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Mr. Paul Szabo

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Monday, April 27, 2009

• (1530)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): I call the meeting to order.

This is meeting number 16 of the Standing Committee on Access to Information, Privacy and Ethics. Our order of the day is to hear a witness from the Office of the Public Sector Integrity Commissioner, Ms. Christiane Ouimet, commissioner.

It's nice to see you here. I understand that you have some opening remarks for us. Would you please introduce your colleagues you brought here with you today.

With that, please proceed.

Ms. Christiane Ouimet (Commissioner, Office of the Public Sector Integrity Commissioner): Thank you very much, Mr. Chair, and good afternoon.

It is a real pleasure to appear before the Standing Committee on Access to Information, Privacy and Ethics. I am joined today by my deputy commissioner, Henry Molot, and my general counsel, Joe Friday. I am absolutely delighted to appear before the committee to talk about the mandate and the role of the office, which is still relatively new.

I was truly honoured to be appointed the first Public Sector Integrity Commissioner, and I have invested considerable effort in building a new organization that will be seen by public servants and citizens alike as credible, efficient, and trustworthy. It's very important that we be seen as responding to serious issues of concern and also finding appropriate, practical solutions to problems. Our ultimate goal is to enhance confidence in our public institutions and to support good governance.

Much has happened to advance our work since I first appeared before both houses, but a lot remains to be done. I'm truly confident that the momentum we've created will continue with great strength and that we will build upon it.

[Translation]

I would like to talk to you today about our mandate, who we are and why we were established, but also about the preamble to our act, which expressly recognizes the essential role of the federal public administration in Canadian democracy. The preamble refers to the public interest, and that is very important. It talks about enhancing confidence in the integrity of public servants and in public institutions. This is the solid foundation upon which I have established my office.

I do feel that the current economic climate focuses our attention on the essential role played by our public institutions. In difficult economic times, the role played by public institutions is even more important. The importance and necessity of the programs and services they provide have never been more clearly evident. The same is true of sound management.

[English]

In the context of economic instability, I think this organization plays a very important role in ensuring there is confidence in our public institutions.

Perhaps it might be useful if I go through, in very brief terms, the mandate. Essentially, we're talking about one act and two regimes: the disclosure of wrongdoing process, and a reprisal complaints process.

Let me start with the disclosure of wrongdoing process. The act defines wrongdoing as a contravention of any act of Parliament, provincial legislature, or regulations made under such acts; misuse of public funds or public assets; gross mismanagement; an act or omission that creates a substantial and specific danger to the life, health, or safety of persons, or to the environment; a serious breach of a code of conduct; or knowingly directing or counselling a person to commit any of these wrongdoings. So you see it's very broad, and each element requires very careful attention.

My office is charged with receiving and investigating allegations of wrongdoing. Any public servant or any member of the public can disclose information about suspected wrongdoing.

[Translation]

Under the act, I have the power to determine whether or not an investigation is warranted based on the merits of each case. When we do launch an investigation, we use the combined expertise and experience of my staff, but also call on outside experts from time to time. We do legal analyses and use investigative techniques to find the best possible solution.

It is very important to point out that our investigations are confidential. What guides us throughout our work is that we are acting in the public interest in all cases that come before us. If we find a case of wrongdoing, we inform the deputy head, recommend corrective action and table a report in Parliament.

[*English*]

I have to say that public servants have the choice. They can go to their immediate supervisor, they can go to what is called the senior officer of each organization, or they can come directly to my office. Also, members of the public can come to our office.

Let me tell you about the second very important component under the act, which is called the reprisal complaints process. This second aspect of the mandate is quite critical, because we have unique and exclusive jurisdiction in protecting public servants from reprisals. We're of course talking about protecting public servants who come forward to disclose wrongdoing.

It is an innovative and important step on the part of Parliament. Reprisal is expressly prohibited under the act, and we must act swiftly and decisively to respond to it.

• (1535)

[*Translation*]

The act defines a reprisal as a disciplinary measure, demotion, termination of employment, anything that adversely affects employment or working conditions or a threat to take any of these measures.

When a complaint of reprisal is presented to us, there are some very short timelines, and I have been asked to be informed as soon as an allegation of reprisals comes to our office. Under the act, I have the authority to refuse to deal with a complaint when, for example, it was made in bad faith or is outside my jurisdiction. Whenever people contact our office, we want to make sure we listen to them, that we deal with their request and that we refer them to the best place to find a solution to the problem.

The act talks about dealing with and protecting people from reprisals as far as possible informally and expeditiously. This is a very important point. I also have discretionary authority to refer a complaint to the Public Servants Disclosure Protection Tribunal for an order for remedial or disciplinary actions.

[*English*]

Let me now turn briefly to the first annual report that I've tabled before Parliament. We have handed out a little brochure, which you have before you. What I'd like to bring to your attention is that the thematic of our first annual report is "Building Trust Together". In it, you will see these three words: "inform", "protect", and "prevent". These are truly the pillars of our organization and the act. Let me explain how they will frame my submission today.

With the word "inform", of course, we need to inform public servants and the general public of who we are, but as well, who we are not.

[*Translation*]

The annual report was a way of reaching out to people and all our stakeholders to introduce our new organization and to inform them about our mandate. There is still time to do more to make our role

better known, for example by letting people know that our office has jurisdiction over 400,000 public servants, and that members of the public can disclose information about wrongdoing. With our role to inform in mind, we continue to focus on our outreach activities.

[*English*]

It is together that we must build trust in the process and in our procedures. Chief executives have a direct and pivotal role in informing everybody in their organizations, including in regard to the appointment of a senior officer who is tasked with the responsibility for accepting and acting upon allegations of wrongdoing.

In addition, I would be remiss if I did not mention that the Canada Public Service Agency, now the office of the chief human resources officer at the Treasury Board, is identified as having a very specific role, as well as supporting the Treasury Board minister.

