.S. and coming back into Canada slowing if this goes through?

Could Canadians not see some of their favourite sites suddenly affected either by speed or by new pricing that would show up in their bill, that if they want a certain app, they have to pay another \$5 and bundle it up in order to stream that content?

**Dr. Michael Geist:** On the speed side, especially for some of the most popular ones, I would say no. Generally, it's not as if, on December 15, we'll see a two-tier Internet. It might take a bit of time for some of these to unfold.

**Mr. Nathan Cullen:** Yes, over time.

**Dr. Michael Geist:** In terms of speed, the reality is that many of the largest players ensure that they have Canadian-based servers to send out the data. They'll locate here. Netflix, for example, will co-locate in lots of ISPs to try to speed up and reduce the amount of bandwidth that gets used, and the like. There will be the ability, certainly for some of those large favourite services, to ensure that they can, in a sense, bypass anything that we've seen take place in the United States.

• (1710)

**Mr. Nathan Cullen:** I worry about the entrepreneurs who can't come up.

**Dr. Michael Geist:** I worry about them, too. That's where the rubber will hit the road for some of those players who might struggle to really emerge.

Your other point about potential costs is a good one as well. It's certainly possible that, if this is what happens, at the end of the day we'll see price increases, because we all know that no matter where the bill happens along that chain, it's the consumers at the end of the day who are going to have to pay the freight.

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

Mr. Erskine-Smith is up next for seven minutes.

**Mr. Nathaniel Erskine-Smith:** Thanks very much.

It's not the first issue and not the last issue that we are likely in disagreement with President Trump about.

I'm curious. We've had statements from government officials. You noted that it's not just the Liberal government, but the Conservative government previously, and you've heard questions from Mr. Cullen that suggest we're all on the same page in advocating for net neutrality.

Can you walk us through specifically where we protect net neutrality in legislation? Is it the CRTC Act? Is it the Telecommunications Act?

Can you walk the committee through what sections we're looking at where we're currently protecting net neutrality?

**Dr. Michael Geist:** It's a good point. It is worth noting that some groups, especially in light of what we've seen in the United States, have called on the government to establish a clear-cut net neutrality provision in law. Given that the government has indicated that it plans to review both the Broadcasting Act and the Telecommunications Act, it would seem that there is an obvious opportunity to do that.

I referenced the CRTC's decisions and policies. That effectively is where we get our net neutrality rules from an operational perspective. There have been a number of decisions where the CRTC has provided guidance and guidelines on what they see as the law. The early ones on Internet traffic management practices included things I mentioned such as the disclosure requirements. It also established rules for examining different kinds of activities by ISPs to determine whether they were permissible.

More recently they concluded another case involving the so-called zero rating issue. Part of that provided even more fulsome discussion around the kinds of practices they would see as permissible and how to identify that.

Of course, the question becomes, what are they basing that on in law? I think that's what you were asking. You have provisions such as section 36 about not affecting content and you get the undue preference provisions and non-discrimination provisions. It really comes down to non-discrimination, no undue preference, and no altering of the content.

**Mr. Nathaniel Erskine-Smith:** Presumably in the examples you mentioned, about where an ISP is already in the media game and might be even throttling traffic for Netflix or other streaming services, such as Spotify, or whatever the case might be, there has to be a Competition Bureau concern there as well, one would think, which is separate. It would be enforcing net neutrality but by virtue of a specific instance of violation of net neutrality.

**Dr. Michael Geist:** You would think. The CRTC would say that the act gives them the ability to address the issue of undue preference, too.

**Mr. Nathaniel Erskine-Smith:** Sure.

Are you one of the people, then, who would say the government ought to be putting this in legislation?

**Dr. Michael Geist:** In terms of the discussion earlier around enforcement, if I had to pick the best thing we can do to improve the law, I would say improving some of the enforcement is probably more of a priority for me than getting a net neutrality provision, given the way it has unfolded. In fairness, we've seen in the United States that what we thought was well-entrenched policy can change.

**Mr. Nathaniel Erskine-Smith:** Wouldn't they go together in some ways? I don't know all the powers that the CRTC might have to enforce the existing rules, but presumably putting something in legislation gives you an opportunity to give the authorities more teeth.

**Dr. Michael Geist:** The question then becomes whether the enforcement structure that they've adopted is a function of limitations they're facing in the law or simply a decision that they would prefer to respond to complaints as to more proactively examine or audit someone's network where there's a reason to do so.

