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

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**EVIDENCE**

**Tuesday, April 15, 2008**

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**Chair**

**Mr. Paul Szabo**

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

Tuesday, April 15, 2008

• (1530)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** Good afternoon, colleagues.

Our meeting today is pursuant to Standing Order 81(4), on the main estimates for 2008-2009, votes 40 and 45 under Justice, referred to the committee on Thursday, February 28, 2008.

Our witness today is from the Office of the Information Commissioner of Canada, Mr. Robert Marleau, who is the Information Commissioner.

Welcome, Commissioner. I would invite you to introduce your colleagues to the members, and I understand that you do have a brief opening statement for the members. I would ask you to proceed.

**Mr. Robert Marleau (Information Commissioner of Canada):** Thank you, Mr. Chair.

[Translation]

Honourable members, thank you for the invitation and for the opportunity to inform you of the priorities of the Office of the Information Commissioner of Canada for the upcoming fiscal year.

With me today are Suzanne Legault, Assistant Commissioner, Policy, Communications and Operations, and Andrea Neill, Assistant Commissioner, Complaints Resolution and Compliance, and Mr. Daniel Brunet, the General Counsel and Director of Legal Services, as well as Mr. Stephen Campbell, Director of Financial Services.

[English]

When I appeared, Mr. Chair, before this committee last year on main estimates, a few months after taking up office, I said my mission as Information Commissioner was to resolve complaints, to foster better relations with federal institutions, and to persuade them to be more open and transparent with their information. My staff and I, through a variety of activities, worked towards that goal every day.

It became apparent, however, during the year that other pressing priorities needed careful attention to ensure effective and efficient stewardship of the office's internal operations in the area of investigations, internal support services, administrative services, and human resources. A lot of efforts were made and will continue to be made to strengthen and in some cases build the organizational capacity of the office.

[Translation]

The office currently has an annual budget of \$7.6 million and 78 full-time employees. This budget has not been substantially modified in recent years while the office has been managing additional responsibilities.

Last year, we sought and received Treasury Board approval for additional funds to comply with the requirements of the Access to Information Act as amended by the Federal Accountability Act, and to establish and maintain an internal audit function as required by the Treasury Board.

This additional funding is not reflected in the 2008-2009 Main Estimates but will be part of Supplementary Estimates in the fall. If Parliament grants this supplementary funding, it will increase our annual budget to \$9.6 million and our human resources to 90 full-time employees for 2008-2009.

[English]

The coming into force of the Federal Accountability Act placed additional demands on internal resources to the point that a review of our service delivery model, including our investigative and administrative support processes, is required. In order to assess whether we have sufficient resources, human and financial, to deliver on our mandate, our office will do an A-base review of our funding, operations, technological equipment, and staffing levels.

We've already begun to look at ways to improve the efficiency of the operations. We started a comprehensive review of our complaints handling process last year, where much improvement was needed. This is one important action of our backlog strategy.

With this strategy I was hoping to announce today a large dent in our backlog. However, at year-end, according to our service standards, almost 85% of our cases are still in backlog, an increase from last year.

How can this be? Well, the near doubling of our complaints significantly contributed to this. I think, however, that our service standards are unrealistic and played an important role in the backlog by setting timelines with no consideration for the complexity of complaints and the resources available.

This year, we'll fully implement the strategy, starting with establishing, on a pilot basis, a dedicated intake and early resolution unit that prioritizes complaints according to a set of criteria that we are now developing. Such criteria may include urgency of the request, nature of the complaint and its complexity, and type of complainant. We'll also set aside our existing service standards and instead we will inform our clients on a case-by-case basis of the expected time it will take to respond to their complaint.

• (1535)

[Translation]

Other areas of our operations, such as information technology system, will require significant strengthening in light of advances in technology. This reinforcement of resources is essential to provide the appropriate tools for staff to do their job efficiently and to enhance electronic communications between us and federal institutions and the public.

In order to assist Parliament and government in addressing access to information issues, we also need to bolster our policy development capacity and the parliamentary relations function.

[English]

I would like to note in passing our new approach to report cards, which will provide a more complete picture of the performance of the selected institutions. We selected ten institutions that will be assessed against various criteria, such as the timeliness of their response to requesters; trends we've observed in the last year, such as consultations, request processing models, and the use of extensions; good practices; and the progress these institutions may have made to comply with the act. The results of these reviews will be available in the fall by way of a special report to Parliament.

More fundamentally, an important priority of this office is to give careful consideration to the reform of legislation. Mr. Chair, on July 1, 2008, the Access to Information Act will be 25 years old. Important amendments were made last year as a result of the Federal Accountability Act—namely, the inclusion of a statutory duty to assist. Nonetheless, in this celebration year, I believe it would be timely to take a step back and look at how the act needs to be adapted to today's realities.

[Translation]

I want to commend this committee for your interest in seeking reform of the legislation. I stand ready to assist Parliament in modernizing the access to information program. In leading up to such a dialogue, my office will hold a round table in June 2008 with stakeholders to exchange ideas on legislative reform as well as administrative reform. We will report on the round table this fall.

[English]

In conclusion, Mr. Chairman, I'd like to leave you with a quote from the 2002 Delagrave report. It conveys my views and my approach to improving the access to information regime:

There is no magic solution to the shortcomings of the system. A healthy access to information system needs all its parts functioning well in order to deliver the outcomes intended by Parliament: the right systems to process requests, skilled staff, supportive managers and Ministers, adequate resources, good information management, good understanding of the principles and the rules by all, including third parties, and effective approaches to oversight.