One thing that has become quite clear to me since I assumed this role is that we cannot do it alone. We cannot take it for granted that because Parliament created my office, and because the office is up and running, as it had to be from the first day of the implementation of the act, people know exactly who we are. There's still a fair bit of confusion and a fair bit of work to be done.

The challenge of informing our stakeholders continues. I think everybody has a role, including the public sector, the media, the members of this committee, and your fellow parliamentarians, to help ensure that people are aware of our existence and our mandate and that they are confident in our ability to carry out that mandate and protect their interests.

The word "protection" is pivotal in the title of the legislation. This has to do with protecting the confidentiality of the disclosure, but also the confidentiality of the process itself and anybody who is part of this. Again, earlier I referred to informal and expeditious investigations, natural justice, and procedural fairness. We are not conducting criminal investigations. This is about public administration and administrative law. We have to recognize the many interests at stake. As well, we have to recognize that reputations and careers may be at stake as a result of any of our processes.

• (1540)

[*Translation*]

Our ability to offer real and effective protection is extremely important. In the next annual report, which I hope to table shortly, I ask whether people are afraid of coming forward, and if so, why? What collective role can we play to ensure once again that these questions are asked and answered?

[*English*]

Briefly, and I'm conscious of the time, I wish to address the third pillar of my mandate, which is prevention.

Immediately upon taking office, I made the deliberate choice, with the support of eminent jurists and Parliament, that prevention was part of the mandate. My office certainly will not hesitate to use the full strength of the act and investigate, but I think that the enforcement model is not enough. To achieve our goal, we must promote ethical behaviour and enhance confidence through the prevention of wrongdoing.

[Translation]

I would also like to make it clear that I am not the Auditor General, nor the chair of the Human Rights Commission, nor the person in charge of the staffing process. I play a complementary role that must not overlap with that of the specialized administrative tribunals. Once again, our objective is to protect the interests of all those who turn to us.

Before the meeting started, I spoke with some of the committee members about the fact that it was not easy to set up a new organization. There are huge challenges involved, but there are also opportunities. We invent processes, we interpret the act with the guidance of Parliament, but also with the assistance of all the people we consulted over the last two years. I think that as a result our mandate is very realistic and solution-oriented. We are not interested in simply identifying problems, we also want to identify solutions.

[English]

Creating a new organization presents challenges for any government and business, and our organization was no exception. We needed to interpret the legislation, to develop guidelines, while at the same time recruiting staff, setting up offices, setting up new processes. We needed to ensure that our organization had the right governance, the right accountability structures, to ensure that our day-to-day activities were conducted properly. Certainly, the experience had made me acutely aware of the unique challenges facing small organizations.

[Translation]

The committee may be interested in the budget of my office. I would be pleased to answer questions on this. Our budget is \$6.5 million. Since we are a young organization, we expected we would spend \$3.7 million, but we actually spent \$3.6 million. In the years ahead, we will build on our experience. We use diversified resources to ensure we have all the expertise we require. I know there is provision for a five-year review of our act, and we will focus our research and work so as to reply to any concerns regarding our mandate.

[English]

Mr. Chair, it has been an honour to appear. I'm happy to answer any questions that you or members might have.

Thank you.

The Chair: Thank you kindly.

I must admit that I leaned over to say a word to Mr. Poilievre. We both know what we were thinking. Back in 2005 we were on the government operations and estimates committee that resurrected the dead whistle-blower act, which this now replaces, I guess, in its mandate.

If you haven't already, you might want to read the transcripts of some of those meetings we had. Many of the items that you talked about were argued very strongly by members, particularly the reprisals issue, which is extremely important, and also the area of the option of public servants to make complaints directly to the commissioner as opposed to through the designated person in that department, or whatever.

It's very interesting, but I'm very pleased that you and your commission are now in place and working towards....

I only have one question for you, because it was speculation all throughout our hearings. We were concerned as to whether or not introducing this act would create a wave of complaints. Did you have a wave of complaints?

• (1545)

Ms. Christiane Ouimet: First of all, we had a wave of inquiries. There were well over 200 inquiries about what the legislation was about. It is confusing. The legislation, Bill C-2, has created a series of mechanisms. As well, as I recall, in the debates leading to the creation of this office, some machinery issues were discussed as to whether it was going to be a stand-alone agent of Parliament or joined with, for instance, the Public Service Commission, whether the tribunal should be created and what would be the role. But in the end, in the context of Bill C-2, in the context of the creation of a series of new agents of Parliament, some of which were called before this committee, we absolutely need to continue to inform about what we are and what we're not.

So we had well over 200—

The Chair: So you didn't have a wave of complaints then?

Ms. Christiane Ouimet: We had 200 inquiries and we did have a number of—

The Chair: No, no complaints.

Ms. Christiane Ouimet: Complaints? We had a good 70 complaints that needed more probing.

The Chair: Okay.

Ms. Christiane Ouimet: Which was considerable.

The Chair: Our members will have lots of questions, so we're going to try to keep it nice and crisp as opposed to....

Madam Simson, please.

Mrs. Michelle Simson (Scarborough Southwest, Lib.): How many are on staff under your jurisdiction?

Ms. Christiane Ouimet: Currently we have 22, and a 23rd member will be added in the next month or so.

Mrs. Michelle Simson: I noted from the briefing notes we received that in your first annual report to Parliament, which was May 28, you stated your office had received 59 disclosures and 22 complaints of reprisals. Are you in a position to give us—I know it is coming out fairly shortly, but it's almost a year later—how many complaints you've received since then and how many complaints of reprisals and disclosures you've had?

Ms. Christiane Ouimet: Yes, essentially last year the number of disclosures was 59 and 22. This year the total number of disclosures was 76 and the total number of reprisal complaints was 23. We had over 150 general inquiries.

