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

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**EVIDENCE**

**Thursday, April 26, 2007**

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**Chair**

**Mr. Tom Wappel**

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

Thursday, April 26, 2007

•(0905)

[English]

**The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)):** Good morning. I'd like to call the meeting to order. This is our 43rd meeting, and pursuant to Standing Order 81(4), we're considering the main estimates for 2007-08: vote 40, Office of the Information Commissioner of Canada, under Justice, which was referred to our committee on February 27, 2007.

Committee members, you will notice that there is a camera in the room. CBC requested that they be able to televise or tape this entire meeting, or whatever portion of it they want. They did it through the appropriate channels, so that's the case, that's why they're there. It's a fixed camera. They'll focus on the people who are speaking, and only the people who are speaking, or the person who is speaking—hopefully. So that's why they're there.

They can only get the back of my head anyway, and that's the worst part of me, believe me. The back is worse than the front.

We have today, from the Office of the Information Commissioner, Mr. Robert Marleau, Information Commissioner; Mr. Alan Leadbeater, deputy information commissioner, and no stranger to the committee; J.G.D. Dupuis, director general, investigations and reviews; and Ruth McEwan, director general, corporate services, corporate management branch.

You don't have to introduce them, since I just did.

Welcome. I presume you have an opening statement, and then we'll go right into questions.

Mr. Marleau, please.

**Mr. Robert Marleau (Information Commissioner, Office of the Information Commissioner of Canada):** Thank you, Mr. Chairman. It's a real pleasure for me to be here this morning to assist you today in considering the estimates of the Office of the Information Commissioner of Canada.

I will admit that I'm still near the bottom of a steep learning curve about the intricacies of the Access to Information Act and my office's role in its enforcement. In fact, this is my first appearance as Information Commissioner of Canada before your committee. However, I do have a good understanding of the role of the committee and the specific relationship that I and the other offices of Parliament have with their respective committees and with Parliament as a whole.

What I most want to say in these opening remarks is that I'm looking to this committee and to all MPs and senators to help me be the most effective Information Commissioner I can be.

It's been said that the right to know is the oxygen of democracy. Yes, there are many justifiable reasons for government secrecy, but too, there are great pressures on all governments to tolerate secrecy creep, to use secrecy as a strategic political tool and to hide behind it, sometimes to avoid embarrassment and accountability.

[Translation]

The mandate Parliament has given me, for the next seven years, is to be its agent for ensuring that governments keep the proper balance between openness and secrecy—a balance which is carefully articulated in the Access to Information Act, a balance which has stood the test of almost 24 years of time. In the coming months, if the government responds positively to the first report of the Standing Committee on Access to Information, Privacy and Ethics, members of Parliament will be called upon to scrutinize government proposals for access reform and to ensure that this law remains strong.

[English]

My priorities are set by the statute. I'm obligated to deliver to individuals through thorough and fair investigations into complaints made against government institutions. My mandate is to convince government institutions to correct any instances of excessive secrecy without the need for recourse to the courts. My pledge is to be a constructive voice of reason wherever and whenever there are debates over the proper balance between openness and secrecy in the federal government. In other words, I will not be an advocate for access requesters, nor will I be an adversary of government. I will be a servant of Parliament in the application of the ATIA and its purpose, which has been described by the Supreme Court of Canada as facilitating democracy by ensuring that citizens have the information required to participate meaningfully in the democratic process.

The core business of the Office of the Information Commissioner is investigation of complaints under section 30 of the ATIA. It is the goal of all our investigators to resolve the complaint, and they are very good at it. The volume of complaints and the length of time to complete them continue to be a concern. Last year's funding increase for investigators was a great step forward. We were unfortunately delayed because of the lack of appropriate space to house the new recruits. That's been resolved now, and we should be up and running by the summer of this year.

[Translation]

If government does not follow the Commissioner's recommendations, the next avenue of recourse is to the Federal Court of Canada. During confirmation hearings, I said to Parliament that I have, and will have, a bias against going to court. Despite my reluctance to go to court, when citizens' fundamental rights are at risk and mediation has failed, the Commissioner has no choice but to aggressively pursue the matter before the appropriate tribunal, including the Supreme Court of Canada.

[English]

Over the years, the ATIA has proven to be very robust; the jurisprudence has been largely in its favour. There will, no doubt, be hard cases that require court interpretation so as to protect the integrity of the statute and the rights it provides to Canadians, in which the court will benefit from the commissioner's views and input.

The Office of the Information Commissioner has no specific statutory audit or education mandate. Yet the pressure on my office to assist institutions is growing. We do systemic investigations and report cards. Believe it or not, many heads of agencies want to be in full compliance with the ATIA, and they look to us for advice and evaluation. The better their performance and knowledge, the fewer complaints we have to deal with. It might be better to invest in resources to advise, train, and educate than to incrementally increase the investigative budget.

The Office of the Information Commissioner and the Office of the Privacy Commissioner have, for four years now, worked with the University of Alberta on an online certificate program for ATIP officers and aspirants.

Over the past year, my office has been working with a distinguished group of access and privacy experts to develop national professional standards for access to information and privacy administrators. I have already made it a personal priority to get the Treasury Board, as the federal employer, to support the University of Alberta program and to recognize the new national standards as desirable, if not required, in its recruitment and advancement policies for ATIP officers. In the coming months, I hope to engage the standing committee on this matter and also to make it a component of any future debate on the reform of the ATIA.

As you will see from parts II and III of the estimates documentation, my office is seeking Parliament's approval in vote 40 for resources in the amount of \$6,684,000, of which \$5,278,000 is for employee salaries exclusive of employee benefits, and \$1.4 million is for the anticipated operating expenditures.

• (0910)

[Translation]

Honourable members, I am ready to answer your questions. I will endeavour to provide you with some information about who we are, what we do, how we measure our performance, what is on the horizon for us and how we have utilized our resources. You may wish to have further explanations, which we are here to give. I am confident that we will develop a fruitful relationship.

[English]

Thank you very much.

**The Chair:** Thank you very much, Commissioner.

Before we go to questions, in your handout, in the second last paragraph, the written text says, "The OIC does not anticipate seeking additional funds for 2007-2008 by way of supplementary estimates". I didn't hear you say that orally.

**Mr. Robert Marleau:** You didn't hear me say it orally, Mr. Chairman, because I was planning to keep it as an answer to a question.

**The Chair:** Then I'll ask. Are you planning at this point to seek supplementary estimates?

**Mr. Robert Marleau:** Once it's printed and said, sir, I have to stand by that statement.

**The Chair:** Thank you.

We will go to Mr. Peterson.

It's been a while since we've had witnesses, because we've been working on our other report. I'll just remind you that we'll have seven-minute rounds for the first round, and go to five-minute rounds.

It's Mr. Peterson, followed by Madame Lavallée, I expect, and possibly Monsieur Vincent.

**Hon. Jim Peterson (Willowdale, Lib.):** Thank you, Mr. Chairman.

Could I read to you from a *Globe and Mail* article of April 25:

The Harper government knew from its own officials that prisoners held by Afghan security forces faced the possibility of torture, abuse and extrajudicial killing, *The Globe and Mail* has learned.

But the government has eradicated every single reference to torture and abuse in prison from a heavily blacked-out version of a report prepared by Canadian diplomats in Kabul and released under an access-to-information request.

Initially, Ottawa denied the existence of the report...

etc.

I would ask you, sir, if you could launch an investigation immediately as to why this report was blacked out and as to why Canadians were denied access to proper information.

**Mr. Robert Marleau:** I'm informed that we have a specific complaint at this time. I'll ask the deputy commissioner to comment.

**Mr. J. Alan Leadbeater (Deputy Information Commissioner, Office of the Information Commissioner of Canada):** Mr. Peterson, as you know, we have a statutory obligation placed on us by Parliament not to disclose the details of what is ongoing. I certainly would be prepared to talk to you, or any other member, who wants to raise an issue about this. However, if someone is going to complain about the answer to an access request, it needs to be the person who made the request. Anybody has the right to make an access request. The scope of our jurisdiction is set out in section 30 of the statute. We certainly will take your representation and ask our legal services whether we have jurisdiction to do so, and we would be happy to inform you of the result.

**Hon. Jim Peterson:** Is it legal for government officials to black out a report to the extent that has been reported?

**Mr. J. Alan Leadbeater:** There are a number—13, actually—of reasons in the statute that justify secrecy. We have seen cases where one of those reasons will justify the withholding of an entire record, and we have seen cases where the withholding has been overzealous. It would require us to examine the specific case to determine whether it was improper.

• (0915)

**Hon. Jim Peterson:** I will put it to you as a hypothetical question, then. If references in a government report to human abuse such as extrajudicial executions, disappearances, torture, and detention without trial were blacked out, what could possibly be any legal justification for blacking out such reports? Would it be the security of the country? No.

**Mr. J. Alan Leadbeater:** Your question will have to be taken as rather rhetorical in the sense that our obligation is to hear both sides and make a determination. To prejudice the issue by offering a response to your question in the absence of having that balanced view, I think, would undermine our neutrality.

**Hon. Jim Peterson:** I'm asking you to speculate. Can you imagine any possible defence that could be given for blacking out such comments?

**Mr. Robert Marleau:** I think, Mr. Peterson, for us to speculate on a hypothetical case is very difficult. As the deputy commissioner said, there are some 13 exemptions in the act.

**Hon. Jim Peterson:** Sir, can you give me one of those possible exemptions that could possibly justify blacking out such comments?

**Mr. Robert Marleau:** I've not yet memorized the 13 exemptions, but it could be "relations with a foreign country"; it could be "matter under investigation". There is a whole series of them.

As the deputy commissioner said, our approach to each complaint is to hear both sides, not to prejudice the case on its prima facie presentation. The to and fro that our investigators entertain with the coordinators usually leads to resolution of the complaint. We have a very high success rate. Or, at the end of the day, it could end up in the Federal Court on a section 37 recommendation of the commissioner.