Mr. Chair, I've outlined the office's priorities and the financial requirements for these activities in 2008-2009. I plan to table our annual report to Parliament in the last week of May 2008, and a special report, with the new report cards on access to information performance by selected federal institutions, in the fall.

Thank you for your attention, and I stand ready with my colleagues to answer your questions.

**The Chair:** Mr. Commissioner, thank you for this very frank report. I think it's very clear, and I'm sure that the members will want to discuss a few elements of it with you.

I have Mr. Pearson, followed by Madame Lavallée, and then Mr. Wallace.

Mr. Pearson.

**Mr. Glen Pearson (London North Centre, Lib.):** Thank you, Mr. Chair.

Commissioner, it's nice to see you with us again.

I'm intrigued by what you just said in your report, that perhaps we need to step back and look at how the act needs to be updated. I would be interested in some of your comments on that, but you don't have to give them now; just be thinking of those through your time here.

When you were last here, you talked about how your office was having trouble with accommodation for staff. Do you recall that? I am wondering how you've done with that, because you felt that it was something of a holdback.

**Mr. Robert Marleau:** Yes, indeed, sir, it was a holdback from my predecessor. I had anticipated occupying new space by August and September of last year. Unfortunately, that did not transpire.

We're moving in two weeks' time, the week of May 6, I think. We've secured more accommodation on the seventh floor of Place de Ville, where we're currently on the 22nd floor and the fourth floor. We now have sufficient space on the seventh floor, which has been renovated for us.

It will allow us not only to move forward on our backlog strategy, but also to staff up to the number of FTEs we have. We've lost another year, is the short answer.

• (1540)

**Mr. Glen Pearson:** I understand.

But it's not resolved yet, and you hope it will be soon?

**Mr. Robert Marleau:** I can say it's resolved. The offices on the fourth floor are packing; it's that imminent.

**Mr. Glen Pearson:** I read with interest a speech you made to the Department of National Defence a little while ago. I don't know if you remember it, but you talked about the backlog and what access to information requests and other things were facing. You made an evocative comment in saying that if governments began to do more in communicating with Parliament, the public, and the media, you felt that the access to information requests would decline.

I read that speech, because I was interested to see how you would see that happening. Part of what we have to do here is to help you with prevention so that everything will not be all doubled up again this year, as you said.

Can you maybe expand on that a bit? How would you see us, as parliamentarians, being able to provide that service for you?

**Mr. Robert Marleau:** In terms of access to information requests declining through more proactive disclosure, that's kind of a long-shot call on my part. But the more there is proactive disclosure on behalf of federal institutions, the more those who are looking for information are better informed when they ask for more specific information. I think it would cut down on a lot of the fishing expeditions that go on from time to time asking for a whole range of documents in order to find that pearl or that needle in the haystack.

It's also linked to the duty-to-assist provision that you've included in the statute. To make every reasonable effort to assist the requester is another dimension of the statute that I think would reduce some of the complaints I get.

On the second part of your question about what the committee can do to assist us, these new report cards we'll be tabling with Parliament, which will be referred to you in the fall, are really an effort to give you better information and leverage your interest in getting the institutions to account for their performance. They'll present you with not just delay statistics, but a context of operations and performance in that year, a response from the government institution, and hopefully an action plan. You will have that in the fall at the same time you get departmental performance reports in the supply cycle. You've been getting them early in the year and they've been focusing only on delays—it's an A or F grade, it's a one-day wonder in the media—and to some degree I don't think you're getting the whole story.

I don't want to say it's an effort to leverage the committee to get the system to move along, but it will certainly give you the information you need to hold them to account.

**Mr. Glen Pearson:** Can we go back to my original point? In your report where you talk about how the act needs to be adapted to today's realities, can you point us in the general direction of what you're speaking about?

**Mr. Robert Marleau:** After 25 years, we know that the reports of the former commissioners and my report last year—which wasn't fully my own report—have a common thread in them: delay, delay, delay. There is a lot of frustration out there about the time it takes us to investigate and answer a request. I think we have to look at means for building incentives for better performance. Nobody likes the concept of sanctions, but we need to have a discussion about sanctions versus incentives.

We have to look at the challenges that technology has brought, like email. Searching email is a very complex exercise now. You can't just search the subject line. The particular record you're looking for may have several iterations of a title within the body of the email. There are some technological challenges we have to look as far as information management and searching for that information. Training of staff, both within my shop and the ATIP community, is related to that.

So it's a question of bringing it into the 21st century. In 1983 cellphones were huge; e-mail was in a display-phone-style, in its infancy; and of course digital information was still thought of as microfiche on film. I think the technological context has evolved such that the act has to be adapted to some of those issues.

• (1545)

**Mr. Glen Pearson:** Thank you, Commissioner.

Thank you, Mr. Chair.

[*Translation*]

**The Chair:** You have the floor, Ms. Lavallée.

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Thank you very much, Mr. Chair.

I must say, Mr. Marleau, that I have so many questions that I hardly know where to start. I have too many questions, and I'm going to have to make some choices between the technical questions I would like to raise and the more political ones.

First of all, in your presentation, you say that you are ready to assist Parliament in modernizing the access to information program. And you talk about your round table in June with stakeholders. This is not a priority, but at some time, I would like to know who you are planning to invite to your round table. However, that is not my question, as I said, I hardly know where to start, so I feel I have to demonstrate what I mean.