Mrs. Michelle Simson: Okay. So for the new ones, would it hold true, as it did after your first report, that there were no findings of wrongdoing, no settlements or applications to the tribunal? Would that be the case again this year?

Ms. Christiane Ouimet: I'll be tabling the report probably in the next week or so. There have been some full investigations in cases of reprisals. There has been a finding with respect to a reprisal case. In the context of disclosures, some corrective actions were recommended.

Mrs. Michelle Simson: So there hasn't been a significant jump in terms of the number of cases you've looked after?

Ms. Christiane Ouimet: That's correct. However, you will see a statement in the next annual report. I don't think it will ever be a sheer number. It will not be measured by the number but rather the complexity and the sensitivity of each case—just as we had the previous year, very sensitive, complex cases.

Mrs. Michelle Simson: As a relatively new piece of legislation in a new office, unlike the other commissions we've heard that are over a quarter of a century old, do you think the current act does the job, or do you have any recommendations to maybe enhance it that might be easy to implement?

Ms. Christiane Ouimet: This is a very good question.

You're absolutely right, Mr. Chair. When there is a new piece of legislation you need at least a couple of years to really understand the full strength, what is needed, and ultimately we're talking about public interest versus private interest. That's not to say that private interests are not important—quite the opposite. At this juncture we're looking at some technical issues with respect to specific timelines, and probably in a year or two we'll be in a better position to make recommendations.

But at this point certainly the breadth of the act, the discretion that is offered, is certainly adequate to do the job.

Mrs. Michelle Simson: Based on what you've seen thus far?

Ms. Christiane Ouimet: That's correct.

Mrs. Michelle Simson: Okay.

• (1550)

The Chair: Mr. Wrzesnewskyj.

Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.): How much time would you require to deal with the average inquiry? I know there will be a range, but on average?

Ms. Christiane Ouimet: On average, we try to deal with issues within a three- or four- month period. Again, this fluctuates. In the case of reprisal—

Mr. Borys Wrzesnewskyj: So three or four months, and actual time spent. So there is time waiting for information, etc. But as for actual investigative time spent on a complaint file, if you were to determine the person hours, what would your estimate be?

Ms. Christiane Ouimet: It's still a bit early to tell, because when I arrived in August we did not have a measurement system in place,

which we just implemented. We are starting to document the time being spent, and again there is the full range. At this point some of the cases have required very intensive work—some, in fact, years. We don't have the specific data.

Mr. Borys Wrzesnewskyj: Okay, I see that you don't have the data on that. Per employee, we've had four complaints of various types per year in your department.

Now I'm going to a different topic. You've said that one of the pillars is protection. You're limited to \$1,500 for legal fees for someone who comes forward, a whistle-blower. Do you think that acts as a disincentive? You may not be hearing this, but people look at the details, you provide information, and they say "Oh. It's only \$1,500."

A run-of-the-mill lawyer is about \$250. Mr. Dechert would probably know these rates better than I would. A good lawyer would be \$500 or perhaps more. You're looking at serious issues, especially if you're dealing with senior levels within the civil service for a complaint. So you're protected for up to three hours of legal advice. Why is it capped at this low level? Does it in fact provide—if that's one of the pillars—the protection that whistle-blowers need?

They're putting their futures in jeopardy. Some of these cases, as you said, are very complex. How is it that we provide all of three hours of legal support?

Ms. Christiane Ouimet: In fact, this legislation included the \$1,500 limit, but it also provides the discretion to take it up to \$3,000.

The reality is that we have had only one case where in fact legal advice was required. Under the act, we can actually offer that legal advice directly from our office, which is exactly what happened. The person who made the disclosure was very happy with the result and indicated that he had received very good, neutral, and objective advice on the process.

In addition, we are also seeking the help of other organizations, such as the unions, to provide general advice on the best venue in which to deal with people who have complaints. In addition, there is an obligation within each department to provide information. I'll definitely be recording your concern and examining it closely.

The Chair: Thank you.

Madame Thi Lac, s'il vous plaît.

[Translation]

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good afternoon, Commissioner. You said earlier that you had received 200 inquiries, including 70 complaints. You also said in your presentation that you had discretionary authority to accept or reject complaints.

How many of the 200 were rejected?

Ms. Christiane Ouimet: First of all, we have what we call the admissibility stage. This is when we decide whether we can refer the individual and the complaint somewhere else. The matter may not come under our jurisdiction, for example, if the individual is complaining about an organization that does not fall within our mandate. I should mention that 59 of the 206 inquiries received further consideration. We dealt with 49 of them at the preliminary level, but the others advanced to various stages. It is very important that all issues be considered on their merits. There may be referrals to other organizations, such as Mary Dawson's office—and she has appeared before this committee—or the Human Rights Commission.

• (1555)

Mrs. Ève-Mary Thaï Thi Lac: Are your findings made public or do they remain confidential?

Ms. Christiane Ouimet: We provide as many details as we can in order to inform Parliament about the type of work we have done and the issues we have dealt with. This is a very delicate issue, particularly with respect to unfounded cases, to ensure neither the whistleblower nor the people who are part of the process are identified.

Mrs. Ève-Mary Thaï Thi Lac: From what you said earlier, I understand that the public administration does the investigation. My colleague asked you a question about the turnaround time for investigations, and you said it was about four months. Does the four-month period apply just to the work done by your office, or does it include a general investigation done by the public administration?

Ms. Christiane Ouimet: Let me clarify, I think I've caused some confusion. When I talk about the general mandate of my office, I am talking about public administration. In the preamble, there is reference to serious cases of mismanagement, violations of the code of conduct, and the poor management of public funds. Generally speaking, I spoke about the turnaround time for complaints, which varies a great deal. I should mention that the act has been in force for only a year and a half or two years. On average, the turnaround time, from the time we receive the complaint until the time the file is closed, is about four months. But those are very preliminary figures.