For us to speculate on a reported case that we haven't seen, I think, might undermine the perception that we approach this from an impartial stance going in and that we are—hopefully—still impartial going out.

**Hon. Jim Peterson:** Did I hear that you are looking at this issue now, or would we have to file a new request in order to have you examine the blacking out of this report?

**Mr. Robert Marleau:** As the deputy commissioner said, it would be up to thee complainant to request such a review.

**Hon. Jim Peterson:** And if that complainant does not do so, let me give notice now that we shall be filing that request.

**Mr. J. Dupuis (Director General, Investigations and Reviews, Office of the Information Commissioner of Canada):** Mr. Peterson, I'd like to add that the one you're referring to in the paper might not be exactly the one that's under investigation by our office. I know you're referring to what was in the papers yesterday and

today. I'm not saying I can link that to one that is actively with us, because that requester may not have chosen to launch a complaint with our office. It's in the papers, but he has not chosen at this time to make a complaint to our office. As the commissioner has said to you, there is one around the same subject matter that could be under investigation by our office.

**Hon. Jim Peterson:** Let me give you notice that we will be launching a request for such information.

Thank you very much.

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

Madame Lavallée.

[*Translation*]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Mr. Peterson somewhat pre-empted me. Mr. Marleau, I'm sure you recall that we met on another committee, the Finance Committee. That is why I am somewhat familiar with your area of expertise. It is also why I want to address the same issue raised by Mr. Peterson.

Indeed, we saw how the government did all it could to prevent the internal Department of Foreign Affairs and International Trade reports on torture in Afghanistan from being made public. I will ask you the same question in French; that way you can practice. First, the Conservative government denied the existence of the document, and then it was forced to do its homework. Finally, the Department of Foreign Affairs and International Trade made public a version which I would qualify as being highly censored.

I have several questions for you on this subject, mainly because access to information concerns you directly.

Here's my first question. You know, this old Conservative government—I'm sick of hearing it referred to as the new Conservative government—promised during the election campaign to implement Commissioner Gomery's recommendations by reviewing the Access to Information Act, which still hasn't happened. I must say that, unfortunately, as with every government of the last 30 years, this one also refuses to amend the current act. In fact, the government pretends to be moving forward, but obviously does not want to. Perhaps we'll see this very soon. I presented a motion to this committee almost six months ago calling on the new minister to table a draft bill to modernize the Access to Information Act. But for now, it seems that the government is refusing to do so. We'll see what happens later on. This Conservative government refuses to amend the Access to Information Act. I have the impression that this allows it to shirk its responsibilities too easily. Its attempt to suppress information these past few days is another example of that.

You gave two answers in response to Mr. Peterson's question. I don't remember who said what. One of you said that you received a complaint, and the other one said that you did not. That's what I understood. I would like you to clarify that for me.

• (0920)

**Mr. Robert Marleau:** We received a second complaint about the same subject. Is it exactly the same as the one referred to in today's newspapers? We are not sure, we would have to check. Given that a complaint is already being examined, I do not imagine that the second one would be identical to the first. An investigation is already under way, and now, there's a request in connection with a document, albeit a censored one, that has been made public by the government. I imagine that we're probably dealing with two different requests.

**Mrs. Carole Lavallée:** Last fall, our committee looked into a case where it appeared that the Prime Minister's Office had flouted the Access to Information Act. The name of an applicant who had filed a request under the access to information program was made public. The committee conducted an investigation into this matter, at the same time as your office was doing its own investigation. However, when we were ready to report our findings, we decided it would be best to wait for your report.

That said, how do you feel about a committee such as ours carrying out a parallel investigation into a matter that you are investigating as a result of having received a formal complaint?

**Mr. Robert Marleau:** The case in question was referred for investigation before I became Commissioner, although, even then, I kept abreast of current affairs. I believe it is the Privacy Commissioner's Office, and not my Office, that is investigating the matter.

However, by way of a general answer to your question, allow me to say that I am fully cognizant of the parliamentary powers of committees. It is not for a commissioner to comment on the merits of a committee decision to investigate a given matter. When a committee chooses to carry out an investigation in parallel with an investigation led by my Office, we act pursuant to our statutory mandate and the committee follows a course of action that it deems appropriate.

Obviously, the media interest surrounding a parliamentary inquiry could hamper or clash with our investigation, but it is not for the Commissioner to comment unless he is invited to do so. The committee is master of its own destiny.

**Mrs. Carole Lavallée:** Nevertheless, we are talking about two parallel investigations, which, as you rightly said, have different objectives and different *modus operandi*. You are right in saying that the media interest could perhaps hamper down certain aspects of your inquiry; however, it could also speed it up.

• (0925)

**Mr. Robert Marleau:** When I spoke about a clash, I did not necessarily mean that this was undesirable. It is more that we are subject to strict statutory obligations with regard to confidentiality, for example. Certain information could be disclosed in the course of a parliamentary inquiry, information that we would not even be allowed to comment on because of the statutory restrictions with which we must comply.

**Mrs. Carole Lavallée:** We again find ourselves in a tricky situation because the Access to Information Act has still not been modernized.

Do you not think that the case featured in the *Globe and Mail* today should spur the minister into getting his famous draft bill ready and bringing it to committee as quickly as possible, as we asked him to do?

Furthermore, I would like to take a moment to refresh everybody's memory, although not yours, as it is excellent. We asked him to table an updated and stronger Access to Information Act by December 16, 2006, not 2007. As you can see, the minister is very behind with his homework.

Would you not agree that the case featured in today's newspapers is a further sign of the pressing need for the minister to draft a new act.

**Mr. Robert Marleau:** Without having seen the details, I do not know whether I could say that the case reported in today's, or yesterday's, newspaper serves to underscore the necessity of updating the act. It is possible that it was appropriate to censor the sections in question and that it was not an over-zealous application of the act. It is also possible that the opposite is true. I cannot comment without being apprised of the details.

To return to your question on the Access to Information Act, I cannot confirm whether the government intends to undertake a substantive review of the act. I can however tell you that my first move as Commissioner was to meet with the justice minister and offer him our full support in reviewing the act and preparing the groundwork before tabling a draft with the committee. The Deputy Minister of Justice and I agreed to review both the bill that my predecessor tabled and the discussion paper the minister tabled last April in order to establish areas of agreement: we set up a task force, which began work last week. We also want to evaluate whether Bill C-2 has resolved certain issues, as well as try to fill in some of the missing pieces, regarding matters that were addressed neither by my predecessor nor by the minister's discussion paper.

We hope to produce a discussion paper that will help both parties and will perhaps result in the committee being asked to study a draft bill. From our point of view, it is also a way of initiating a dialogue on administrative matters with the Department of Justice so that we have a better awareness of one another's situation when we have to take a public stance on issues.

[English]

**The Chair:** *Merci.*

Mr. Wallace.

**Mr. Mike Wallace (Burlington, CPC):** Thank you, Mr. Chairman. I see my colleagues from across the way.... Today's meeting was to deal with estimates, but they've gotten sidetracked a little bit.

Just for my understanding, before I ask you about the estimates, each department—and I think the Honourable Mr. Peterson would know this—has employees who deal with the access to information issues, and they make the decisions on what meets those criteria or not. Is that an accurate statement?

**Mr. Robert Marleau:** Yes. They're called access to information and privacy coordinators.

**Mr. Mike Wallace:** Right. Are they trained by you, by your department, or do you provide them information on what is...?

**Mr. Robert Marleau:** No, they're employees of the individual departments or agencies that they work for, and so they're not trained by us. There may be some osmosis training by—

**Mr. Mike Wallace:** But their sole responsibility is to decide whether they meet those criteria or not. Is that correct?

• (0930)

**Mr. Robert Marleau:** That's correct.

**Mr. Mike Wallace:** Okay. Thank you.

Back to the estimates, which is why we're here today. If I did the math right, and you can tell me if I'm wrong here, 2007-08 and then 2008-09—I'm doing it from your estimates book that you provided us with, through the blue books—we're going down in actual fact over time, and in actual fact we're going down in human resources from 90 to 82 over the next number of years. Is that because you think you'll be able to catch up on the backlog, or why is the number going down?

**Mr. Robert Marleau:** The reason the number is going down this year is that we were given, in the previous year, a one-time funding to cover some IT security and office one-time-cost set-up, as well as some professional service money that was attached to the information technology project.

**Mr. Mike Wallace:** Okay. You also mentioned...and I know we had a discussion about this last year, and I know you weren't here. But the commissioner was not able to move on hiring staff and getting locations for people. You indicated in your opening, I think, that this has been resolved. Is that an accurate statement? Have those people started to be hired?

**Mr. Robert Marleau:** The statement was accurate. We have obtained, through the usual applications to Public Works, space on the seventh floor in the same building in order to house all of the new recruits. We did hire five special backlog investigators last year. That's all we could house, and now the competition process is under way to hire the balance.

**Mr. Mike Wallace:** On the backlog piece, it looks like it's going down some, which I think is good. And there are guidelines—90 days for some, 30 days for administrative ones. What's the longest one that's behind? Where are we on that piece?

**Mr. Robert Marleau:** We've made some progress. Because of the five new recruits, we're down almost 250—I think 241 is the figure—of catch-up backlog cases. You were also told last year that the investigative workload for one investigator is approximately 45 investigations per year, so if you multiply 5 by 45, the 250 figure is pretty close to the performance standard that we have set. And so we're making some gains in the backlog.

As to what kinds of cases and how far behind they are, I'm really not able to answer that directly, so I'll ask Mr. Dupuis to comment.

**Mr. J. Dupuis:** If your question is whether we have cases past 90 days, the answer is yes. Do we have cases one year old? The answer is yes. And the oldest is probably a year and a half.

**Mr. Mike Wallace:** Okay. I appreciate that.

You did mention to the chair that you're not planning on any supplementary requests, but on page 10 of this report under "other items", it says "as a result, planned expenditures for 2007-08 do not cover any specific changes with regard to the Federal Accountability

Act". But I think we've doubled in the Accountability Act the number of people, the number of organizations, covered by... Isn't that going to drive your costs up? I don't understand how you can say on one hand things are going down, and then we add workload and nothing is changing.