I'm going to speak in more general terms about modernizing the Access to Information Act. I have noticed—and I didn't need a private school education to figure this out—that governments do not want an Access to Information Act. They want one for window dressing, but they don't want a genuine act. Even at this committee, when we talk about reviewing the Access to Information Act, modernizing it and strengthening it, immediately all the government members become quite uncooperative, and actually resort on some occasions to delaying tactics.

We've invited the Minister of Justice to come and discuss this with us on a number of occasions. The first justice Minister, Vic Toews, did appear before us, but all he did was to put the ball back into our court so as to do nothing or to keep committee members busy. The new minister has not even shown his nose here. At some point, we threatened to have all his officials appear, and he gave us an approximate date, but in the end, he never came. It is extremely difficult to get him to appear before us. I must say that I am very surprised, because every time we talk about an Access to Information Act, the representatives of the parties that could form the government in the not-too-distant future are reluctant to follow our lead.

In addition, I have said this publicly, Mr. Marleau, and I said it to you at a private meeting, it is not my impression that you want to enforce the act rigorously. I would like you to tell us what your arguments are, as you explained them to me at our meeting. A number of people are calling for this new legislation. Last week, I even saw a new bill that a journalist had put forward that would make the changes to the legislation that he would like to see. After John Reid's draft bill, a journalist drafted a new bill in his spare time. There are major problems and shortcomings with the current legislation. As you said, when the act was written, cellphones were huge, but I do not think there were any cellphones in 1983. I got my first one in 1988, and was one of the first people to have one.

I would like you to tell us clearly whether you intend to enforce this act rigorously. What are you really prepared to do to modernize the Access to Information Act?

**Mr. Robert Marleau:** I would like to start by saying that the round tables are part of the process. I said earlier that I was ready to assist Parliament in modernizing the program. I think there are three parts to this modernization process.

First of all, we need to modernize the public service culture as regards what I call the service culture. We must advocate a service approach when it comes to responding to inquiries. With respect to the latest amendment you made to the legislation, I will base all of my initiatives on the duty to assist in a reasonable way. I see this as a question of leadership on the part of deputy ministers.

I met with about 20 deputy ministers on the advisory committee of Treasury Board at a breakfast meeting. I told them that I see the duty to assist provision in the act as a question of leadership. Parliament did not include this concept in the act as a motherhood statement. The head of a business or a federal institution cannot delegate this responsibility to the coordinator. In terms of leadership, this is a continuum from the top down and from the bottom up.

The second component is the modernization of the administration. With Treasury Board, we have already started working to review the recommendations contained in the Delagrave report. This report was supported by my predecessor, but it has been gathering dust since 2002. Ms. Legault, the Assistant Commissioner, Policy, Communications and Operations, has begun discussions with Treasury Board representatives to begin moving these issues forward. We're talking here about statistics, training, recruitment and the qualifications of public servants, and perhaps some day their certification. In your report on Afghanistan, you used my recommendation that these people be certified, that their skills be identified and that their role within the federal institution be very specific.

The third component is the modernization of the act. This involves all sorts of considerations that I would like to discuss at the round table meetings. In his presentation to the committee, my predecessor—and this is not a criticism—did not discuss the issue of the power to order as compared to the ombudsman role. I am not advocating that we have the power to make orders, but this has not been discussed. If I remember correctly, four jurisdictions in Canada do have the power to make orders as compared to the ombudsman role.

At the federal level, the ombudsman manages to settle 99% of the complaints. The process works, but it is slow. Would a system in which we could make orders be more effective? It might lead to legal

disputes earlier in the process, and it may not be more effective. However, we will have to have a debate in which we compare penalties and incentives and in which we discuss the entire technological system. We will also have to look at the timelines set out in the legislation and ask whether 30 days for an initial response is really a valid deadline nowadays, and whether there should be some limits on extensions. At the moment, extensions are unlimited, once the department has provided a document within the 30-day period.

I hope to focus on these issues at the round tables and present a detailed report on these matters next fall. In my opinion, these issues are not covered in Mr. Reid's draft bill.

• (1550)

**Mrs. Carole Lavallée:** Do I have any time left?

[*English*]

**The Chair:** A short question.

[*Translation*]

**Mrs. Carole Lavallée:** I would like to make a comment. One of the few officials who appeared before the committee regarding his work on the Access to Information Act spoke about Professor Attaran's access to information request regarding the Afghan prisoners. I found it surprising that an access to information coordinator would tell us specifically—and I remember the expression she used—that she wanted to protect the “confidential nature of these things”. That has to do with training, Mr. Marleau.

**Mr. Robert Marleau:** I agree.

[*English*]

**The Chair:** Okay.

I'm going to go to Mr. Martin now.

**An hon. member:** You're bumping me.

**Mr. Pat Martin (Winnipeg Centre, NDP):** I thought that was always the order in our committee.

**The Chair:** It is. Go ahead, Mr. Martin, please.

**Mr. Pat Martin:** I read carefully the well-prepared report here.

Thank you, Mr. Marleau, for being here. I know this is about the estimates technically, but as you know, these conversations get more wide-ranging, and I appreciated your input to Madame Lavallée's remarks.