The act provides for some timelines in the case of reprisals. We have 15 days to rule on the admissibility of the complaint. Within a year or two, we will definitely have more details about the type of issues we will have to deal with. Since people will understand our mandate a little better, they will not come to us for issues we do not cover. If they do, we will refer them to the right place.

Mrs. Ève-Mary Thaï Thi Lac: You talk about disclosures. Last year, when I was on the agriculture committee, we heard about a researcher who had told his union about a document that was going around and that talked about possible budget cuts at the Canadian Food Inspection Agency. This employee had lost his job. He had not stolen the document in question, he just happened to receive it.

Is that the type of complaint your office can investigate?

Ms. Christiane Ouimet: It would be difficult to comment on a specific case. However, I invite any member of Parliament or any individual to feel free to ask questions and to speak in confidence to a representative from our legal service or someone else in our office. We would be pleased to deal with any concerns.

Mrs. Ève-Mary Thaï Thi Lac: You said that your office had been established quite recently. What difficulties have you encountered since the office opened? What steps have been taken to correct these problems?

Ms. Christiane Ouimet: That is an excellent question. The establishment of small agencies is in fact one of the important themes in my upcoming annual report. We are still facing challenges, in particular staff turnover, and in having the right people in the right place with the right training. We want to ensure that at all times the office meets its commitment to Parliament to deal with every issue in accordance with the act and to make the necessary decisions. The rest has to do with infrastructure issues, such as a telephone system that works well, and proper case management.

I am very proud of my team, which includes experts in all fields. We have managed to process all the cases. We support these people in the decisions they make, even though it is difficult to establish a small agency. Once you have read the annual report and the chapter on federal organizations, I will be pleased to discuss these issues with you again. Committee members could really be helpful to this community in finding all sorts of practical solutions.

• (1600)

Mrs. Ève-Mary Thaï Thi Lac: A number of commissioners have appeared before the committee since the beginning of this session. One of the things we have heard the most often is that it is very difficult to recruit staff.

Why are you having so much trouble recruiting people? Do the people you recruit stay, or is there a high staff turnover?

Ms. Christiane Ouimet: That is an excellent question, Mr. Chair.

Sometimes, people who start working for a small organization expect to be promoted rapidly and need to follow very specific ongoing training. Sometimes too they are offered something better elsewhere; it's a matter of supply and demand. A combination of factors allows people to ensure that they have the right people at the right time. Once again, the committee members can help us find solutions. There are many practical solutions and I will suggest some of them in my next annual report.

Mrs. Ève-Mary Thaï Thi Lac: Thank you.

[English]

The Chair: *Merci.*

Mr. Siksay, please.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Mr. Chair.

Thank you for being with us today, Commissioner, with your colleagues.

In your remarks earlier, in the protection section, you posed the question, are people afraid of coming forward, and if so, why? Can you try to answer for us?

Ms. Christiane Ouimet: In fact, we have a whole chapter in the next annual report on this that is entitled “Why People Are Afraid to Come Forward”. We’ve extended an invitation to former disclosers to share with us their concern about what has happened. We’ve also spoken to top researchers in the areas. Certainly there’s a cost. There’s a cost for people who come forward with issues and concerns. We want to protect confidentiality, but as I’ve explained, there’s a delicate balance as well. Our objective is not to shut down an institution. It’s not to shut down organizations that need to continue to provide services and programs. Our objective is to zero in on what the problem is. As a new organization, we must be able to reassure them that we’ll do the utmost to find solutions.

This is universal. This is not typical to Canada. In Canada, in fact, we have very progressive legislation. We are doing an analysis with what is called the “quads”, the four countries that are most like us. That is also something we’re going to pursue with disclosers. We’ve met with a number of organizations, and we want to continue to work with them to find out how we can attenuate the concerns and make the system work for everybody.

Mr. Bill Siksay: Is Canada still one of the only countries that link both disclosures and reprisals in this legislation?

Ms. Christiane Ouimet: Yes. Not only linking reprisal and reprisals—that’s a very good question—but as well having the power to investigate. Occasionally you have those links, but the power to investigate rests elsewhere. I hesitate to use the word “unique”. There has been that debate among my deputy commissioner and my general counsel as to whether Canada is really unique. I think it’s very innovative in its approach, it’s very complete. To a certain extent we remain a model in many, many ways.

Mr. Bill Siksay: You mentioned that one of the features of the legislation is that people can also make a complaint to the designated senior officer in their organization. Have all organizations designated such an officer, and is that work complete?

Ms. Christiane Ouimet: In fact, they have a choice. They can designate either a senior officer within their organization or what we call the 10(4). That is subsection 10(4), where they can designate our office as the prime recipient of the complaint.

Mr. Bill Siksay: So have all the agencies or all organizations done that?

Ms. Christiane Ouimet: They either have designated or have their own, and we’re reaching out to that community as well.

Mr. Bill Siksay: Do you know what the split is, how many have designated your office and how many have designated—

Ms. Christiane Ouimet: It is definitely in the minority. It is 37.

Mr. Bill Siksay: Thank you.

You mentioned in your response to Mr. Wrzesnewskyj’s question that you have worked with public service unions in terms of legal fees and that kind of thing. Is there a relationship with public service unions? It would seem to me that there is a pretty key connection between their work on behalf of their members and taking someone through this kind of complaints process. Is that relationship functioning well?

●(1605)

Ms. Christiane Ouimet: I’ve worked very closely with the unions throughout my career, either co-managing the union management forum.... I have always said that unions have to be part of the solution. I appeared before the national joint committee, which represents the 18 bargaining units, just two months ago with senior counsel. I offered them a special consultation process in the fall, and they accepted at the time. First of all, a lot of the cases that come to us have a labour relations issue or staffing human resources issue. They have committed to work with us to identify the key challenges and the key solutions. Absolutely, they are a very key group with respect to implementing the legislation and coming up with solutions as well.