**Mr. Robert Marleau:** We still don't have a handle on what the impact is going to be of five foundations, the officers of Parliament and some 150—yes, that's us, officers of Parliament—extra crown corporations and subsidiaries. It's very hard to know where that will go.

We've been given numbers by Treasury Board. They've looked across government in terms of the application of the FAA, and if you look at page 8 in part III of the estimates, in table 1 you'll see under "Other", \$1.582 million. This is kind of an action plan on the FAA that was given to us by Treasury Board. This is a Treasury Board estimate of what we might need going forward. What we're saying is that for 2007-08 we don't plan to use any of that money. We may be back as part of the mains next year when we have a little more data, or maybe some kind of curve on the impact that would be broadening—

**Mr. Mike Wallace:** I appreciate that.

I have one more question. I think I am entitled to one more. This performance report here, which I found interesting, is dated March 31, 2006. It was submitted in March 2006 and then dated by the deputy commissioner on October 12, 2006, and I am seeing it and we're dealing with it now.

I find this information old. Is there a way of making it more relevant by getting it to us sooner?

• (0935)

**Mr. Robert Marleau:** The answer to that, sir, is that what you're getting at this time on the supply cycle is part II and part III of the estimates. The performance report that you just referred to actually gets tabled in the House in the early fall. So there's no way we can get it to you any earlier.

**Mr. Mike Wallace:** Should it be on an agenda for us to discuss with you in the fall, after it's tabled?

**Mr. Robert Marleau:** In another life I was also concerned about the delays of information coming to Parliament, and I even made recommendations that, as part of the supply process in relationship with Treasury Board, the DPRs should actually be ready by June and given to Parliament.

Within range, ideally, they should be to you before you pass the estimates of the subsequent year. But I gather that for government to extract all of that information in time to table it in June is somewhat difficult. So we're caught in that cycle, as is any other government agency or department.

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

Mr. Dhaliwal, followed by Mr. Tilson, followed by Monsieur Vincent, followed by Mr. Van Kesteren.

**Mr. Sukh Dhaliwal (Newton—North Delta, Lib.):** Thank you, Mr. Chair.

Thank you, Commissioner, and your team, for coming out here today.

I would not agree with my colleague Mr. Wallace that you're here only to deal with the estimates. In fact, an important issue that my colleague the Honourable Peterson mentioned is the tortures in Afghanistan—

**Mr. Mike Wallace:** On a point of order, Mr. Chair, if you read the actual agenda for this meeting, it says “Pursuant to Standing Order... Main Estimates 2007-2008: Vote 40”—

**Mr. Sukh Dhaliwal:** Do I have the floor, Mr. Chair?

**The Chair:** Yes, you have the floor. It's not a point of order.

**Mr. Sukh Dhaliwal:** Thank you.

I would like to follow up on that one as well, Mr. Commissioner.

Yesterday in the House of Commons, Minister MacKay claimed that he never read the report that is critical of the most important military foreign policy and priorities of this government. Can you tell us whether your investigation will look at whether anyone in his office reviewed the report and also the ATIP requests?

Also, can you tell us that you will investigate whether someone has looked at this report and who has given instructions to black out the report as well?

**Mr. Robert Marleau:** Mr. Chairman, I beg your indulgence, I'm not trying to avoid answering the question. As I said—

**The Chair:** Maybe you could walk us through a typical investigation and how it would take place.

**Mr. Robert Marleau:** Exactly. That's just about what I was going to do. I just wanted to preface that it wasn't in answer avoidance. As I said earlier, and it was confirmed by the deputy commissioner, we are prohibited by the statute to comment on any details of an investigation, even after the investigation is over.

As for a typical investigation, a typical complaint comes to our office and we evaluate it. There's a conversation with the requester to clarify it. It is sometimes narrow, because sometimes the requester isn't quite sure what they're asking for. If we decide to go ahead at the request of the complainant, we'll then assign an investigator.

The investigator will look at the issues, the facts, the documents. He may indeed talk to people in the minister's office, or to anyone who was involved with the disclosure or non-disclosure of the document. The investigator then formulates an opinion, which then comes to the director of investigations, who will look at it. He may go back and say, look, our investigator has made this recommendation, but you don't seem to be in agreement. Could we try again as a mediation process? Mr. Dupuis will try to get the department to comply, from our perspective. We'll also take representations from the requester.

At the end of the day, there's a decision that has to be made; it's either a section 35 or section 37 report. Ultimately it can end up in the Federal Court. If I recommend disclosure, because I have no powers to order disclosure, it would be up to the court to decide if it should be disclosed or not.

●(0940)

**Mr. Sukh Dhaliwal:** Can you compel, Mr. Commissioner, the government to immediately table this report into the House?

**Mr. Robert Marleau:** I have no order-making powers of any kind.

**Mr. J. Alan Leadbeater:** I will just clarify. In our office we will definitely see any document the government wishes to keep secret, unless it's a cabinet confidence. We will see the document and we will ask who made the decision to keep it secret. When we find out who made the decision, we'll ask them why, and we'll measure that against the exemptions in the statute. We can order the document produced to us, but not to a parliamentary committee or to be made public.

**Mr. Sukh Dhaliwal:** In answer to my question, you will have access to whether the officials looked at the file—and if they did—and to who gave him or her the orders to whitewash that report.

**Mr. J. Alan Leadbeater:** Without buying into any of the particular language in your question, we cannot assess whether the reasons justify secrecy until we find out who made the decision. Yes, our first step is, who made this decision? That is always part of our investigation.

**Mr. Robert Marleau:** They have to invoke a specific exemption under the statute. Apart from the practice in our office, there's also a lot of jurisprudence around all of those exemptions, whether they're mandatory or discretionary.

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

It's pretty clear from a procedural point of view. You get a complaint, let's say hypothetically, about the items that are in the newspaper. You actually are able to see the uncensored document in its entirety. You discuss with the relevant person who made the decision to censor it why they made the decision to censor it and what they censored. You measure that against the standards in the act.

Then what happens, once you've come to a conclusion?

**Mr. J. Alan Leadbeater:** If we disagree with secrecy, we will recommend to the department that the document be disclosed. If we agree with secrecy, we will tell the complainant that we agree with the department. Either way, the next step is that either party can go to the Federal Court and have the Federal Court make a decision.

**The Chair:** Thank you.

Mr. Tilson.

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



The references to the Federal Accountability Act, which you've already commented on, to some degree, with the actual estimates on section 4 dealing with "Other".... The last sentence reads: As a result, planned expenditures for 2007-2008 and 2008-2009 do not cover any specific spending commitments to manage implementation of the Federal Accountability Act.

I think in the question to Mr. Wallace you referred to the amount that is in section 3 as being put there by Treasury Board.

**Mr. Robert Marleau:** We put it in part III on a recommendation from Treasury Board.

**Mr. David Tilson:** I just want to be clear. Your commission has no program planning at all for this period of time with respect to the Accountability Act.

**Mr. Robert Marleau:** No, sir. We were ready for the implementation of the Accountability Act both internally and in the context of the expanded scope. Internally we now have an ATIP coordinator because we're subject to the act. We didn't rush out to hire a whole bunch more investigators, anticipating that we would get  $x$  number of complaints.

The Treasury Board estimate is that we will require 12 more full-time equivalents. That \$1.5 million is almost all for salaries. We're somewhat skeptical and think that figure is too high.

**Mr. David Tilson:** It's good news to hear that, Mr. Commissioner. Normally it's the other way.

**Mr. Robert Marleau:** We anticipate we will need three or four. We could be wrong on that, because a lot of new organizations out there are staring at the statute for the first time, so there may be a bit of a bulge. But once they get up to speed, we're probably looking at the same kind of curve as we had in the past. That's our anticipation.

• (0945)

**Mr. J. Alan Leadbeater:** Can I just jump in here, in case you're giving away the shop, Commissioner?

On the reason you're not seeing it this year, Mr. Tilson, there are 16 people we won't be able to hire until August, and we think that the salaries for 16 people between now and August will cover our startup costs for 2007-08. For out years—at tab 4 in the materials we gave you—we're looking at an additional \$1.2 million on an ongoing basis. So we are expecting to have additional costs, but because of our delay in implementing the money we got last year, we can cover the startup costs this year.

We'll be asking for it in the main estimates next year, but for this year we think we can husband those resources that way.

**Mr. David Tilson:** Perhaps I could continue with Mr. Leadbeater, because he has been with the commission awhile.

I got the impression, listening to the former commissioner, that things weren't always well between the commission and the Treasury Board. You were having problems, which was why you got the one-shot funding. Has that improved, and can you tell us how that has improved?

**Mr. J. Alan Leadbeater:** The creation of the ad hoc parliamentary advisory panel on the funding of officers of Parliament has had enormously beneficial effects. Its mere existence

means that the Treasury Board and our office tend to come to agreement more easily on resource needs, knowing that at the end of the day there's a referee that is not the Treasury Board minister. Since the first meeting of the advisory panel for our estimates in the fall of 2005, we have had a very good working relationship with our Treasury Board officials.

**Mr. David Tilson:** This committee spent a lot of time discussing that panel. Has it been working for a year?

**Mr. J. Alan Leadbeater:** It started in the fall of 2005.

**Mr. David Tilson:** Do you have any suggestions as to improvements?

**Mr. J. Alan Leadbeater:** I'm going to turn this back over to Mr. Marleau, who was very active in its design, but I will simply say one thing.

We have not engaged in the evaluation exercise of this, but we hope to do it in the fall this year. Part of the design was to have an evaluation where all the officers of Parliament would say how they experienced it and Treasury Board would say how they experienced it. I know that members of the panel are wondering how it fits with these standing committees, but at this point we just haven't done the evaluation exercise.

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

Monsieur Vincent.

[*Translation*]

**Mr. Robert Vincent (Shefford, BQ):** Thank you, Mr. Chairman.

Mr. Marleau, for how long have you held this position? I believe it has been for a year.

