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Tuesday, November 15, 2005

Speaker: The Honourable Peter Milliken

Government Orders

[Supply]

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[Translation]

Supply
Opposition Motion — Access to Information Act

The House resumed consideration of the motion.

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Mr. John Cummins (Delta—Richmond East, CPC): Mr. Speaker, when I listen to the minister, it kind of reminds me of that old saw about everyone being out of step but the general's son. Of course, in this instance I guess everybody is out of step but the minister's friends.

On this particular issue of access to information, if the government were acting properly and providing the information in a timely way and open fashion, I guess

it could be said that there would be no need for the legislation. However, the fact of the matter is that the administration of the *Access to Information Act*, for example, at the Department of Fisheries and Oceans has been severely politicized. The act is administered at fisheries in a manner designed to protect the government from embarrassment rather than provide information in a timely fashion.

DFO administers the act so as to allow the legislation and House planning branch of the Privy Council Office, the minister's office, the executive secretariat that supports the minister, and the department's communication branch to track and intervene in the handling of information requests in a manner designed to protect the government from embarrassment rather than to dispassionately provide public access to departmental records.

DFO's computerized records show the handling of each information request on an activity sheet. I have received from the department computerized records covering my information requests in 2004. First, the activity sheets show that my information requests were routinely categorized as sensitive. Requests that are categorized as sensitive receive heightened scrutiny. Such heightened scrutiny reflects not a special case management system to protect national security but one to address concerns that if certain departmental records were made public, the minister might be politically embarrassed.

Second, the activity sheets reveal that the legislation and House planning branch of the Privy Council Office generally monitors and tracks my information requests to the department. Some of the notations on the activity sheet imply that the legislation and House planning branch was actually involved with what was to be released.

Third, the activity sheets show that the executive secretariat at fisheries was directly involved in tracking and monitoring my requests and, more importantly, was involved in decisions as to what was released.

Before I proceed any further, I should mention that I will be splitting my time with the member for Yellowhead.

Fourth, the activity sheets show that the minister's office is directly involved in the information requests I made to fisheries. Copies of the various versions of the released package are provided to the minister's office through the release process. Finally, the activity reports show my information requests are monitored and tracked by the communications branch of the department.

The computerized tracking of my information requests under the *Access to Information Act* reveal a process organized to protect the political interests of the minister and the Prime Minister rather than dispassionate administration of the act. Let me provide an example.

Last year I asked the department for documents relating to fish farm sites. This request was made in February 2004. Just as an example of how the tracking works, I think there were about 28 people who reviewed that request and the response to it. Later on in the process the documents went to the Privy Council Office, and the legislation and House planning branch, Mr. Côté.

What is interesting are two things. First, when something goes to the Privy Council Office that it says should not be released, it cannot even be reviewed by the Information Commissioner. It says it is a confidential cabinet document and that is the end of it. In this instance, it went to Mr. Côté and, as we know, he is now the ombudsman for National Defence and the Canadian Forces. In my view, he was up to his neck in cover-up on the issue of these questions. Yet, he was the guy who was screening on behalf of the government, so we have to wonder about his appointment as ombudsman.

After the question went for review to the Privy Council Office, it went to communications. It was sent the entire package with a heads up, so it could prepare a response. Then the minister's office was copied. It received notice. Then there was notice received that the minister wanted to see this again. The file already had been released. It had his go around. Then the file moved on and back to the minister's office. Finally, it went to the communications department before the information was made public.

That sort of routing is disturbing. These access to information requests are asked and they are asked openly and with an anticipation that the government will be forthcoming. We have to wonder what fish farm sites have to do with the Privy Council. Why would the Privy Council Office be concerned about the siting of fish farms? I do not know what is secret about that. I am appalled that this kind of screening process is taking place.

On the issue of the questions that have gone to the fisheries department, we have complained to the Information Commissioner at various times about the information that was not forthcoming. For example, on July 25 we wrote to the Information Commissioner because we sought records on environmental and economic issues posed by the development of sablefish aquaculture.

The department's response was that fisheries claimed a 90 day extension was due to the volume of records and the need to consult with other government departments.

The commissioner investigated and concluded his investigation by saying, “The volume of records was not overly voluminous and there was no evidence to support the length of the extension”. He went on to say, “Furthermore, despite the

fact that consultations were completed by January 24, 2005, D&O did not provide you with a response until April 8, 2005".