Mr. Bill Siksay: When I was poking around on the website today, which I found very helpful and easy to find information that I was looking for—it was very well put together—I noticed that you had attended the Council on Governmental Ethics Law conference. Can you tell us something about that organization, and if that’s a place where you learned more about similar regimes in other countries, or if you were talking about Canada’s particular legislation? Can you tell us a bit about what that organization does?

Ms. Christiane Ouimet: That organization has a much broader mandate than whistle-blowing. In fact, it regroups as well on elections issues, ethics issues.

While there are similarities with respect to the issues at stake, in the end what I gathered out of this—and I spoke to a lot of experts, including the World Bank representatives—was that you need a multiplicity of mechanisms in order to have ethical organizations. You have to reach out to the various units. You need, for instance, an ethics commissioner. You need, as well, some values and ethics. You need strong lobbyist legislation. You need a combination of these. But ultimately it is the leaders of each organization, and people in the organization who have a supervisory role, a model role, who make the difference. This is what we gathered out of this.

I would also point out that we’re going to be paying far more attention to the system of our neighbours to the south. That’s for obvious reasons, because of the economic situation and because there are more similarities in many ways. We’d be happy to report further on this in the future.

Mr. Bill Siksay: Thank you.

Thank you, Chair.

The Chair: Thank you very much.

We go now to Mr. Poilievre, please.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Thank you very much.

Merci, et bienvenue

I want to go over the numbers from your report that finishes the period of 2007 from the time of your creation, which I believe was in March, through to March 31 of 2008. On page 24 of the annual report, you list the number of disclosures, investigations, etc.

The number of disclosures received was 59; the number of disclosures reviewed to determine jurisdiction under the act was 49. What's the difference between those two?

Ms. Christiane Ouimet: Some of them were that the person making the disclosure decided they didn't need to pursue it, or it didn't need a further examination of jurisdiction because, for instance, it was clearly a private sector matter.

It is confusing, and I would commit that in our next annual report—

Mr. Pierre Poilievre: I don't have much time, so I'm going to focus on these questions.

The number of files closed after preliminary review and analysis was 25.

Ms. Christiane Ouimet: Correct.

Mr. Pierre Poilievre: So they were reviewed and determined not to have merit. Is that correct?

Ms. Christiane Ouimet: Correct.

Mr. Pierre Poilievre: Okay.

Then that leaves us, out of the 59—having subtracted the groups we've already mentioned—with 24. And then you had the number of files still in process as of March 31, which was 19. The number carried forward for analysis and verification was two, and the number of investigations of disclosures commenced under this act was three. So out of all the 59, only three led to actual investigations.

• (1610)

Ms. Christiane Ouimet: Well, yes. It's a combination. There were definitely three investigations, and “acted upon” means that there were some specific recommendations as well. But you're right.

What I was going to say—

Mr. Pierre Poilievre: So in the previous two, you made recommendations of some kind.

Ms. Christiane Ouimet: Yes.

Mr. Pierre Poilievre: Okay.

Now, on the reprisals side, you have the number of investigations of reprisals commenced under this act as two. So there were a total of five investigations for the period ending March 31, 2008.

Ms. Christiane Ouimet: Yes, exactly, either full-fledged investigation of process—

Mr. Pierre Poilievre: And of those five, how many complaints were deemed founded by your office?

Ms. Christiane Ouimet: This is part of the next annual report that will be tabled in a matter of days or weeks.

Mr. Pierre Poilievre: And in that report you will list how many founded complaints occurred?

Ms. Christiane Ouimet: Correct.

Mr. Pierre Poilievre: So you have not yet publicly revealed the discovery of founded complaints.

Ms. Christiane Ouimet: That's right.

Mr. Pierre Poilievre: Okay. I'm not saying that you have to. All of us are hoping that there is no need, that our public service is

functioning well enough that there aren't any founded cases of wrongdoing. Nevertheless, we would like to know if you believe the law constrains you from finding that wrongdoing. Or do you believe you have a legal mandate to reach the truth?

Ms. Christiane Ouimet: In fact, this is a very good question. We've worked with various former officials who said in the end you want a joint quest for the truth. In my next annual report, our choice is not only to investigate or not act upon; in fact, in some cases we've acted with the full force of sharing the information and come up with practical solutions in very specific cases.

I didn't want to pre-empt the tabling of the next annual report. That's the reason I—

Mr. Pierre Poilievre: If I could just pull us back to the question again, do you believe that you have the legal mandate to seek the truth when you're investigating complaints?

Ms. Christiane Ouimet: Without a doubt.

Mr. Pierre Poilievre: Okay. What kind of professional investigators do you have on your team?

Ms. Christiane Ouimet: We have a combination of skills, and in fact, I saluted your earlier comment to ensure that we have a variety of expertise. My deputy commissioner has spent more than 37 years with the Department of Justice and is one of the top experts in administrative law. My general counsel, Joe Friday, has a unique expertise and is one of the experts in Canada in alternative dispute resolution. We have a combination of people with expertise in investigations, of course, and public administration.

Mr. Pierre Poilievre: Could you give us some examples of people who are professional investigators in your team?

Ms. Christiane Ouimet: One of them has worked for a number of years at the Canada Border Services Agency and has worked in the area of labour relations and harassment.

Mr. Pierre Poilievre: All of this stuff is very important and very good, and I would salute you for having all of those people, but I want to know about investigators. You listed dispute resolution and public administration, legal counsel, and you can't function without any of those things; however, I'm striking right at the core of who you have on your team who is a professional investigator, maybe a police officer or an RCMP investigator. Do you have anyone like that?