**Mr. Robert Marleau:** I took up the position on January 29, 2007, approximately three months ago.

**Mr. Robert Vincent:** What has struck you about the Office of the Information Commissioner over the past three months? What should we improve or change?

**Mr. Robert Marleau:** Are you talking about the Office itself or about my responsibilities as a whole?

**Mr. Robert Vincent:** Your responsibilities as a whole.

**Mr. Robert Marleau:** I spent the first 30 days, virtually the whole of February, studying the substantive issues surrounding the debate on the bill the committee recommended to the minister. I also presented my credentials to the lead ministers.

My priority is to develop, together with Treasury Board, training and performance standards for ATIP coordinators in the various departments. I firmly believe that having recognized professionals in all the departments will allow for a better understanding and application of the act which, in turn, will reduce the number of complaints.

That is why I spoke about the University of Alberta program, which offers an online certificate program in both official languages. It is the one that I will recommend to Treasury Board.

Our priorities are the same as those set out in the act.

• (0950)

**Mr. Robert Vincent:** I do not want to hear about the overall priorities, I want to hear about your priorities. We heard that you are 16 investigators short. Is there a personnel shortage? Are there too many investigations? Do you receive many complaints? As you go about your duties, what have you observed about the department?

I want to your vision, not the vision of the two people sitting next to you. I understand that they brief you and guide you, but I want to know what it is that has struck you personally.

**Mr. Robert Marleau:** I have been very impressed by the quality of the work carried out by the investigators. We have developed an action plan to address the backlog, not only...

**Mr. Robert Vincent:** I want to know whether you personally have noticed that there is a staff shortage. Is your office overstuffed? Do you receive too many complaints? Are there too many investigations being conducted? I imagine that some employees have said that they are snowed under and that you need to hire more investigators. Do you agree with their assessment of the situation? Could the investigations be handled differently, through mediation or a similar process, for example? Do too many cases proceed to the investigation stage? What is your opinion?

**Mr. Robert Marleau:** I share the view of my predecessor. For a number of years, the office did not get enough funding to keep on top of its workload and address the backlog. The committee debated this point last year. Parliament approved additional funding. However, due to a lack of office space, we were unable to hire the 16 or 18 investigators for whom we had been granted funding. A solution was found just as I took up my position: we are going to be able to house our new recruits on the 7th floor of our building. The aim of the three-year plan is to clear the backlog and, in spite of a slight delay, we should be able to do that right on schedule.

**Mr. Robert Vincent:** Do you think that it would be possible to amend the act in order to reduce the number of investigations? Would it be possible to incorporate a degree of flexibility to avoid systematic recourse to investigations?

You said that an additional 16 to 18 investigators were required, so how many do you already have on staff? How many complaints do your offices investigate each year? How many complaints do investigators handle? Do they deal with 200 a year or with ten?

**Mr. Robert Marleau:** This year, we have started 3,527 investigations in all. We have completed 1,863 of them and, as I said earlier, we have addressed 241 of the backlogged cases. Our hands are tied: the act stipulates that all complaints must be investigated. We therefore have no control over the number of complaints we investigate. For a number of years we did not have enough resources; however, fortunately, Parliament provided us with additional resources last year.

• (0955)

**Mr. Robert Vincent:** Are the investigations...

**The Chair:** You are out of time, Mr. Vincent.

[English]

We'll go to Mr. Van Kesteren.

**Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC):** If time permits, I'll split my time with my colleague.

I'm following along the lines of Mr. Vincent and Mr. Marleau.

It's good to have you back here. I'm glad to hear that you're settling into the job. And I was really encouraged when I read your opening statement. You state that your priorities are set by statute, but that your mandate is to convince government institutions—these are noble terms, and I mean that, too; when I read this, I thought, this is good—to correct any instances of excessive secrecy without the need for recourse to the courts.

Then if I go down a little farther, you say, "I will not be an advocate for access requesters or an adversary of government". I take that to mean that there must be a lot of frivolous cases. And I'm wondering—and I know some of my colleagues are going to ask you meatier questions themselves about the budget—whether a lot of the costs that we find in your office are related to frivolous cases. Can you weed those out and, as a result, speed up the process and even make it more efficient?

That's the only question I wanted to ask you.

**Mr. Robert Marleau:** I will perhaps ask the deputy commissioner to comment after I make an initial comment, Mr. Chairman.

In the dialogue that takes place with the complainants, if it is frivolous, they can be talked out of it, and quite often, the dialogue with the complainants will make the scope of a potential investigation a lot narrower. So we do everything at the front end to try to make sure the complainant understands what he or she is asking for and what the scope of the statute is, because there is often not a lot of good understanding of what can be asked for and why it can be asked for.

But on the comment as to whether many of them are frivolous, I'd have to ask the deputy commissioner to respond. I don't get that sense early on in the game, but I'll let Mr. Leadbeater comment.

**Mr. J. Alan Leadbeater:** It's always in the eye of the beholder, isn't it? But in about half the complaints we get about excessive secrecy we come down on the side of the complainant and in half we come down on the side of the government institution. Of the ones where we side with the complainant, 99% we resolve with the government institution without the need to go to court. So the process actually works as a pretty good alternate dispute resolution mechanism.

**Mr. Dave Van Kesteren:** The other thing that jumped out at me was the fact that you're partnering with the University of Alberta. You mentioned that before, and that looks like a wonderful idea. Was there a program before that trained people for your office, or is this a new project?

**Mr. Robert Marleau:** There were no formal programs. This began in 2003. As a matter of fact, for a brief time, while I was interim Privacy Commissioner, I enjoined with then Commissioner Reid in supporting this program, and my successor there followed through on it.

It's a new program. It's offered online. It has five modules, I believe, that are needed for certification, and we just had some 40 students write their exams in our office a few weekends ago. I think there are more than 500 graduates of the program now across the country.

Tying into what Mr. Vincent was saying when he was asking me if there was something I wanted to change in the law, this is a dimension of it. I said in my remarks that I don't have an education mandate, but I think, like the Privacy Commissioner, that we should be considering an education and training mandate for access to make it better understood, and hopefully, to reduce complaints.

**Mr. Dave Van Kesteren:** How long is that program and what does it cost? I'm just curious.

**Mr. Robert Marleau:** I'll ask Monsieur Dupuis to comment on those details.

**Mr. J. Dupuis:** I believe the program is something like \$400 per course. It's the same thing as a university course in the sense that it's 35 hours of lecture and 90 hours of studies to get them through. Normally students will take one course per semester. Some have taken two. There are even good stories, where one gentleman came in and hired full-time professors so that he could get it all through in five courses as he's going through university. So it is a growth industry.

I'm corrected. It's \$700 now per course. We started out at \$400.

Most departments are paying those who wish to apply. It's not coming from the students; the government is supporting that. In our office, we support everyone who takes it.

We have 12 graduates in our office now, and I believe there are about 380 people in government now, across Canada, taking the courses. So it's provincial and federal. It's linked for both.

•(1000)

**Mr. Dave Van Kesteren:** Good. Thank you very much.

**The Chair:** Thank you.

Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** Thank you, Chairman.

Thank you, Mr. Marleau. It's very fitting that you're here today, because I can tell you that some members of this access to information committee are reeling with shock over what we believe to be some of the most egregious and blatant violations of our freedom of information system that we've ever seen exposed publicly. I know you've now received three formal complaints about this same issue, one coming from the NDP, Dawn Black. I have her letter of complaint here.

This is not only the most blatant and serious violation we've seen, but the subject matter is so important, on a national level and international level, because we're being accused of violating the Geneva Convention by some of the information that has been blacked out. It's clear that the government has been busted, with black ink on its fingers, for blacking out sections of this report—36 sections of a 20-page report, all but two under subsection 15(1) of the Access to Information Act, which we supervise.

In your understanding of subsection 15(1), are you allowed to black out basic information such as...? Let me read one line that has been blacked out that we now know is in this report and ask you if you think this would qualify under subsection 15(1). It says here, "military, intelligence and police forces have been accused of involvement in arbitrary arrest, kidnapping extortion, torture and extrajudicial killing" of criminal suspects.

Why would that information fit under the category of subsection 15(1), about international affairs, etc.? Is that the kind of thing that you believe is properly excluded under subsection 15(1)?

**Mr. Robert Marleau:** Mr. Chairman, with all respect, again, I did say earlier that it is very difficult for us either to comment on an investigation that we have ongoing, because it's required to be in private and kept confidential, or to speculate on what's out in the media, not knowing whether it is before us, for that matter.

**Mr. Pat Martin:** Well, sir, you've been staying away from those specifics. It's the optics. Do you think it's proper that entire sections can be categorized under the rubric of subsection 15(1)? Staying away from the specifics, in a nutshell, what is your reading on what would be properly excluded under subsection 15(1)?

**Mr. Robert Marleau:** I'll ask the deputy commissioner to comment in a minute, if you want to be specific on subsection 15(1).

But as part of the process when we get a complaint, of course, when there has been severance from the document, we not only challenge it but try to understand it, and we may agree or we may disagree with the government. As I said earlier, there is jurisprudence attached some of these interpretations. Some of the exemptions are mandatory. Some are discretionary. But in terms of giving you a specific example, without having a specific case it's very difficult.

But I'll ask the deputy commissioner to comment.

**Mr. Pat Martin:** I would urge you to try to be specific, because we're at a crisis point here. Some of us believe that access to information is the oxygen that democracy breathes, and that we've never seen an example so egregious since I've been involved, or since this newly formed committee has been studying the issues of access to information. It's actually rare that the government gets busted so directly and so thoroughly and so....

I'm surprised they're not embarrassed over there. Maybe that's why they're being quiet.

•(1005)

**Mr. David Tilson:** Do you want us to heckle you? I'm right on the edge of heckling you, because what you're talking about is a lot of nonsense.

**Mr. Pat Martin:** No, it's not nonsense. You will rue the day you said that. I think you'd better keep quiet about this, because you should be embarrassed.