I note on the bottom of page 1 of your report you say you were hoping to be able to announce today some dent in the backlog that's been an irritation to users of the system as well, but there's actually an increase. You ask how this can be. I would like to put it to you and have your answer, but you have to look at the root causes of the backlog, I guess, and the overwhelming increase in the number of complaints filed, which says to me the system is not working well. Perhaps the government side is not complying with requests, leading to this complaint.

I'll give you one example. Dawn Black is the defence critic for the NDP, and she recently got an access to information request back saying they needed another 300 days to deal with the inquiry, which had already expired its normal time limit. A further 300 days. Then if she wasn't satisfied with that, she would be faced with filing a complaint with you and waiting God knows how long, through no fault of your own, for that to be completed. Surely that's not freedom of information; that's stifling information.

So I guess I'm asking your views on the doubling of the complaints. Also, one thing you mentioned is the.... No, I'll let you speak to that first, if you will.

• (1555)

**Mr. Robert Marleau:** Mr. Chair, there are two dimensions to the backlog. The first is, of course, our service standards. I've come to the conclusion—and I've asked an outside consultant to look at it and make recommendations to us—that we've set ourselves up for failure with the backlog. We set timelines that are unrealistic, and then within those timelines there is a series of elements we don't control.

If there's a third-party consultation, we have to stop the clock and wait until it comes back in, or if there's a section 69 consultation with—

**Mr. Pat Martin:** I'm sorry, what is a section 69 consultation?

**Mr. Robert Marleau:** Sorry, it's a cabinet confidence consultation with PCO, and that's a bit of a dark hole. It's hard for us to chase those. We can't see the documents.

I've come to the conclusion that the backlog is artificial. It doesn't mean from a service standpoint to the individuals waiting for an answer that it's irrelevant. So we're going to put our service standards on hold and we're going to look at this as an inventory.

There's never going to be a zero-complaint world, so what is the kind of throughput that is normal for an investigative organization to have as an inventory, and classify the requests as administrative, simple, straightforward, complex, and try to provide service in categories, rather than say they're in the queue and if you happen to be behind a complex one, it might take four years.

**Mr. Pat Martin:** That's good. It's sort of triaging complaints.

**Mr. Robert Marleau:** That's right, use a little bit of the emergency care room. You walk in the room and it says "Waiting time is six hours". The first thing they do is assess life or death when you walk in the door, or do you need to go to radiology because you're having an X-ray, or you need pain management. You can look at these issues in a triage manner. We have to be fair and balanced.

I'm taking a risk here—I'll admit that to the committee—and you'll probably hear complaints in the context though for the next year. So that's one approach, and we have a strategy for that.

The other aspect of why it has grown is that Bill C-2, the Federal Accountability Act, has reduced the complaint period to 60 days. Before, a requester had up to a year to file his or her complaint; now it's 60 days. So I think they're coming in earlier.

I think also Bill C-2 heightened the interest. There's a renewal of requests. If we got an 80% increase in our workload, I suspect that next year's statistics or the end of this year's statistics when produced by Treasury Board will show a comparable workload increase.

I'm not alarmed by it. I think it's manageable. I'm not even addressing at this point that we need more resources for this. We're doing an A-based review. I think with a different approach in terms of managing complaints we can provide better service than we're providing now.

**Mr. Pat Martin:** One quick comment about section 15. We find a lot of people are complaining that section 15 is being used extensively and maybe excessively. Do a lot of your complaints deal with people who are angry at their things being redacted with section 15 as a justification?

**Mr. Robert Marleau:** Section 15 deals with international relations. I'll ask Andrea to give you a quick overview of percentages.

We have the statistics for this year. This is based on our complaints, not the whole system.

**Mr. Pat Martin:** I understand.

**Mr. Robert Marleau:** We're not alarmed. There is a change in trends, and I'll let Andrea comment.

**Mrs. Andrea Neill (Assistant Commissioner, Complaints Resolution and Compliance, Office of the Information Commissioner of Canada):** Thank you.

We have five top exemptions, and the top ones are always personal information and advice. Section 15, which is the international affairs and defence exemption, tends to be the third—

**Mr. Pat Martin:** You mean national security.

**Mrs. Andrea Neill:** —yes, national security—or fourth spot, but it was definitely in the third spot for this year.

**Mr. Pat Martin:** Okay, that's very helpful. Thank you.

**Mr. Robert Marleau:** We could leave the committee with a chart that shows kind of the evolution over 2005, 2006, and 2007. It's kind of self-evident that things have shifted, but there's nothing dramatically different for all of the exemptions.

**Mr. Pat Martin:** That would be very interesting. If that could be tabled, that would be useful.

**Mr. Robert Marleau:** Okay, we'll do that.

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

**The Chair:** We will make that available to the committee members.

Mr. Wallace, please.

**Mr. Mike Wallace (Burlington, CPC):** Thank you, Mr. Chair.

I'm going to try to be quick, because I have a fair number of questions, and you may hear from me again.

I'm one of these guys who keep last year's book to compare what you said we were going to do last year.

Now, I know you're relatively new, so I'm not sure if these are your numbers or not, but I'm a little confused already, based on what you presented today.

The operating budget for 2006-2007 had 57 people. They were claiming that was going to go to 90 in 2007-2008. That was the estimate. It looks as though, in the current book, we have 61 people. Then you tell me on your list you have 78. So there are a lot of people hanging around, and you don't know where they are or something.