Another interesting sidebar is that again we made a request of the Information Commissioner to try to determine what happened to an information request. He replied to us again on the 25th. These were about briefing materials prepared for the minister involving aboriginal fisheries, and the department again demanded an extension.

The commissioner concluded, "There is no evidence to support the length of the extension taken". He went on to say, "The consultation process took a maximum of three weeks to complete, with most consultations taking approximately one week. Despite the additional 60 days claimed, the department missed the extended deadline. This placed fisheries in a deemed refusal situation". He went on to say, "The investigation determined that the delay was the result of a lengthy approval process". This is the approval process to which I referred.

Again we asked about the harvest of salmon caught in unauthorized fisheries on the Fraser River. Again, the department demanded an extension due to the volume and interference with operations. Again the commissioner concluded that DFO failed to meet the extended deadline. Therefore, the department found itself in a deemed refusal situation. He said, "I will remind the department of its obligation to respond to access requests in a timely manner".

The government's response on these access issues is scandalous. It is beyond me how the minister could stand there and try to defend that action. Rather than complaining about the committee, he should have been complaining about his own ministers.

The strengthening of the powers and independence of the Access to Information Commissioner is necessary and his authority over the administration over the *Access to Information Act* would guard against the politicization of the administration of the act as has occurred at DFO. The work of the Information Commissioner in ensuring that I have access to government documents is essential to my job as a Member of Parliament. I believe his independence and his control over the administration of the *Access to Information Act* needs strengthening, not weakening.

I do not believe the job of the Information Commissioner should be merged with that of the Privacy Commissioner. The politicization of the administration of the *Access to Information Act* at fisheries and oceans provides yet another reason for strengthening the powers and independence of the Information Commissioner rather than merging two essentially incompatible offices.

º (1645)

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Mr. Speaker, unfortunately my hon. colleague did not have enough time to get into all the information that he wanted to present here today, so I will ask a general, open-ended question. Could the member please expand a bit more on some of the problems he currently sees with the ATI?

Mr. John Cummins: Mr. Speaker, the problems that I outlined with access to information were problems that could essentially be described as problems where politicians had taken over. Politicians had set up a screening process to ensure that the minister or the government would not be embarrassed by any response.

The issue I would like to address now relates to the “leaky condos”. It is a huge issue in British Columbia and it has been an issue as well in Newfoundland and Labrador. It would appear that rather than the ministers or their agents acting to confuse the issue, the bureaucrats seem to be protecting their own interests.

On the leaky condo issue, the access to information coordinator for CMHC, D.V. Tyler, is also the general counsel. As general counsel, Mr. Tyler acts on behalf of CMHC with regard to the wet wall syndrome or what is commonly referred to as leaky condo problem.

While Mr. Tyler is acting on behalf of CMHC in court on leaky condos, he is at the same time, in his capacity as access to information coordinator, withholding leaky condo documents from me under the *Access to Information Act* and drafting answers for the minister to my letters and parliamentary questions on leaky condos.

Mr. Tyler's direct involvement as counsel to CMHC in a B.C. leaky condo case, his involvement in the preparation of the minister's response to my letters and his involvement in the preparation of a response to my parliamentary questions undermines and taints the administration of the *Access to Information Act* at CMHC.

At the same time, Mr. Tyler has an interest in ensuring that the complete story of CMHC's transgression remains hidden from public scrutiny. As access to information coordinator at CMHC, he is ruling as to what can be released to me on the leaky condo issue. At the same time, he is a major player in the leaky condo file at CMHC, both in making decisions and providing advice to the corporation. He can hardly put himself in the position of ruling on which of his own documents or documents in which he had an interest should be released to me.

The Information Commissioner must have authority over the administration of the Access to Information Act in any department or agency in government. There is no one in government who has a direct interest in ensuring that the *Access to*

Information Act operates effectively, except for the Information Commissioner, yet he lacks such authority.

We should remember that there is no real advantage for anyone in government to ensure that the public has access to government records. Common sense and the practice I have outlined today would suggest that there is every reason to believe that it is natural for governments to want to limit access to their records and the scrutiny that such access brings.

This access to information bill obviously needs fixing. It is a cart that is broken. The biggest problem is the failure of the government to act in a proper manner and ensure that our rights as parliamentarians are not impacted and the rights of the average citizen are not impacted by the government's desire to protect itself from criticism.