**Mr. Nathaniel Erskine-Smith:** Following that train of thought, then, legislation aside, are there other ways you would suggest to this committee or to Canadians that we ought to be looking to better protect net neutrality in Canada, or are you fairly satisfied with the status quo?

**Dr. Michael Geist:** We have rules that a lot of other countries look to as striking a pretty reasonable balance. I'm sometimes a bit befuddled at the controversy you see in the United States, both the politicization of it, given that it hasn't been political in the same way here, and also the notion that having these rules in place would somehow cause decreased investment or significant harms. That simply hasn't been the experience here, and it hasn't been the experience in other places.

• (1715)

**Mr. Nathaniel Erskine-Smith:** The United States is reversing course because of a change in presidency. Are there other countries, developed countries, that we would look to that have gone down this path of having net neutrality undermined and can we see the consequences of that?

**Dr. Michael Geist:** You certainly do see other countries that have had issues come up from time to time. You see it certainly in the wireless area. We've seen it in Europe and other jurisdictions where there is some of the zero rating and concerns around what that zero rating would mean. In fact, some studies out of Europe point out that where there's a choice between zero-rated services and services that ultimately offer things in the hands of consumers to decide how they want to use their data, typically consumers end up with simply more data. You get to basically make your own choices about how you want to use your data, as opposed to being nudged or pushed in a particular direction.

I should quickly note that we've also seen the issue come up in developing countries. For example, India has done a lot of work on net neutrality. It actually originated first out of Netflix's proposal to offer up so-called free Internet services with particular carriers. Some would think, "Wow, isn't this great." It turned out that there wasn't a whole lot of uptake, but there were real concerns about what that would mean for net neutrality and a lot of people arguing that this was a wrong-headed approach. Their regulator has also implemented all sorts of rules now that try to preserve and safeguard net neutrality.

**Mr. Nathaniel Erskine-Smith:** I only have a minute or so left.

Regarding website blocking, it occurs to me that some websites could be completely full of hate speech. Some websites could be full of other content that is illegal to be posting, but then you get more complicated situations.

Take torrents. There are legal torrents. There are illegal torrents. There are websites like the Pirate Bay that might principally traffic in more illegal torrents. There are streaming services that do the same. Can the government say no to this website, and yes to that website? Is government able to draw those clear guidelines for a regulator like the CRTC?

**Dr. Michael Geist:** No, and the agency that Bell has in mind to help develop the block list wouldn't even be government. It would be largely comprised of the private sector. We already have a system in place for child pornography, which has always, I think, been seen as different from all the other examples you provided because it's illegal to view. There is blocking that takes place of child pornography images, and that's done without law, but it's done based on the fact that everybody agrees that it's harmful not just to distribute but also to view.

In the case of almost all this other content—lawful, potentially engaging in infringing activity, and stuff that really pushes the envelope at times—there is certainly the prospect of the courts becoming involved. We already have, under the Copyright Act, the ability to target sites that enable infringement and are hosted here in Canada. We have some of the toughest anti-piracy laws already in place for stuff that's hosted in Canada, but the idea—and this is what Bell is apparently about to propose—of putting forward an essentially private sector blocking agency that would create a list of stuff to be blocked, without the court ruling that it ought be blocked, should be a total non-starter.

**Mr. Nathaniel Erskine-Smith:** First they'll want the sites and then they'll want to block VPNs, and then they'll want to block—okay, I'm out of time.

**The Chair:** We have three people who still want to ask questions. We have two for five minutes each, and one for three. That should take us right to the end. I might have to cut off the last person, but it should carry us there.

Mr. Tilson, you have five minutes.

**Mr. David Tilson:** I have no questions—

**The Chair:** That's easy.

**Mr. David Tilson:** —so the three-minute guy is guaranteed to get some questions in.

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

**The Chair:** That's right.

Mr. Cullen, you should thank him for that.

Mrs. Shanahan, you have five minutes.

**Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.):** I'll share my time with Paul, or we'll see how we go.

I'm intrigued, Mr. Geist. This is an area that has been thrust upon me. I need to learn about it, and I need to learn quite quickly, actually.

What concerns me is the privacy aspect here. Please explain to us again how net neutrality protects citizen privacy. I'd like to understand that better.

**Dr. Michael Geist:** Sure. There have been, as I mentioned, a couple of examples where privacy has been directly implicated through net neutrality.

One would be where a service that might provide better privacy might either not emerge or might struggle to work effectively. The example that I gave involved Internet telephony services. This would be things like Skype or other sorts of services that, today, we often take for granted. If we think back a few years ago, however, many of the large carriers were really concerned about the ability for people to make free calls using these Internet-based services. They saw them as competitors. It used to be the case that on your smart phone you couldn't even access Wi-Fi networks because people didn't want you accessing Wi-Fi. They wanted to sell you the data.