Can you tell me what the discrepancy is and why that issue is there? Because this is all the information we have. Also, I'm looking at a 19% increase of the total budget at the end, and that doesn't reflect going up by...well, even from 61 to 90 is about a 40% increase in people. So the amount of money you're asking for does not reflect the number of people you're looking to get.

Regarding the numbers of people, it goes down after that to 82 people. How are you going to meet the backlog if you're going to have fewer people? I'll leave it up to you to explain to me.

• (1600)

**Mr. Robert Marleau:** On the last question, Parliament voted a special allotment of some \$650,000—I'm rounding figures—for three years standing to address the backlog.

**Mr. Mike Wallace:** Is that reflected in these numbers?

**Mr. Robert Marleau:** Yes and no. I'll explain in a moment.

Because of the space issue, last year we lapsed \$1.3 million, which we could not spend. So the 61 FTEs you see in this report represented the number of people staffed. That's the actual use we made of FTEs. We went from 56—

**Mr. Mike Wallace:** You went from 57 to 61.

**Mr. Robert Marleau:** Yes, that's right—because we couldn't staff it. This year we used the \$650,000 allotment in a different strategy by hiring chiefs and reviewing management levels, hiring some extra administrative staff and investigators, and we got to 78, which is the figure I reported to you when I appeared last year. In fact, that's what I commented on today.

**Mr. Mike Wallace:** That's what you have in your book here.

**Mr. Robert Marleau:** The 90 in 2008-2009 is the planned number if we get the supplementary estimate allotment that will be before you in Parliament. Treasury Board is—

**Mr. Mike Wallace:** Why is it not included in the main estimates as base funding?

**Mr. Robert Marleau:** It's because of the cycle of preparation of this. The mains get prepared and roughly closed in September, and our supplementary estimate submission came before the panel in December and Treasury Board in January.

**Mr. Mike Wallace:** You're preparing next year's mains in September. Is that what you're telling me?

**Mr. Robert Marleau:** That's when they close, yes.

**Mr. Mike Wallace:** So you weren't sure if you got your supplementary estimates, which would have come in supplementary estimates A, I guess—Is that right?—

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

**Mr. Mike Wallace:** —in the fall, so they're not included in this book that we have in front of us. Is that correct?

**Mr. Robert Marleau:** That's right, except—

**Mr. Mike Wallace:** But you included the number of people that you hope to get, so there's extra money that supplementary estimates A allotted to you over a three-year period. Is that right? Is it over one year or three years?

**Mr. Robert Marleau:** No, it's three years.

**Mr. Mike Wallace:** So the \$660,000 is over three years. You've spent some of it.

**Mr. Robert Marleau:** Yes. Last year we lapsed it. This year we spent most of it. This year, this actual year that has begun, will be our last—

**Mr. Mike Wallace:** Will you have to ask for supplementaries again?

**Mr. Robert Marleau:** Not for the time being. The supplementaries we've asked for cover the Federal Accountability Act increases as well as the internal audit. Now, in the third year out, because of that special allotment, we go back to 82.

**Mr. Mike Wallace:** So that extra allotment is gone.

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

**Mr. Mike Wallace:** So you're reducing staff based on the income you think you will have.

• (1605)

**Mr. Robert Marleau:** That's right. I will be engaging the committee some time in the fall about what the future looks like with that reduction, particularly when I have the A-base analysis of our staff levels.

**Mr. Mike Wallace:** This is why I don't understand. I hate supplementaries, and I've said this many times. I don't understand. You know what the FAA is. You know that it's adding 70 new units of things to look at.

We have to remind the committee that you're just looking at complaints. Who knows—maybe you know, but I don't know—in terms of requests, how much they're up in terms of percentage? You're looking at complaints on your side. Why is that not built into your future plans for spending if you know that this is going to be a requirement? Why do I have to wait to say...?

I know that you are small peanuts compared to some of the other departments around here, but we're approving a 19% increase this year. You're saying that you're going down. It's a kind of feel-good sort of thing, but in actual fact you are going to be back asking for more money to keep the 90.

**Mr. Robert Marleau:** I can say that I'll probably be asking for at least the status quo.

**Mr. Mike Wallace:** You'll be asking for the 90.

**Mr. Robert Marleau:** It will be for the 90. Now, our peanuts are important to us—



**Mr. Mike Wallace:** I know. I understand that.

**Mr. Robert Marleau:** —and we do count them, and we look forward to their consumption in order to deliver our services.

If you go to page 6 of the RPP, the performance cycle of government asks us to plan three years out.

**Mr. Mike Wallace:** Right.

**Mr. Robert Marleau:** This is prepared on the basis of a forecast of spending for 2008 prepared in January, well before the end of the fiscal year, and then looking out three years. It happens that for 2008-09 we did look out to 2008-09 and made a supplementary submission late last fall, and it will be part of the supplementaries you will see in the fall. There was no way to integrate that in July 2007 in time for the preparation of the mains.

**Mr. Mike Wallace:** I don't believe you. I think you could do it if... You know that for 2009-10 you want 90 people, Mr. Marleau, if you're going to try to get that backlog changed. For 2010, I don't understand. If you know you're going to need those people, why are we not told well in advance so we can budget for it?

**Mr. Robert Marleau:** It's the Treasury Board cycle for preparing estimates. That's all I can tell you.

I can tell you right now that the 82 we're looking at for 2009-10 will likely not be enough, but that figure was planned three years ago.