Ms. Christiane Ouimet: Yes, in fact, the lady I was just talking about was a professional investigator with the Canadian Border Services Agency. We do have somebody, a former police officer, who was with the City of Ottawa. We've just recruited a new person who has some financial background and has been with the bankruptcy superintendent doing investigations there. We also have somebody who comes from the Solicitor General portfolio with expertise in investigations. As well, the registrar has again some expertise in mediation, in legal investigation processes.

Mr. Pierre Poilievre: Okay. Would it be possible for you to write our committee and list the number of career investigators you have in the office? I know you've done a good job here and it's been hard for us to absorb all of that, but perhaps reiterate what you've just said and be very tangible in listing their investigatory experience throughout their career.

Ms. Christiane Ouimet: I'd be happy to.

• (1615)

Mr. Pierre Poilievre: Thank you so much.

Ms. Christiane Ouimet: I should point out as well that I've headed criminal fraud investigation at Customs, and as well, I've had a lot of experience in administrative investigations. I think that also is part of my experience.

Mr. Pierre Poilievre: Good. It sounds like you have plenty of it, and I was very pleased to see your appointment at the outset.

As one of the authors of this legislation, I want to make sure it's working in a practical sense. Do you believe that Parliament has given you the resources to do your job?

Ms. Christiane Ouimet: Certainly.

Mr. Pierre Poilievre: So you have the legal mandate and the resources. If there were additional tools you required, what would they be?

Ms. Christiane Ouimet: I think it's a little early to tell, but first of all, we need to establish very clearly the parameters of the legislation. Every time you have a new case you have to look at the specific piece of legislation, so it will be demand driven, but also it will be based on the specific cases that come to us. But we are absolutely recording all of those elements.

Mr. Pierre Poilievre: I had some concerns about the accessibility of your office under its legal mandate for RCMP officers. I wonder if you can give assurances that RCMP personnel are able to come to you if they believe they have witnessed wrongdoing.

Ms. Christiane Ouimet: In fact, there's very detailed legislation that is applicable to the RCMP. In fact, one of our lawyers has acute, very extensive experience in litigation and disciplinary matters for the RCMP.

Mr. Pierre Poilievre: But can RCMP officers come to you, unobstructed, with disclosures of wrongdoing?

Ms. Christiane Ouimet: Yes.

Mr. Pierre Poilievre: For disclosures of reprisals, can they come to you, again unobstructed?

Ms. Christiane Ouimet: For reprisals, they have to go through the internal process, as you're well aware.

Mr. Pierre Poilievre: Yes.

Ms. Christiane Ouimet: I've had exchanges with the Commissioner of the RCMP, in fact, with respect to some of the processes. He was aiming, as well, at simplifying the process for accessibility. So that was very much what he had in mind.

Mr. Pierre Poilievre: Right. Okay.

How many disclosures have you received from RCMP personnel?

Ms. Christiane Ouimet: We've received some. I don't have the exact number. We have to look at the confidentiality of that aspect, but Mr. Chair, we could write to you.

Mr. Pierre Poilievre: I don't want to know the names.

Ms. Christiane Ouimet: I appreciate that.

We have received a few, yes.

Mr. Pierre Poilievre: Have you been able to receive them and review them, or have you been forced to consider them outside your mandate, right from the beginning?

Ms. Christiane Ouimet: No. In the disclosure area they were, to use your terminology, unobstructed.

Mr. Pierre Poilievre: Okay. That's all.

The Chair: I allowed Mr. Poilievre to move a little longer than normal, only because he has a lot of experience with, certainly, the RCMP. I think the military was another that we got extensively into.

Your commission actually reports to another standing committee, which is the Standing Committee on Government Operations and Estimates, so we're not going to tread into their area too far. But it's good to know that there is some linkage to the access to information and privacy area. I think that's how we justified allowing you to come before us.

Ms. Christiane Ouimet: I'm very happy to be here.

The Chair: I think it's important for us to know that this is working reasonably well, given the timeframe.

We'll go to Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: Thank you.

The Chair: We're down to five minutes per member, so if he has ten questions, you're going to have to be quick.

Mr. Borys Wrzesnewskyj: I'm back to the \$1,500 limit. Do you know what the logic was for placing that as an upper limit for legal services?

Ms. Christiane Ouimet: No, I don't know, Mr. Chair.

Mr. Borys Wrzesnewskyj: Okay. Perhaps that could be provided to us. I'm sure that a number isn't pulled out of thin air, you would hope. That will be provided to us.

You had also said that we might assume, perhaps, that it was considered a bridge legal service until, as you said, public service unions begin to cover costs if things get a little more involved. What about cases like the RCMP, which doesn't have a union?

Ms. Christiane Ouimet: Let me clarify. I apologize if I created any confusion. I'm not suggesting that the union would necessarily pay additional costs. I'm suggesting that many sources of information would be available to the discloser, including the unions and some associations as well. In the meantime, our experience so far is that we can offer the choice to the discloser.

• (1620)

Mr. Borys Wrzesnewskyj: I'm going to keep moving on.

Ms. Christiane Ouimet: Certainly.

Mr. Borys Wrzesnewskij: Unions do at times provide some protection, but as I've already made clear, I'm not quite sure that what is provided is adequate. As I said, the RCMP doesn't have that option for its membership.

Has it been made clear to the RCMP rank and file that the rules of the game have changed? Previously it was drilled into the RCMP that if there's a complaint, you take that complaint to the officer in charge. You work within the hierarchy. The RCMP has a very different structure from other government departments. It has the culture of a paramilitary force. That particular aspect of keeping things in-house was drilled into generations of RCMP officers. How are you overcoming that?

Ms. Christiane Ouimet: We have an excellent relationship with the disclosure ethics group. In fact, the lawyer I was referring to has been in contact with us. I myself have worked very closely with the RCMP at least three or four times in my career on the operational side, on the policy side.