These were seen as truly competitive services, and there were attempts in some instances to try to stop people from being able to actively use those services. How do you do that? In one instance, in the United States, they did it by proactively blocking. In another instance, here in Canada, they did it by reducing the speeds that were available for that service, so that they were so slow so as to not function effectively. That's a practice known as throttling.

If you do that, you have potentially privacy-enhancing technologies that are rendered unusable or blocked on the basis of a carrier deciding that they prefer you not to use that service but to use something else. That has clear privacy implications for someone.

• (1720)

**Mrs. Brenda Shanahan:** What about the flip side? Is there a way that not having net neutrality actually allows these big carriers...? I seem to sense that there's a difference between the traditional big carriers—Ma Bell, television, cable networks—and those who are sort of the innovative entrepreneurs, the anarchist types of actors in the Internet. There's a culture difference there, and that's what I'm trying to understand.

Is this, out-and-out, the traditional ISP companies just trying to squash any competition whatsoever? If so, are we equipped to combat this?

**Dr. Michael Geist:** To start, yes, it is the traditional ISPs, the carriers, that we're talking about in terms of concerns about violations around net neutrality.

What they became concerned with a number of years ago was that they were seeing much of the value in these networks being accrued by other players. You can use your Internet service to make those phone calls, to access video, to engage in education, to do all these different things. The way that some of the carriers used to describe it is that they didn't want to be left just providing a dumb pipe: "All we

do is provide you with the ability to transmit those bits and somebody else gets all the economic advantage."

They said, "Wouldn't it be great if I get to share in some of your revenue simply for transferring your bits?" The response from some of the players was, "Well, hold on a second, I am paying for you to transfer my bits. I have to subscribe to the service and I've paid for all these services." What they were hoping to do was to leverage, in a sense, their gatekeeper status as the intermediary to say that they can actually charge even more and find different ways to do that.

I understand why, economically, they would have incentives to do that in the same way that they might have incentives to favour some of their own content or to stop or make it more difficult to access other kinds of content, but that's not a good enough reason for us to allow it to happen. In fact, that provides us with a very strong, compelling reason that we shouldn't be allowing that to happen.

The type of robust Internet ecosystem we've seen emerge today that has had that transformative effect on everything from commerce to education to culture has really benefited dramatically from that ability to ensure that a bit is a bit is a bit and I get to ensure that my content gets treated in the same way that some other giant's does. The fear is that net neutrality will do away with that bedrock principle that has allowed many of these businesses to emerge.

**Mrs. Brenda Shanahan:** Who is in the best position to ensure that the privacy of individual citizens is protected in this universe?

**Dr. Michael Geist:** The online privacy issues, of course, extend even beyond net neutrality. Net neutrality can be a factor and an assistance in potential misuse of their information in terms of, let's say, the deep packet inspection example that I provided, where you had providers who were trying to drill down and examine precisely what type of application people were using at times. If they could do that, they could slow that particular application. The ability to examine that information might involve highly personal information.

The CRTC recognized that and it stepped in and said you can't use this kind of personal information for any of these other sorts of purposes. You can't sell it and you can't use it for marketing. You can't use it for any of those sorts of things. That's an example where the CRTC could use net neutrality rules to better protect privacy.

There are, of course, other instances where we've seen the privacy commissioner and PIPEDA step up to try to provide protections for privacy, because those rules will also govern the approach that we have. Today we have many telecommunications providers, for example, that offer up transparency reports that describe instances where they disclose their information to law enforcement, and the like, but still not all of them.

Bell, for example, is the largest provider in the country. They still do not offer up a telecom transparency report so that people would know how their information is being used, in contrast to the other large providers such as Telus and Rogers.

• (1725)

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

We have had a slight change. We have Mr. Cullen for three minutes, and then Mr. Kent for whatever time is left.

**Mr. Nathan Cullen:** Can you just finish that last point? Did you say “despite being ordered to”? I might have missed that.

**Dr. Michael Geist:** They haven't been ordered to issue a telecom transparency report, although I think there is an argument to be made under PIPEDA that it should be a requirement under the accountability principle.

**Mr. Nathan Cullen:** Right.

Is this Bell that we're talking about?

**Dr. Michael Geist:** This is Bell.

A number of years ago, most of the large providers began issuing transparency reports. The big Internet companies do the same. Bell has been the lone big holdout in Canada.