**Mr. Mike Wallace:** I have it right here. I have 2008-09 in front of me, and it has 90 people in it. So it was planned a while ago. I can see that. But I don't know...

**Mr. Robert Marleau:** I couldn't put 90 in there for the 2009-10 period because my approved level at Treasury Board on the basis of that three-year submission, decided by Parliament, was that it would be clawed back. Now, I may have to make an argument, both at Treasury Board, before the parliamentary panel that reviews our submissions, and at this committee to justify the 90. For that I want to do an A-based review, and I want to come here with facts and figures.

**The Chair:** We'll begin the second round with the Honourable Judy Sgro. Five minutes is our question and answer slot.

**Hon. Judy Sgro (York West, Lib.):** Mr. Marleau, now that we have this administration in front of us, for the top five sections—everybody works very fast and efficiently here; you handed it out, and instantly we all have it—would you go over these numbers a bit and explain the graphs a bit, starting from this year?

[Translation]

**Mrs. Carole Lavallée:** But what we've been given here is not in colour.

**Mr. Robert Marleau:** That's unfortunate. We could talk about the percentages.

[English]

What do you mean, in terms of...?

**Hon. Judy Sgro:** You have where these complaints generally come from. There's the Department of Foreign Affairs, National Defence, and various departments.

**Mr. Robert Marleau:** Right. These are the top five cited exemptions and exclusions in all of our complaints. This is not in the system. All of these statistics are what's within our control and knowledge through the complaints process. What we've done is allocated the percentage of them by section in the statute. Section 19 deals with personal information—privacy issues, essentially—and section 19 is the navy blue, which is at the top—

**Mr. Mike Wallace:** What's the percentage for 2007-2008?

**Mr. Robert Marleau:** In 2007 it is 27%, over 23% of the previous year, and over 28% of the year before—so kind of a constant there in terms of, through the complaints process, invoking privacy and personal information.

To get back to what Mr. Martin had raised earlier, if you take section 15, which is the light blue, it's 13% for the now-expired year, 13% for the previous year, and it was not really captured in the year before—again, a constant, but that's only within the complaints process.

Is this Afghanistan 2006-2007 that creeps in? It's difficult to say, but I suspect that's part of it.

That last comment is more anecdotal than scientific.

• (1610)

**Hon. Judy Sgro:** As you're looking at your reorganization, and so on and so forth, and trying to modernize the access to information program.... Given your new setting, do you continue to expect that you're going to have more and more complaints, based on what you've had in the past?

I realize you mentioned that you were going to be quite clear with the government and others to provide transparency with the hope that would be reducing the complaints. Do you have hope that will really transpire in the way you're looking at the future of your organization?

**Mr. Robert Marleau:** It's difficult to read the tea leaves and try to predict where it's going to go. What I can say is that we had a major spike at the beginning of the fiscal year, which stayed with us through until recently, until the end of March. The trend—if you look at this chart, and I can make this available to the committee—was on the rise considerably, and then it's peaking down.

Are we going back to norm next year? I don't know for sure. I suspect that we'll be at a different norm because of the 60-day window that people must complain within or they're rejected. It's difficult to say whether we're just reaching another plateau. The plateau has been there for five or six years at around 1,300, 1,400, 1,500 complaints. We're now well over 2,000. Is that the new plateau? I can't say for sure.

There's also another dynamic at play. We used to open up an investigation on every complaint and move it along for as long as it was required for the requester to have the information they asked for, or if there were exemptions, extensions, or complaints, it went through that one process. Now, if it's a deemed refusal, we get a commitment date, we tell both the complainant and the department, "That file's closed. If they don't meet their commitment, come back and see us."

We hope to create a better dialogue and monitor that. In other words, once the department is committed to a date, it's got to do something or we'll be back, rather than us just carry the file along on behalf of both the requester and the department.

**Hon. Judy Sgro:** The whole issue of prioritizing the complaints and the ability to be able to label things as a frivolous complaint, because I expect you get a lot of those as well.... As you go forward with trying to reorganize and make some changes, is that one of the areas you are going to allow yourself some more room on?

**Mr. Robert Marleau:** Mr. Chairman, I'm glad the honourable member raised that word, because the commissioner can't, himself. There's no such thing as a frivolous request and there's no such thing as a frivolous complaint. There's no such word in our statute.

**Hon. Judy Sgro:** There should be.

**Mr. Robert Marleau:** There are in the provincial statutes—frivolous and vexatious clauses are in there—and that certainly has to be part of the debate when we look at modernizing the regime and the act. They exist, but the statute says I shall investigate, and through the process—if it is frivolous or vexatious—and through the mediation we either get the expectation of the requester to be reduced or the department to be more understanding. But some of those are time-consuming.

We won't have, in this new approach, a frivolous and vexatious category. But our early intake and early resolution unit should be able to solve those before they become an investigation.

**The Chair:** Thank you.

Mr. Wallace, you have another five.

**Mr. Mike Wallace:** Thank you, Mr. Chair. I'm going to share my time with Mr. Van Kesteren.

I get a little excited about these things, so I apologize if I offended you.

I think three years is a bare minimum that we guesstimate out to what we're going to be. What would your suggestion be, then, for me as a politician on this side of the table to improve the system so that you don't have to put the 82 in there? You plan properly, in my view. You're forced to do it by the rules, in a sense. If you can't tell me now, you can e-mail me. What needs to change to make it more reasonable for departments and commissioners to properly plan their budgets and to allow us to properly investigate, in your view?