**The Chair:** Mr. Martin, you opened yourself up to an attack, but I would ask everybody to just cool it.

Can you wrap up your question, Mr. Martin?

**Mr. Pat Martin:** This does all gear around subsection 15(1). It would be helpful, I suppose, while we have you here, to know in a nutshell what properly can be deleted under that section and what you believe might be overstepping that.

**Mr. J. Alan Leadbeater:** Mr. Martin, that is an interesting section for a couple of reasons.

First of all, it is discretionary. In other words, when we investigate a discretionary exemption, we require the head of that government institution to explain what factors, pro and con disclosure, were weighed. Were they the right factors? Were they given the right weight?

It is also—

**Mr. Pat Martin:** Mr. Leadbeater, I don't want to interrupt, but who would you ask those questions of?

**Mr. J. Alan Leadbeater:** It would be whoever made the decision.

**Mr. Pat Martin:** I see; you will have to know, someday, who actually put the black felt marker to the paper.

**The Chair:** Mr. Martin, I know that you came in late. There were two previous questioners on this issue, and that question was specifically answered in the affirmative. Okay?

Mr. Leadbeater, could you conclude your answer on subsection 15 (1)?

**Mr. J. Alan Leadbeater:** The second interesting thing about that exemption is that it contains an injury test: “could reasonably be expected to be injurious”. That, the courts have said, must be not speculative. It has to be a reasonable expectation at the level of a probability, not a possibility, and the burden to demonstrate that lies on the government institution that claimed the exemption; it does not lie on the requester.

Those are the tests that we would be—

**Mr. Pat Martin:** Saving the government from being embarrassed is not one of them.

**The Chair:** I'm sorry, you're out of time, Mr. Martin. You can come back for another round, if you like.

I'm going to take a round.

Mr. Marleau, I received this document: “Office of the Information Commissioner of Canada, April 26, 2007”. I hope you're familiar with it. I found it very interesting and useful. I just have a couple of quick comments and observations.

On page 1, just so that I understand it, there is a flow chart, and there you are, and there is a figure. Is that your salary?

**Mr. Robert Marleau:** No, it's my salary plus some operating costs in my office.

**The Chair:** Does it include a full-time equivalent employee? What does that “1 FTE” mean?

**Mr. Robert Marleau:** I am the one FTE, sir. It's my salary, plus travel and operating costs directly attributable to my responsibility centre.

**The Chair:** Well, I've never seen anything so detailed so far. I want to congratulate you for coming forward. I'm not even going to ask any further questions. That's enough for me for this year.

It was very helpful—to me, anyway—that you identified five specific things under “What Do We Do?” We've been talking about this, because in the blue books here, on page 3, you talk about striving to reduce the number of access to information requests and say that you're going to do this in three ways, including educating managers in the federal government.

On page 3 you also mention trying to develop an informed and well-trained federal workforce. I think that's a very good thing, because people who are properly educated as to the Access to Information Act will, we hope, make consistent and statutorily correct decisions when they're making their decisions as to what should or should not be blocked out.

This brings me to what's been questioned by Mr. Van Kesteren, this program you're involved in. I'm going around this the long way. You indicated that you really have no education mandate, yet you're in effect undertaking an education mandate, whether you have it or not.

Then back to Monsieur Vincent. When you got to Mr. Van Kesteren, you more or less suggested to us that if we're studying access to information, it might be a good idea for us to consider recommending that you have an education mandate, and obviously that would clearly require further funds, etc. Am I right in thinking that's where you'd like to see us go, and that's where you think the Office of the Information Commissioner should go, in terms of educating the ATIP officers around town?

• (1010)

**Mr. Robert Marleau:** I would not want, Mr. Chairman, the responsibility for actually training and educating the ATIP coordinators. They are employees of the federal government, and Treasury Board has that mandate. We do some education through our reviews. We do two kinds of investigations, one following complaints, and then initiated reviews; and through that process, when we assess the department's performance, there's a lot of educating, if you like, going on, and we're going to continue doing that.

If the act were to be opened up, it would be one of my recommendations that we be given an education mandate on the advocacy side of education. We've done, I think, quite a bit in collaboration with the Privacy Commissioner and the University of Alberta with existing resources, with very minor investments on our part—mostly intellectual—on top of the duties my officers have.

If I can just make a parallel here with internal audit, the Government of Canada, Treasury Board, has set standards for recruitment of internal auditors. They set standards for recruitment of financial officers, and certification is required. I believe the same thing should apply to ATI coordinators, so that a deputy minister who gets a report from his coordinator's office that says "This has to be divulged" can look at that report with the same kind of confidence as if he were getting it from an SFO or from an internal auditor.

**The Chair:** Not to beat it to death, but in your remarks today you said it might be a better investment of resources to advise, train, and educate than to incrementally increase the investigative budget. I certainly agree with that. So a possible recommendation we might consider in the future would be that Treasury Board ensure that it sets up this kind of set-up that you're suggesting, or some set-up whereby the ATIP officers would take some courses or refresher courses or continuing education, whatever the case may be.

**Mr. Robert Marleau:** I've already met with the President of the Treasury Board, Mr. Toews, and I've given him the prospectus of the University of Alberta. He was very receptive in a conversation. I've subsequently met with the Secretary of the Treasury Board, who has also agreed to follow up on this.

**The Chair:** Thank you. My time is up on this round.

Mr. Stanton.

**Mr. Bruce Stanton (Simcoe North, CPC):** Thank you, Mr. Chair.

Thank you to the team here today from the Office of the Information Commissioner.

I just have one question, because all the questions I had noted have come out from other members, and they've been answered quite well.

I have to say, in regard to the progress you've made this last year, that the team in your office has done a tremendous job in dealing with a high volume of investigations and whittling down the backlog, getting out in front of this in terms of education. So I really hand it to you, and I wish you well in the year ahead as you continue to pursue these important objectives.

I'd also say that it gives me great confidence in your abilities—all your team—in the sense that you faced some pretty pointed questions here this morning and answered them with great professionalism. So I take some confidence in the fact that you're on top of this and you understand well and execute the objective role of this office of Parliament in keeping with those important tenets of both access to information and privacy, for the right reasons, in the execution of your work.

Now to my question. As the chairman also mentioned, the report you submitted here was, I thought, very well done. One of the items I came across, though, was in respect to your role. I was a bit surprised—I think it was a bit towards the end of the summer—when we received a special report to Parliament from the Office of the Information Commissioner. It was a rather comprehensive précis on the proposed amendments to the Federal Accountability Act, a very thorough document, set out at a time when the office was backlogged and going through some administrative pressures.

How does producing a document and a study like that fit into the mandate? Presumably this was an offer of advice and suggestion to Parliament. I don't know, I can't say what its origins were. Is that something that your office would just decide to do? Where does that fit into the mandate of the office, without being asked to jump into providing this kind of commentary?

• (1015)

**Mr. Robert Marleau:** The statute provides for the commissioner to report to Parliament on an annual basis on section 38. Section 39 also provides for the commissioner to choose to report on a matter that he or she deems to be urgent or of great importance that Parliament should be seized of.

Obviously I'm not in a position to comment on the origins and the rationale. The report is there. I believe my predecessor explained in the preface why he was doing it. But that was initiated under the provisions of section 39.

**Mr. Bruce Stanton:** If I could summarize then, it's really much in the same vein as the report to Parliament that's done annually, but because of the timing, this was almost like an addendum to that reporting responsibility.

**Mr. Robert Marleau:** Yes. If I remember from reading the report, and you can correct me if I'm wrong, the former commissioner said he was reporting in late May/June because of the likelihood of Bill C-2 being passed before this summer. So I think probably, in his perspective and the timeline, that's why he chose that particular timing.

**Mr. Bruce Stanton:** That's all I have, Mr. Chair. Thank you.

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

Mr. Dhaliwal, followed by Mr. Wallace.

**Mr. Sukh Dhaliwal:** Thank you, Mr. Chair.

I have just a brief comment on what Mr. Martin said. I can tell you about the Canadian reputation. When I chose to be Canadian, by choice, pogrom was happening in India in those days, with torture and manslaughter. So I can see how important these Canadian values are. And in fact, this was a very important issue that the opposition members didn't want to listen to.

But back to the commissioner here....

**Mr. David Tilson:** You're the opposition, we're the government. I just wanted to remind you of that.

**Hon. Jim Peterson:** Well, you're in opposition to all that is right and proper and just. That's what he meant.

**Mr. Sukh Dhaliwal:** Okay.

Anyway, Mr. Commissioner, when I look at three months in the office, it's a tremendous leap; you're doing a good job. In fact, contrary to the Conservative government, when people are feeling too tired and they're still claiming to be the new government, well....

Anyway, you have said there is a backlog of about 1,000 in your office. Is it true?

**The Chair:** This document here says 1,059 investigations are in backlog status.

**Mr. J. Alan Leadbeater:** These figures are changing every day, but it's 1,057 at the moment.

**Mr. Sukh Dhaliwal:** You also mentioned you have taken care of about 290 backlog complaints.

**Mr. Robert Marleau:** Yes, 241.

**Mr. Sukh Dhaliwal:** What kind of additional resources will it take to clean up this backlog, or do you think it's not possible to clean up the backlog?

**Mr. Robert Marleau:** We will not be asking for any more resources than those that were approved by Parliament last year. We've hired five, we've approved 18, and we have 13 for which we have open competitions now. We hope to house them by August.

I would like to say that we can make up the lost time. My team would probably not agree with me, but we will strive to make up the lost time. And I should add that at the end of the three years, these were conditional increases for the backlog only. Eight of those investigators will be released.

**Mr. Sukh Dhaliwal:** Are there any employees you see leaving the department for some reason, or is it pretty well stable right now?

**Mr. Robert Marleau:** Being there now, my impression is that it's a very happy little crew. Nobody is jumping out the windows. They're working very hard. They get a lot of satisfaction in what they do. We do resolve 99% of the complaints, and they've had some extensive training—that I attended early on in my mandate—on mediation rather than investigation.