Mr. Borys Wrzesnewskij: How is the information getting out to the rank and file? Do you have printed materials? Have you produced it so that every officer receives that sort of information?

Ms. Christiane Ouimet: In fact, it was also quoted and reported by the Public Service Agency, as it existed, as some of the best practices.

We'd be happy to provide, in the form of a letter, what we've gathered as far as general information, practices, and exchanges are concerned.

Mr. Borys Wrzesnewskij: Sure, and it would be even more helpful if you provided us with the materials you've provided to RCMP members explaining your availability and that they no longer have to go to their superiors when complaints arise.

Ms. Christiane Ouimet: In fact, we offered to make a presentation to the executive group of the RCMP very early in our mandate. I'll be happy to provide—

Mr. Borys Wrzesnewskij: They are the very people, as we heard in other committees, who did a lot of the intimidating and reprisals. I'm curious about the information you provide rank-and-file RCMP officers if they have complaints.

You said in a somewhat different context that you've interpreted your mandate more broadly than perhaps was written. There are civil servants out there who are still suffering as a consequence of attempts to do the right thing. They blew the whistle, and reprisals were taken against them. That was before your office came into existence, but they're still out there suffering in silence.

Do you see your office being able to take on cases from the past that are still outstanding? If so, how would you go about making former civil servants, public servants, and RCMP officers aware of this potential?

Ms. Christiane Ouimet: We have no such jurisdiction.

Mr. Borys Wrzesnewskij: If someone came to you and said, "Three years ago I was removed from my job. At that point I had no one to turn to. I was removed from my job because I saw a senior officer who was in charge of my department...the very officer I had to report malfeasance to, and soon afterwards I suffered a punitive removal. I don't have the resources to go after this. I don't have a

union to stand up for me." Where does that leave those public servants who served the public interest, at times for decades?

Ms. Christiane Ouimet: Parliament has given us a mandate, and we have to apply the legislation as it was given to us. But I can assure you that if there is a venue that remains available for anybody who comes to us, we're happy to guide them to that venue. But we have to apply the act as it was presented to us.

The Chair: Thank you very much.

Mr. Hiebert, please.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thanks, Mr. Chair.

I know that you report to another committee on your budget, but I couldn't help notice that your spending for 2008-09 was about \$3.7 million, and your planned spending for the next fiscal year is \$6.5 million—approximately double. Can you provide us with an explanation of why your budget is doubling year over year?

• (1625)

Ms. Christiane Ouimet: The information on the expenditures for this fiscal year has just been made available, so what you're reading was for the previous fiscal year. For the fiscal year that just ended—this is standard—you always project generally the expenditures for which Parliament has voted—the budget—to the best of your ability. Our organization is still evolving, from the senior financial officer's perspective, so you try to predict. But the expenditures are very close to those that were expended last year.

Mr. Russ Hiebert: You mean your prediction for this coming year.

Ms. Christiane Ouimet: Yes. For the year that just ended, it was exactly the same: \$3.6 million. It was \$3.6 million for the previous fiscal year, which you're reading. While the projection was for the full \$6.5 million that Parliament voted for my office, I'm very conscious of every single dollar that is being expended. So we're not going to expend money, even though the budget has been allocated and is \$6.5 million. In fact, we expended exactly the same amount.

Mr. Russ Hiebert: So you anticipate that your expenditures for this coming year will be the same as for the past year.

Ms. Christiane Ouimet: The expenditures you are reading were for fiscal year 2007-08.

Mr. Russ Hiebert: No, they are for 2008-09.

Ms. Christiane Ouimet: The 2008-09 numbers were the projection of how much we were going to expend, but we completed the fiscal year on March 31. I just had the report, and in fact what we expended for the last fiscal year was similar to the previous fiscal year.

Mr. Russ Hiebert: I see, and you anticipate that will continue.

Ms. Christiane Ouimet: We just completed a strategic planning exercise around Christmastime. We are in the process right now of realigning our operational priorities. We will allocate the budget. We've had a preliminary budget allocated, but over the next few weeks we will look at the priorities. There will be investment, for instance, in case management systems, information management. This is the basic infrastructure you need when you start a new organization. Based on that, in a few months' time we will have allocated the budget. But essentially the last two fiscal years were in the \$3.6 million range for expenditures.

Mr. Russ Hiebert: I note that you have about 41 employees.

Ms. Christiane Ouimet: The \$6.5 million was based on a projection of 41 employees, but we have not reached that level. We are planning to have about 23 to 24 employees. In order to make the most of resources, we will have a list of some top-notch mediators who are available. We will hire people part-time. We will also have a group of people we can recruit quickly, should additional resources be acquired.

Mr. Russ Hiebert: I'm obviously very supportive of the work you do, but when I think about two dozen employees facing about 200 inquiries a year, and only about three to five investigations, I wonder if everybody is being kept busy. That's about 20 per month or one per employee. Am I misunderstanding that?

Ms. Christiane Ouimet: Yes, it's a little more than that. I would probably refer you to the 59 cases of disclosures and the 22 of reprisals. On some of the cases that will be in the next annual report, some people under the previous office worked between a year and a year and half, almost full-time.

I should also mention that depending on the issue, we also occasionally have lawyer investigators. I was expanding on some of the backgrounds of our colleagues on the legal side. It is important, because under the previous administrative office they occasionally wore the hats of an investigator and a lawyer. Of course, my deputy commissioner will remind me that you have to be very careful. You can't have a lawyer advise on an issue that he's investigating. This is one of the challenges of federal small agencies as well.

So we are balancing the current resources, and the office has been incredibly busy. We have both outside and inside training sessions. We also reach out to that group of senior officers to get practical suggestions on the prevention side. I refer to my next annual report, which will be tabled shortly.