Do you have any comments on that? Suzanne, you're eager to answer.

• (1615)

**Ms. Suzanne Legault (Assistant Commissioner, Policy, Communications and Operations, Office of the Information Commissioner of Canada):** Part of the issue is that we're talking about

planned spending. It's not the spending that we plan strategically when we develop our strategic vision for an organization. We say we forecast that over the next three years this is where we want to end up and these are the resources we're going to need.

This is not what's recorded here. What's recorded here is we know we're going to have this spending this year and we know we're going to have this spending next year. In the following year, based on what's been approved already by Treasury Board, this is what the situation's going to be like. The exercise you have here is not linked to what we would develop in our strategic vision as the planned resources that we would need to implement that. It's a different exercise.

**Mr. Mike Wallace:** Right.

Do you not think that they should be? Should they not be connected?

**Ms. Suzanne Legault:** I think there should be and could be a section of this document that addresses that idea. It addresses it in part by our identifying some of the external factors that are going to put pressure on the delivery of our program, which is what we have here, but it doesn't translate into our expectations in terms of additional resources, and I think that could easily be added.

It doesn't mean that Treasury Board Secretariat will allocate that money or that Parliament will agree to allocate that money, but at least it would give a better indication.

**Mr. Robert Marleau:** In Treasury Board-speak, if I may add, it's called the ARLU, the annual reference level update, and they won't allow you to put down any figure other than what has been approved by Parliament. Technically, in this case, we go back to 82. That's because we only have three-year increase approval level, so we go back to 82.

**Mr. Mike Wallace:** Okay.

**The Chair:** Go ahead, Mr. Van Kesteren.

**Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC):** Thank you, Mr. Chairman.

Thank you for coming.

Commissioner, when I read your quote here, I was reminded of another quote. It was from Ronald Reagan, who said,

The nine most terrifying words in the English language are "I'm from the government and I'm here to help".

What I like about Reagan is the same thing I like about you, and I give you that as a compliment: he had the ability to measure up quickly what he wanted to say. In the times we've met with you and in the times I've spoken to you, I found you have that gift as well.

When we did the Afghan report, there was a lot of concern that the bureaucracy was inept. In the end I think we really found that wasn't the situation. There were other things at play. The people in the bureaucracy are just trying to do their jobs. They're trying to do their jobs well, and I like to think that in government that's pretty much the case for those who work in the bureaucracy.

I'm going to ask you two questions. You've been at this now for about a year, and there have been some allegations that we are involved in a culture of secrecy. Do you think that's true? Do you think our government is shrouded in a culture of secrecy, or is it just a matter of...? Maybe I shouldn't lead the witness. Do you think we're in a culture of secrecy?

**Mr. Robert Marleau:** It's the first time in my life that I've been compared to Ronnie Reagan. So the paraphrase comes to mind, "Mr. Prime Minister, please tear down this wall", in terms of secrecy.

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

**Mr. Robert Marleau:** I do not believe there is a culture of secrecy in the public administration of Canada. I've said this publicly before.

Are there pockets of resistance to disclosure? Of course there are. Are there some groups who plan to make it difficult for documents to be made available? Probably. I don't see it as a conspiracy. I don't think deputy ministers get up in the morning with the intention of violating the Access to Information Act.

We have a Westminster model of governance, based on cabinet confidence. Does it flow down the side of the mountain? Yes, of course it does. Every senior public servant doesn't want the minister to be surprised or to get caught out with information that he or she doesn't already have and can't explain. So there is a reflex in this system that has to be managed. That doesn't mean they cannot be more transparent. It doesn't mean the executive cannot support a regime of more transparency, more timely disclosure, more complete disclosure, and more proactive disclosure outside of the statute.

I reluctantly joined the debate on the so-called lack of disclosure about the detainees issue in Afghanistan just after Christmas. But it wasn't really an access issue; it was a communications issue. If we can get governments to more proactively communicate what they do... Whatever their message is, it has to be verifiable through the access to information regime. So you can't communicate something as an executive and not allow verification of that message.

It's that dynamic that I was talking about in the quote I used. It's a continuum of sharing of information that renders everything more transparent.

I may sound Pollyannaish, but I don't believe there's a culture of secrecy. I believe there is some bad performance—and that has to be addressed.

• (1620)

**The Chair:** Thank you.

Mr. Nadeau, *s'il vous plaît*.

[Translation]

**Mr. Richard Nadeau (Gatineau, BQ):** Thank you, Mr. Chair.

Good afternoon, Mr. Marleau, Ms. Neill and Ms. Legault.

People file complaints because they're not satisfied with the answer they receive. The complaint then goes to your office. I'm going to make a comparison with an area that I know better. The Commissioner of Official Languages has a grid that rates departments and shows which ones are doing a good job, which

ones are doing less well and which ones should be doing more to promote the official languages.

Have you noticed that there are some departments where there are always more problems? Why is that? What could we do to improve the situation?

**Mr. Robert Marleau:** It is true that pretty well the same departments turn up on our non-performance list every year. The report cards we put out in the past were just for those who failed to meet the initial 30-day deadline.

I think the situation is much more complex than that. That is why the new report cards we want to give the government will include the context involved. We are at war. Everyone is familiar with the Afghanistan story. The Department of National Defence and the Department of Foreign Affairs are experiencing huge increases in the number of access to information requests. There may be an explanation for the delay, or perhaps there could be improvements in this area. If we have an answer from the department and an action plan, the committee will have all the information about the department's performance. So far, you have had just part of the information.