• (1020)

**Mr. Sukh Dhaliwal:** The employees you're thinking to house by August, will they be fully trained, or do you have to provide the training in-house?

**Mr. Robert Marleau:** We will have to train them. They'll be paired with experienced investigators, and we will train them. We can also reassign within our experienced staff. And some of them will come with skill sets. That's part of the competition process.

**Mr. Sukh Dhaliwal:** What is causing this delay until August? Why don't you do it right away?

**Mr. Robert Marleau:** We had a problem getting the space to house them. Even though Parliament made a decision to grant the money, there just wasn't the space in the building. It has been established by Public Works that someone is coming to a lease end on August 1. We've made a business case for that space, and I believe it's been agreed to formally.

**Mr. Sukh Dhaliwal:** Thank you, Mr. Chair.

Does Mr. Peterson want to add something?

**Hon. Jim Peterson:** No, but thank you.

**The Chair:** Thank you.

Mr. Wallace.

**Mr. Mike Wallace:** Thank you.

I also read the April 26 document you provided, and it's excellent. I have a few questions from it, if you don't mind.

We'll start with some numbers on page 6, where you're talking about internal audit. Is that one person, a couple of people, or what? I'm assuming there's no internal auditor now and you want to put one on staff. Is that what I'm to read on this page?

**Mr. Robert Marleau:** It's going to represent two full-time equivalents and some consulting money. We just can't justify having that many more resources. There are two—

**Mr. Mike Wallace:** This is the result of the government's Federal Accountability Act that's been passed, correct?

**Mr. Robert Marleau:** Yes.

**Mr. Mike Wallace:** We want higher financial standards by having internal audits, including in your department?

**Mr. Robert Marleau:** It flows from the internal audit policy of the Treasury Board, yes.

**Mr. Mike Wallace:** Great.

Turning to page 3, there are two things I want to talk about. The first concerns the Privacy Act.

At this committee, Mr. Marleau, and maybe you can help us with this a little bit, I think we have made a decision that holds. In the fall we might embark on looking at the Privacy Act as a major study for this committee.

Of course, you had a previous hat on, but from the access to information piece, do you think it's a good idea for us? Is it time for it to be reviewed by this committee? Do you have any comments to that effect?

**Mr. Robert Marleau:** I can only echo my three predecessors and say that it's long overdue. There should be provided in the act, I think, a timely requirement for a parliamentary review....

Was that the Privacy Act or the access act?

**Mr. Mike Wallace:** Privacy.

**Mr. Robert Marleau:** Oh, I'm sorry, sir.

Yes, from my previous experience, even after six months' interim, I remember writing a letter to the President of the Treasury Board recommending that the Privacy Act be opened up as quickly as possible.

**Mr. Mike Wallace:** So you would agree that this committee putting that on the agenda for extensive study—we agreed to it as of the last meeting—is the proper approach.

**Mr. Robert Marleau:** I don't know what the commissioner has told you, but in my view as a former commissioner, it's overdue.

**Mr. Mike Wallace:** Okay. Because it will have some effect on access to information issues, I'm assuming. Or is that not correct?

**Mr. Robert Marleau:** It could.

**Mr. Mike Wallace:** Okay.

At the bottom of the page, you talk about report cards. Can you explain to me what they are? Are they public? Do we see them? Or who sees them? I don't understand what exactly that is.

**Mr. Robert Marleau:** Report cards are the reviews we do of the compliance of government departments with the timelines, essentially the timelines that are provided by the statute. We do a number of them every year, and we do follow-ups in subsequent years. They're published in our annual report, which will be coming out in a little more than a month's time.

The departments are given a grade—A, B, C, D, E, F—in terms of their performance.

**Mr. Mike Wallace:** Is it just a grade, or are there suggestions on how to improve in this report card?

**Mr. Robert Marleau:** As part of the systemic review we do with a department, there's usually an agreed-upon action plan for improvement that we tend to review. But it's not really an audit. It's a form of an audit, if you like.

• (1025)

**Mr. Mike Wallace:** So it's an operational-type audit.

**Mr. Robert Marleau:** Exactly.

**Mr. Mike Wallace:** Do you assign that to a certain number of investigators who do that kind of work? How does it work?

**Mr. Robert Marleau:** This year we used consultants to do it.

**Mr. Mike Wallace:** Oh, outside consultants.

**Mr. Robert Marleau:** For the actual report card, yes, but the reviews are done by our investigators.

**Mr. Mike Wallace:** Right. And they're shared, then, with the deputy minister and the minister's staff on those issues?

**Mr. Robert Marleau:** Yes.

**Mr. Mike Wallace:** Are those public documents? I guess that's my question.

**Mr. Robert Marleau:** Yes, they are.

**Mr. Mike Wallace:** If somebody wanted to see that, would we have to have an access to information request for that, or is it something that gets published?

**Mr. J. Alan Leadbeater:** You could go to our website.

**Mr. Robert Marleau:** Go to our website and all the report cards are there from previous years.

As a matter of fact, one of the good innovations, outside of amending the act, was the creation of this committee. Last year the committee actually called some of the departments in on their report card performance, and I would hope that the committee would continue.

I've already gone down that line, because I've already had feedback from deputy ministers I've met with that it has some considerable impact when a committee takes an interest in their performance on ATI.

**Mr. Mike Wallace:** Do you report to this committee on which report cards are done?

**Mr. Robert Marleau:** We will be tabling our annual report in a little more than a month's time. It will be automatically referred to this committee for consideration.

**Mr. Mike Wallace:** Okay.

Is that it, or do I have more time?

That's it, okay.

[Translation]

**The Chair:** Go ahead, Mr. Vincent.

**Mr. Robert Vincent:** Thank you, Mr. Chairman.

Page 1 of your document states that your office has seven general counsels paid a total of \$776,000.

Are they your litigation team? Are they legal counsel working under your orders? Do they make decisions? In the case of the report that we have been talking about all morning, and which has been cut left and right and centre, were they involved in the decision-making process? Who decides?

**Mr. Robert Marleau:** Yes, they are the litigation team. They handle litigation in the Federal Court and they also provide legal services to the information commissioner and his deputy.

**Mr. Robert Vincent:** Fine. I am rather new to this and I wanted to understand who makes the decisions with regard to the various document.

**Mr. J. Alan Leadbeater:** The commissioner makes the decisions.

**Mr. Robert Vincent:** Do you decide what is censored, what is said or not said, what is disclosed or not disclosed? You are surely not the only one to review documents and make decisions. I imagine that your staff review documents before you and then send everything to your office for approval.

**Mr. Robert Marleau:** There is an investigation process, which was described earlier. The investigators meet with the coordinators. They meet with the people who made the decisions, as the Deputy Commissioner mentioned, and finally, the Deputy Commissioner himself meets with a deputy minister to try to settle the dispute and recommend whether or not the information will be disclosed.

If there is official disagreement, then it is recommended that I issue a report in accordance with section 37 of the Act, which provides for a recommendation to a department. If the minister still refuses, the applicant may ask to take the matter to the Federal Court. The Court will then decide whether or not the information will be disclosed.

**Mr. Robert Vincent:** In the context of the report, how... I apologize for raising this matter, which is somewhat off the topic of the estimates, but I would like to understand how the decision is made.

First of all, there is an access to information request made. The document arrives at your offices and an investigation is carried out. But what is the focus of the investigation? What do people want to know? How do you proceed when disclosing certain information could lead to some problems? How do you go about this exactly?

**Mr. J. Dupuis:** As the Commissioner explained, Mr. Vincent, I will most likely need some legal opinions in the course of the investigation. That is when I consult with the legal team to get a legal opinion. Am I right in wanting to go to the department—

• (1030)

**Mr. Robert Vincent:** My main question is as follows: How do you determine which information should be disclosed, and which should not? I know that an investigation is carried out, but who do you consult in order to decide whether or not to censure certain information or to withhold it? How do you go about digesting all of this in order to decide whether a particular piece of information should be disclosed?

In the Afghanistan report, some information was released, while other details were not. On what did you base your decision? Does section 15.1 or some unwritten rule stipulate that any word, phrase or information that would embarrass the government shall not be disclosed? Do you consult within the office? How do you proceed?

**Mr. J. Dupuis:** First of all, we have our own manuals, and there are some precedents. In addition, as we said initially in reply to Mr. Peterson's question, we have to listen to the reasons the departmental officials give for making the decision. Of course we will listen to their reasons and why they believe disclosing the information could be prejudicial.

If we do not think that disclosure is clearly prejudicial, we will explain our position. Then we will discuss the matter. The report viewed by the Commissioner will outline the department's position, the complainant's position and our own opinion. At that point, the Commissioner will have to make a decision, after analyzing the various views and after an independent investigation of all the positions has been conducted.

Clearly, many things happen in the course of an inquiry. So the department will see our point of view, and we will see theirs. It is possible that in the end only 20% of the document may not be disclosed, whereas initially, the department may have asked that over 50% of the document not be disclosed. If we do not support this decision, we will have to convince the Commissioner of our view, and he will have to go to the minister and tell him that the document will have to be released.

**Mr. Robert Vincent:** Who has the final say?

**Mr. J. Dupuis:** In our office, the Commissioner does, and he is assisted—

**Mr. Robert Vincent:** I understand that in your office the Commissioner has the final say.

**Mr. J. Dupuis:** Ultimately, the minister has the last word. If we make a recommendation that is rejected by the minister, the Commissioner will go to court to request that it be reviewed.

**Mr. Robert Marleau:** Recent practice dictates that if I issue a report on—

[*English*]

**The Chair:** Mr. Tilson.

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

I just want to finish my line of questioning on this panel, Mr. Leadbeater. As I understand it, the panel ends this fall. It's a two-year

pilot that ends this fall, and you've indicated you're not going to have any supplementals.