**Mr. Nathan Cullen:** Is any particular reason given?

**Dr. Michael Geist:** You'd have to ask them.

**Mr. Nathan Cullen:** Imagine for a moment that you were them. What would you say? It seems odd. They care about their social licence and their corporate reputation. Not being transparent about something such as this seems strange to me.

**Dr. Michael Geist:** That is, of course, the same company that I just described that's putting forward the proposal for website blocking.

**Mr. Nathan Cullen:** All right. Fair enough.

**Dr. Michael Geist:** They seem to be less concerned sometimes. At least from my perspective as a consumer and someone who follows this, they sometimes seem somewhat less concerned about their reputation, at least around issues such as privacy.

**Mr. Nathan Cullen:** My Bell phone just slowed down. That's so weird.

Do we know how many complaints are filed with our regulator over potential blocking or slowing down of sites?

**Dr. Michael Geist:** We do.

**Mr. Nathan Cullen:** Is that posted publicly?

**Dr. Michael Geist:** It is.

The story actually behind that is that we didn't at first. As it happens, I launched an access to information request with the CRTC a year or two after the process had been taking place to identify what on earth was happening. What I got out of that was that large numbers of complaints were being filed. I also found that the CRTC wasn't acting very aggressively on some of those complaints.

They started acting more aggressively, and in the aftermath of that, began on a quarterly basis publishing the number of complaints.

**Mr. Nathan Cullen:** That was through an access to information request.

**Dr. Michael Geist:** I got that information in the first instance through access to information. Now the CRTC proactively, on a quarterly basis, discloses. They don't disclose the details. They disclose how many complaints they got and how many complaints remain open.

**Mr. Nathan Cullen:** I'm so glad your access wasn't deemed vexatious or anything like that, because that would have been too bad.

Can we require CRTC, through legislation or some other means, to be proactive and audit the performance of some of the sites, if there is suspicion or a tendency within certain carriers, certain ISPs, to slow down things in an anti-competitive way?

**Dr. Michael Geist:** I am not aware of a reason why the CRTC couldn't be doing it right now.

**Mr. Nathan Cullen:** Nothing requires them to.

**Dr. Michael Geist:** No, nothing requires them.

**Mr. Nathan Cullen:** That would be why then.

**Dr. Michael Geist:** I think obviously they made, I guess, a policy decision that the appropriate approach was to respond to complaints.

**Mr. Nathan Cullen:** Would it be good for this committee to hear from the CRTC as we look at this?

**Dr. Michael Geist:** I think it would be really good to hear specifically about how they have handled the net neutrality complaints. Frankly, it's an issue that, with the exception of that access to information request and a couple of follow-ups that I've done.... You do get raw numbers, but it's a bit more opaque in terms of trying to identify what is really happening.

**Mr. Nathan Cullen:** For the committee's benefit, we should maybe invite—

**The Chair:** Mr. Cullen, we're right at the three minutes, so I have to be crisp.

Mr. Kent, for the last minute and a half.

**Hon. Peter Kent:** I have just one question, perhaps to help folks like some of us who are still relatively new to the concept of net neutrality.

Would it be fair to compare net neutrality and the potential challenges to net neutrality to what the cable companies did a few years ago when they would shift the digital focus on high movement sports events to give better picture quality, and they degraded other programming in the interests of serving their sports customers?

**Dr. Michael Geist:** That's an interesting analogy. The extent to which they were engaged in that would highlight treating different content—from the perspective of the end-user—differently. Now they might argue that they were doing that for different purposes.

**Hon. Peter Kent:** They didn't ask.

**Dr. Michael Geist:** Yes.

Perhaps even the lack of disclosure around the issue would be part of the problem. That is one of the reasons why the CRTC did insist—and even in the U.S., we'll continue to see it—on some disclosure in terms of what the practices are.

It's hard to complain generally. It's really hard to complain if you don't even know what the carriers say they are doing with the content.

●(1730)

**Hon. Peter Kent:** Thank you.

**The Chair:** Thank you, Mr. Geist, for appearing before committee today. There were definitely interesting questions, and it's an interesting horizon that we're facing.

**Dr. Michael Geist:** Thanks.

**The Chair:** The meeting is adjourned.

---









Published under the authority of the Speaker of  
the House of Commons

---

### SPEAKER'S PERMISSION

---

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

---

Also available on the House of Commons website at the following address: <http://www.ourcommons.ca>

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

---

### PERMISSION DU PRÉSIDENT

---

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

---

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : <http://www.noscommunes.ca>