I want to use these report cards to create a public contract with the deputy minister under the new provision which states that deputy ministers must show leadership and have a reasonable duty to assist people requesting information. With an overall action plan for the department, I will be creating a public contract with these report cards. It will be up to you, as members of Parliament, to hold them accountable for this contract. I do not have the authority to enforce the act more rigorously. All I have is the power to investigate and make recommendations. In an extreme case, I could go to the Federal Court, but it takes 7, 8, 9 or 10 years to get a ruling. We are counting on these new report cards to have an impact on the performance of various departments.

**Mr. Richard Nadeau:** I am not surprised to hear you mention the Department of National Defence, for the reasons you outlined. I imagine the same is true in a number of other countries with parliamentary systems similar to ours and that are involved in wars someplace in the world.

Are there any other departments apart from National Defence? Which one has the best results—let us look at the positive side of things—and which has the worst results? We know why you mentioned the Department of National Defence. You explained that there are various conflicts, military strategies, and so on. Nonetheless, could the departments that do a good job not be a model for similar departments?

**Mr. Robert Marleau:** This too will be the objective of the report cards. They will include an evaluation of best practices and we'll publish them. If a department has improved and achieved some very good results by using a particular technique, we hope this practice will be passed on to other federal institutions. To answer your question, I cannot tell you which department has achieved good results from the list I will give you, because I am the person who gets the complaints. However, the number of complaints is not exactly an indicator of a department's performance.

I already mentioned the Department of National Defence.

This year, the CBC is at the top of the list. A new institution was established in September, and a flood of requests came in in the first few months. There were actually 535.

The Privy Council is always near the top. Most of the time, it is because it takes a long time to respond because consultations are required, and so on. It is at the top of the list.

The Royal Canadian Mounted Police is always in the top five. Here again, sensitive, and sometimes difficult issues are involved. There could be room for improvement in its performance as well.

The Department of National Defence and Revenue Canada are always in the top five or six departments each year.

**Mr. Richard Nadeau:** Thank you, Mr. Chair.

• (1625)

[*English*]

**The Chair:** Mr. Wallace had a burning question. I'm going to let him throw it in before we wrap up this part.

**Mr. Mike Wallace:** I have just one question. In terms of the report cards you're working on, the new report card system, which I think is a great idea, are you getting any input from parliamentarians on what they'd like to see, or do you think you know it already? Do you need help, or are you...?

**Mr. Robert Marleau:** This is the first test, the first round. We certainly hope that when they're tabled you'll give us feedback on how useful they are. We've offered that to our federal partners as well. The dialogue we will have with departments will be about how they can be improved so that they become a tool for them as well. So we will very much be looking forward to your input.

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

**The Chair:** Mr. Marleau, you have outlined for the committee that you are in the midst of somewhat of a chaotic situation that's going to take some Herculean solutions. But they're very important, and I don't think we should concentrate too much on regulating away the backlog, or redefining it away. That's too simple to do, because the rights and the public interest have to be served as well. There's that balance.

We are celebrating the 25th anniversary of the Access to Information Act. I'm not so sure it's a celebration when we've allowed the system to morph into this situation. We need to do better, all of us, and we look forward to progress reports from you. We certainly look forward to an opportunity to deal with you again.

I have one quick question. Would reviewing and updating or modernizing the Access to Information Act in itself help you to deal with your situation?

**Mr. Robert Marleau:** There is no question that reviewing or modernizing the act would help with our situation in terms of the act being more precise and what the legislator wants in terms of time extensions and performance by departments.

Right now, after they've responded to a requester in the first 30 days, basically they can claim all the time that they feel they require, unless it becomes unreasonable, and then I investigate.

What's reasonable in law—I'm not a lawyer, but I've been told this before by lawyers—is reasonable in the mind of a reasonable judge on a reasonable day. So it becomes quite a debate.

I know the committee has committed to reviewing or at least beginning a review of the Privacy Act. We'll be following that with interest. We may even want to provide you some of our views, because many of the principles in that statute are the same principles we will operate under. So I think there's kind of a window for us to get a feel about these issues, and what might be modernization of the Privacy Act in principle could also be modernization of the Access to Information Act in principle.

**The Chair:** We are certainly quite aware that to do either of the acts properly, it is not a two- or three-month project. It is several months. We need to make that commitment, and I hope we're not leaving this too late before we can have a role to play in improving the situation and working with you.

So I thank you and your colleagues for coming to give us a frank assessment of where you are. I think the members are quite satisfied with your numbers, other than the fact that quite frankly, when it gets down to it, money should not be the reason we are not doing the job as well as we are. If it's FTEs, Treasury Board maybe just doesn't get it—I don't know. If we can help in that regard, we can't increase budgets, but maybe we have to start that dialogue with Treasury Board when putting important acts like the Access to Information Act in such jeopardy. So thank you kindly.

• (1630)

**Mr. Robert Marleau:** Thank you very much, Mr. Chair. We're always happy to talk about more peanuts.

**The Chair:** Touché.

I'm not going to suspend. I'm simply going to excuse the witnesses and I'm going to ask Heather Black to please come to the witness table and get settled. I know we don't have a vote today, but we'd like to be finished on time.

[*Proceedings continue in camera*]







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