**Mr. Leadbeater,** you and Commissioner Reid can probably take credit for that whole panel. Mr. Reid came and said the whole process was unsatisfactory as far as the commission was concerned. He may not want to take credit for it, but—

**Mr. J. Alan Leadbeater:** I think this committee can take credit for it.

**Mr. David Tilson:** Well, indeed, we did spend a lot of time on it, but it was certainly former Commissioner Reid's initiative that got that ball rolling.

So it comes to an end, and I don't know whether you have any thoughts, Mr. Marleau, or Mr. Leadbeater, on what happens now.

**Mr. Robert Marleau:** As Mr. Leadbeater said in his last answer, there'll be an evaluation this fall. In this spring of 2007, we're supposed to engage Treasury Board with our experience, and they will share with us their experience with the panel.

After that, it'll be up to the President of the Treasury Board. I assume he will make recommendations back to you, since the genesis was here, on a continuing process. I think all the officers of Parliament—who just had a meeting—are very supportive of the process, as it is very much an improvement. There's a lot more transparency on the part of Treasury Board, and it would be a shame to go back to position ante.

But the initiative is in the hands of the President of the Treasury Board, who started it up, and it will up to him to make recommendations for continuing.

**Mr. David Tilson:** Do you have any recommendations as to whether this committee should do anything further, or should we leave it in the hands of others?

**Mr. Robert Marleau:** I would certainly undertake to share my views, my evaluation of the process, with the committee, and if it wishes to take it up with the Treasury Board president, that would be up to you. But I'll have no difficulty in sharing my views, not only on its usefulness, but also on how it can be improved.

**Mr. J. Alan Leadbeater:** If I may just add, I think we're going to be recommending to the Treasury Board folks that as part of the evaluative process, they try to include all of the committees that made recommendations about the panel, including this committee, the public accounts committee and, I think, the Senate finance committee. Part of the evaluation has to be how you folks feel the panel process fits in with your obligations as standing committees with substantive responsibilities.

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

Those were my questions.

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

Mr. Martin.

**Mr. Pat Martin:** Thank you, Chair.



Mr. Marleau, it's hard to overestimate the importance of your office. We've heard other witnesses and heard people say that freedom of information is a fundamental cornerstone of our western democracy. People have called it quasi-constitutional. Once again, your office is at the eye of the hurricane, at ground zero of a crisis of confidence in the government.

If the Prime Minister and his government knew the realities about the Afghan detainees and chose to hide the truth, then they have broken faith with the Canadian people on a monumental scale. The sponsorship scandal was only about money; this is about the fundamental values by which Canadians define themselves. This is the kind of thing that brings governments down. I'm not overstating that at all. It's not going to be enough that a minister falls on his sword, this could in fact bring down the government. Your office is at the heart of it, and you've told us you have a backlog of 1,057 cases.

I have two questions.

One, if directed to do so by this committee, can you fast-track this investigation and jump the queue, as it were?

Second, what form will your report ultimately take? As I mentioned, this is of critical national and international interest.

Those are my questions to start.

• (1035)

**Mr. Robert Marleau:** In answer to your first question, which is could this committee order me to fast-track an investigation, the statute is set up for my organization to be at an arm's-length relationship for these totally independent—

**Mr. Pat Martin:** At arm's length from government, Mr. Marleau, not from Parliament.

**Mr. Robert Marleau:** Well, at arm's length in terms of the way the investigations are structured. They have to be totally independent.

The process and the content are two things. I can assure you, as I said in my opening statement, that in a given investigation of a complaint, the consequences of which I would feel that the severed matter should be divulged, I would without hesitation issue a section 37 recommendation to the government and, with the requester's agreement on one of these very serious matters, have no compunction about going to the Federal Court to request an order for it to be divulged. That's the process I'm bound by. Only the court, ultimately, can order the actual disclosure that's being denied.

**Mr. J. Alan Leadbeater:** If I can follow up, you also asked about the form of the report. The statute requires us at the end of an investigation to report the results and the basis for them to the individual who made the complaint, to the government institution against which the complaint was made, and to Parliament in an annual report or a special report. Any other comment or disclosure related to the investigation is prohibited by the statute, and so it's only in those types of reports.

**Mr. Pat Martin:** Under what conditions would you consider that it warrants a special report to Parliament?

**Mr. J. Alan Leadbeater:** The test is actually set out in the statute. I'll turn to section 39:

in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereof should not be deferred until the time provided for transmission of the next annual report

**Mr. Pat Martin:** I suppose the national crisis that this has generated may in fact warrant that. It's shining a light on what happened here. It speaks to the very heart and soul of everything that we do and stand for here in Parliament.

I saw my colleague Dawn Black stand up and ask directly. The first question she asked, when this Parliament convened after the election in 2006, was about the detainees. The cover-up was already in full flight at that time, and it has continued to this day. One of the government responses to an access to information request said that "no such report on human rights performance in other countries exists". That was the response to Jeff Esau, a journalist with the *Globe and Mail*.

Is there any enforcement possible by your office for that kind of complete fabrication or denial of access to information with a blanket statement like "there is no such report", never mind blacking out, but denying the report exists?

• (1040)

**Mr. J. Alan Leadbeater:** Hiding the existence of a document requested under the Access to Information Act is an offence under the statute.

**Mr. Pat Martin:** Who would press charges—you?

**Mr. J. Alan Leadbeater:** If in the course of an investigation we determine there's reasonable basis to believe that an offence has been committed, our obligation is to refer that matter to the Attorney General. But it is a matter that any individual can refer to policing authorities.

**The Chair:** Thank you.

Mr. Martin also asked a question, which I don't think was answered, about prioritizing investigations and reports. Given the backlog, how does it work in your office? Is everything a first-in, first-out kind of thing, or does the commissioner decide whether one case is more important to investigate more quickly than another, for example?

**Mr. J. Alan Leadbeater:** We try to be blind to the motives or identities of our complainants, for obvious reasons. We will not speed up an investigation because of partisan political pressure; we will not slow down an investigation because of partisan political pressure. I think this Parliament would expect nothing less of us. We just go about being as professional, thorough, and diligent as we can with every investigation we have.

**The Chair:** Thank you.

Mr. Peterson is next, for five minutes.

**Hon. Jim Peterson:** We have a situation where there's denial by the government that it had been informed of abuses of human rights in Afghanistan. There's an access to information application, and lo and behold, a report is issued showing that the government had been informed of abuses, but the report is blacked out.

What possible justification could there be for denial of access? You have indicated that there are 13 different headings under which denial of access can be granted. Could you just tell us as many of them as you can remember?

**Mr. J. Alan Leadbeater:** The most-used exemption is the protection of personal privacy. It's a mandatory exemption. Another mandatory exemption is information provided in confidence by other governments. Then there are injury test exemptions such as injury to federal-provincial relations, injury to international relations or the defence of Canada, injury to the commercial interests of corporations that provide information to the Government of Canada. There are exemptions for cabinet confidences, to maintain cabinet secrecy, to protect solicitor-client privilege, and on the internal deliberative process of government—that is the advice giving, the recommendation making, the negotiation of contracts, and all the negotiation process.

I don't know if I've hit all of them. The investigative process is another one.

**Hon. Jim Peterson:** I'm going to put it to you that not one of those cited reasons justifying denial of access could possibly apply to the blackout of this report on egregious human rights abuses, including sending people to death. If you have any disagreement with what I've just said, I would welcome it.

**Mr. J. Alan Leadbeater:** There is no way that the office either agrees or disagrees with a proposition put forward by a complainant until we've investigated. Every complainant that comes to us says there is no possible reason there should be secrecy, and the government institution says there's every reason for secrecy. Our job is to try to get to what is an objective, neutral view of the matter.

So if before investigating you're going to work to try to get the commissioner to agree with you that the secrecy is terrible, that's a fool's errand. It's not going to happen.

**Hon. Jim Peterson:** How could a report on committing egregious human rights abuses possibly hurt personal privacy? How could it hurt our international relationships? How could it deal with solicitor-client privilege? It's beyond me.

I can understand that you want to hear the other side, but I'm going to put it to you that you will be listening long and hard to try to find one iota or scintilla of justification. It will be like searching all day for two grains of wheat in a barrel of chaff; ere you search all day and find them, they be not worth it. I put that to you.

• (1045)

**Mr. Robert Marleau:** Let's make a parallel, sir. And I don't want to minimize the issue that you're raising—that is, the content of the document or the content of what's been blacked out. But if I go back to another life, as a table officer in the House of Commons, my duty was to help every single member, regardless of political stripe or the content of his draft bill or his motion. If a member wanted advice on how to put forward a motion on abortion, regardless of my views or anyone else's views, I gave them best draft I could.

We approach our investigations the same way. It is a process by which we are bound. The content is fundamental to the parties, but it is not ours, and not ours to judge—only that it is a fair and thorough investigation ultimately ending in a recommendation, maybe by the commissioner, that the courts would decide upon.

**Hon. Jim Peterson:** Mr. Marleau, first of all I commend the great service that you provided to parliamentarians of all stripes for so many years. And secondly, I agree with your approach. I just put it to you...good luck. This is an issue where it's going to be very difficult

for you to find any justification, I'm sure, for the blackouts that were so blatant.

**Mr. Robert Marleau:** I welcome your good wishes.

**The Chair:** Thank you, Mr. Peterson. That was five minutes, again right on the button.

Mr. Wallace.

**Mr. Mike Wallace:** Thank you.

I appreciate your coming. I have a few more questions left, but they are budget questions.

I appreciate your not getting sucked into the political debate that's happening on the other side of the table.

I have a question with regard to page 9. It's just an understanding issue, again, for me. Table 3 concerns services received without charge.

First of all, I need to clarify that statement. I'm assuming that means that you're using the money but it's actually applied to somebody else's budget and not your own. Is that correct? Or do you put that in your budget? I don't understand what that means, services "without charge".

**Mr. Robert Marleau:** I forget when this was introduced in part III of the estimates; it was some years ago.

We don't get that money. We don't see it. That is the cost of third-party services in support of our program.

So Public Works spends roughly half a million dollars on leases—

**Mr. Mike Wallace:** You don't have to allocate it in your actual spending budget.

**Mr. Robert Marleau:** We have no control over it.

**Mr. Mike Wallace:** I'm going to ask you a few things about that, because I want to be clear.

Accommodation provided by Public Works and Government Services I guess is \$498,000. Is that correct? Yes.

Is that for rent?

**Mr. Robert Marleau:** Yes, that would be essentially lease and what they call tenant services on our office space.

**Mr. Mike Wallace:** And does that include the money that was not spent on rent last year?

**Mr. Robert Marleau:** No.

**Mr. Mike Wallace:** So this is actual space you actually have used, then.

**Mr. Robert Marleau:** It is, yes.

**Mr. Mike Wallace:** Okay. And then where does the money that was allocated last year show up? The reason I'm asking is that there was a bit of debate from me about why you would have it if you're not using it.

So where does that show up? I'm assuming that's part of your base for this year. Is that correct? Or doesn't that show up in any base? It's still Treasury Board?

**Mr. Robert Marleau:** It would be in Public Works.

**Mr. Mike Wallace:** So Public Works budgets allocate for all overhead when it comes to office space.

**Mr. Robert Marleau:** Right.

**Mr. Mike Wallace:** Okay. And that, again, I'm assuming is the same case for all...

So you guys don't really get charged back on a cash basis for any of the employee benefits. Is that correct?

**Mr. Robert Marleau:** Well, the employee benefits are actually charged to our budget and form part of the total salary envelope. But the contributions for the programs that we adhere to, such as dental plan, life insurance, and all those sorts of things, come out of the larger Treasury Board allocation.

**Mr. Mike Wallace:** Oh, cash is paid out of the Treasury Board.

**Mr. Robert Marleau:** That's right.

**Mr. Mike Wallace:** But you take a charge, in a sense, on your statements for that.

**Mr. Robert Marleau:** Exactly.

**Mr. Mike Wallace:** Okay.

Another question I have for you is that we talked briefly about having an internal auditor, which we've requested that you have, under the law now. Does that change the need for the Auditor General's audit services?

•(1050)

**Mr. Robert Marleau:** No. The annual audit of the Auditor General is about how we spent the money we were allocated within the controls, and whether the controls are properly in place.

Internal audit will be another function through which we do things like risk assessments and various activities.

**Mr. Mike Wallace:** It's not an accounting audit. It's an operational audit.

**Mr. Robert Marleau:** We'll be looking at, say, investigations and we may want to establish what risks we have and how we can mitigate those risks. We would do that by way of an internal audit.

**Mr. J. Alan Leadbeater:** I could just add that if you look at that performance report you referred to earlier, there are audited financial statements. The officers of Parliament have all agreed that they will have their annual financial statements audited by the Auditor General. I think we're the only institutions in government that do that.

That is the service that's paid for here, or the annual audit of our financial statements.

**Mr. Mike Wallace:** Okay.

I am back to the full-time equivalents. If I am reading it correctly, about 57 full-time equivalents were forecast in 2006-07. Did that 57 end up being accurate?

**Mr. J. Alan Leadbeater:** On the actual utilization, I think it was 57.

**Ms. Ruth McEwan (Director General, Corporate Services, Corporate Management Branch, Office of the Information Commissioner of Canada):** Yes.

**Mr. Mike Wallace:** We are estimating 90 for 2007-08.

**Mr. J. Alan Leadbeater:** It's 78.

**Mr. Mike Wallace:** I have 90 here on page 8, which is why I'm confused.

**Mr. Robert Marleau:** On page 8, you have a figure of 90, which—

**Mr. Mike Wallace:** What does that include?

**Mr. Robert Marleau:** It includes the 12 that Treasury Board—

**Mr. Mike Wallace:** Oh, that includes the 12 that TB are thinking you'll need for—

**Mr. Robert Marleau:** That's right.

**Mr. Mike Wallace:** Right. That's where I was confused.

**Mr. Robert Marleau:** Our number now is 78, once we've ramped up on the supernumerary investigators.

**Mr. Mike Wallace:** Plus the additional 12 that may come this year.

**Mr. Robert Marleau:** To be determined.

**Mr. J. Alan Leadbeater:** We're not asking for approval for the funds for that in this round of estimates.

**Mr. Mike Wallace:** But as to the \$1,582,000 that's in there, is that not part of the extra 12 people? I thought I saw that in your report.

**Mr. J. Alan Leadbeater:** It would only be if we came back for that by way of supplementaries. We're thinking we will have enough to cover that one-time cost because of the delay in actually hiring the new folks.

**Mr. Mike Wallace:** So your request for space—

**The Chair:** Mr. Wallace, I'm sorry, but you're over your five minutes. We have two questioners and seven minutes left, so I have to interrupt you.

I'm one of them. I'll try to keep it as short as possible. We have our guest, Monsieur Lussier, and I would like him to have an opportunity to speak.

I remind the committee that we've eaten up two hours. That's in the context of previous discussions on the value of having people here for the estimates.

Mr. Marleau, my questions are, again, referring to this document. On page 4, you indicate you've taken 16 cases to court and that the commissioner has been 100% successful. That is a fantastic statistic. I can understand your reluctance to want to go to court, because the more you go the more likely you'll lose that 100% mark.

What fascinates me is the next paragraph. You say the Crown has taken the commissioner to court 66 times on procedural and jurisdictional grounds. You have been successful 95% of the time. What kind of advice is the Crown being given if there's a 95% success rate? When you say the Crown in that sentence, who do you mean? Is that the justice department?

**Mr. Robert Marleau:** It is the Attorney General of Canada, acting for a government department of some sort.

**The Chair:** So the lawyer for the government department is the Department of Justice. Is that right? The Department of Justice would then make these decisions. I am going to make sure we remind the justice minister about these statistics when he's here.

Finally, on page 5, you said that the OIC has established a process whereby complaints under the act against the Information Commissioner can be independently investigated by former Supreme Court judge, Honourable Peter Cory. He has agreed to this role.

Under what statute, guideline, or whatever it is does he take his authority, and who is going to pay him? Does it come out of your budget?

**Mr. Robert Marleau:** We will pay for it. It will come out of our budget. It's under the delegation powers I have in the act under section...section 59. I thought it was 58; I'm starting to learn these numbers.

At any rate, section 59 authorizes me to delegate some of the powers to "any person". In this case, we don't want to be seen to be investigating ourselves. Therefore, a former judge of the standing of Mr. Cory is the way to go for now. We may change that practice over time, to see what might be more useful.

The Privacy Commissioner has the same challenges we do, actually.

•(1055)

**The Chair:** Now, that's shown where in the estimates, the potential allocation of funds for Mr. Justice Cory?

**Mr. Robert Marleau:** So far we have not requested any money for this. We're confident that as part of this year, as Mr. Leadbeater said, we can absorb it, but if we find that we get a large number, we may have to be back in estimates in the future.

**The Chair:** Okay, thank you.

Monsieur Lussier, please.

[Translation]

**Mr. Marcel Lussier (Brossard—La Prairie, BQ):** Mr. Chairman, I would just like to justify my presence here by asking a question of Ms. McEwan, who has been quite quiet so far.

The organization chart shows, Ms. McEwan, that there are 16 people who report to you, and that figure probably includes you. What is the role played by the people who work with?

[English]

**Ms. Ruth McEwan:** I'm in charge of finance, access to information, human resources, information technology, records management. So obviously the qualifications depend—

[Translation]

**Mr. Marcel Lussier:** Do you have a secretariat?

[English]

**Mr. J. Alan Leadbeater:** We don't have a corporate secretariat.

**Ms. Ruth McEwan:** We don't really have a corporate secretariat. It's just different divisions that form corporate services.

At any rate, the qualifications vary, obviously, according to the discipline. For instance, in finance the director of finance would have

a degree and a lot of accounting experience. The director of human resources would also have a degree and a great deal of experience. The same is true of the manager of IM/IT.

[Translation]

**Mr. Marcel Lussier:** That answers my question.

[English]

**The Chair:** Okay, Monsieur Vincent.

[Translation]

**Mr. Robert Vincent:** To continue along the same line as Mr. Wappel, I would like to know what percentage of our budget goes to defending cases involving federal government departments. You said that 88 cases pitting you against the Crown have been heard. In other words, the Office of the Commissioner squared off against the Crown. That means that the Department Justice was involved in a court case against the Office of the Information Commissioner of Canada. What percentage of your budget goes to mounting a defence against your own government?

**Mr. Robert Marleau:** As you will see on page 1 of the document we gave committee members, the total budget for legal services is \$776,000. That includes, for the year just ended, some \$62,000 for outside legal services.

**Mr. Robert Vincent:** That is just for mounting a defence against other departments. There is reference to legal fees of \$800,000. In the end, you are giving each other work.

**Mr. Robert Marleau:** No, that is the entire budget envelope for our program when we have to go to Federal Court or negotiate—

**Mr. Robert Vincent:** It's part of your overall budget.

I imagine that when the Crown takes you to court over one of your decisions, that costs you money. How much of the annual budget do you spend on your own defence when the Crown takes legal action against you?

**Mr. Robert Marleau:** You should put that question to—

**Mr. Robert Vincent:** The question has been asked and I would like to get an answer later.

**Mr. Robert Marleau:** It comes out of each department's envelope or out of the Department of Justice's budget.

[English]

**The Chair:** Merci.

Colleagues, just as a reminder, there's no meeting on Tuesday. And if anyone has any suggestions for witnesses on our study of identity theft, please advise the clerk.

Next Thursday, a week from today, we will have before us the Privacy Commissioner on her estimates.

Mr. Stanton.

**Mr. Bruce Stanton:** I have a question, Mr. Chair. In this estimates process, do we have to do a motion to adopt or vote or anything of that nature?

**The Chair:** Yes, we do, and we can deal with that next week.

On behalf of the committee, I'd like to thank Commissioner Marleau and his team for being here and for the forthright answers to the questions.

The meeting is adjourned.

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