• (1630)

The Chair: I'd like to exercise the chairman's discretion to amplify some of Mr. Hiebert's concerns here. Your actual expenditures are \$3.6 million. If you had a full complement you'd be at \$6.5 million.

Ms. Christiane Ouimet: That's correct.

The Chair: I don't know how you define it, but do you have a backlog now?

Ms. Christiane Ouimet: I used to know that terminology when I was at the Immigration and Refugee Board, I must confess. But at this time we don't have a backlog. However, it does not mean that should our role or mandate be known, it won't happen. So I'm very conscious of that.

The Chair: Has the Standing Committee on Government Operations and Estimates reviewed your estimates yet?

Ms. Christiane Ouimet: No.

The Chair: They will have all of these questions for you, so we'll pass them on to them.

Mr. Nadeau.

[*Translation*]

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

Good day, Ms. Ouimet. Good day, Mr. Molot and Mr. Friday.

There are approximately 500,000 public servants, government employees, in Canada. I may be off by a few dollars, but the figure that comes to mind for the federal budget is \$228 billion. In your report, you say that there were 208 complaints filed. Are they truly complaints?

Ms. Christiane Ouimet: They are requests for general information.

Mr. Richard Nadeau: So there were 208 complaints from such a vast number of employees and for a budgetary envelope covering numerous purchases, services and 1001 other things, even more so because Canada is a G8 country. To my mind, the number of things that can happen in a single year throughout the federal public service is astronomical.

Since the commission is quite a recent invention, if we look at the history of Canada, is there a way, in your opinion, to invite federal employees, those receiving a paycheque from the federal government and who have responsibilities, to become more familiar with your operation so that overall—and it's not because I'm Machiavellian—people feel comfortable saying that they saw something if they have? We know that, often, people are encouraged to take action, but once they have gone about 10 steps, they turn around and see that there's no one behind them supporting them. Could we ensure that if someone does take such steps, they would in fact be protected and could then feel comfortable taking action in the face of an anomaly, be it serious or not, without being penalized? In that context, how do you think we can help honest individuals who want to ensure that public funds are properly spent?

Ms. Christiane Ouimet: Thank you very much for the question, Mr. Chair.

I will make a few brief comments. First, based on the experience in Ontario, where my colleague works and where legislation came into force at approximately the same time, the proportion is approximately the same.

Second, we must remember that the internal disclosure process within each department is working. To that end, I would invite you to consult the Public Service Agency report. In each department, there were a number of internal disclosures made.

Third, Mr. Nadeau is correct, it remains a challenge to ensure that people can ask questions and raise concerns. That is why we want to work with the stakeholders and that is why the next annual report talks about the joint responsibility of the minister and the agency to advise individuals of their rights and obligations. We will also be making increased efforts in that area in order to advise people of this. We will invest in a number of tools. If parliamentarians have suggestions to make, we would welcome them.

• (1635)

Mr. Richard Nadeau: On another subject but still with regard to the Office of the Commissioner, I want to make the connection with the word “tool”, which you just used. Is there a point when, without necessarily setting the order of priority in stone, you would need our help as parliamentarians? I am thinking of a written report that we could table in the House of Commons in which we could indicate that the Office of the Commissioner does this kind of work, that we want to support it, and in which we could indicate what more could be done to provide further assistance. Could you specify what kind of assistance we could provide to you?

Ms. Christiane Ouimet: One of the priorities that, once again, will be part of the next annual report will no doubt be—and it will certainly be appreciated if parliamentarians want to support us—supporting federal organizations commonly known as smaller agencies. Once again, I am suggesting some possible solutions. Your support and comments would be indispensable. Thank you.

Mr. Richard Nadeau: Thank you very much.

[English]

The Chair: Thank you.

Mrs. Block, please.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you very much.

Your 2008 report states that your office is unique in the world. Is that still the case? Are there other countries following our country's lead in whistle-blower protection?

Ms. Christiane Ouimet: In fact, that's why I was debating whether the word “unique” was the appropriate one. It certainly is distinctive; it is certainly seen as a model. In fact, in UN circles it has been often quoted as a best practice as well as all-encompassing legislation. It is a very complex piece of legislation, with more than 54 pages, with some exceptions, with, as well, some areas in which I cannot intervene—if there's already a process ongoing or if the matter could be better resolved under another regime.

In fact, we will be publishing, in the months to come, a summary that was done. We've recruited a professor who's an expert in the analysis of the international system. In fact, he is very well known, Ken Kernaghan. He was also the head of the working group in guiding Parliament with respect to the implementation of the act. In fact, I'm having lunch with him tomorrow.

Next year we hope that members of this committee might be available and interested. We hope to have a modest international symposium, where we would bring to Canada, through video conferencing or otherwise, experts from the four key countries that look more like us, that have experienced various pieces of legislation—Australia; New Zealand; the UK, and I've had dealings

with them; and of course, the United States—to look again at whether we have the best model. Do we have all of the provisions that are required? What is the value-added of our office? Does it make a difference? We will be very humbly appearing before Parliament in the context of the five-year review and sharing with you unequivocally what we found out as far as the success of our organization is concerned, the challenges, the machinery options for you to consider, and whether Canada, based on their public institution, is still a model of democracy. And again, we'll be inspired by your comments and your suggestions.

Mrs. Kelly Block: Thank you. I also note that you make mention of prevention as a strategy. I'm wondering if you've noticed a pattern in the types of complaints that your office has been asked to deal with. If so, what are some of the commonalities?

Ms. Christiane Ouimet: The commonality that I share broadly, as well, with the unions is that there is still confusion about our mandate and there's a lot of private interest, performance management, staff relations issues. Again, it's not that these are not important. I'm not dismissing this; in fact, I worked in that area at one point. But we need to refer these people to the right venue, because the definition of “wrongdoing” is very different. We're talking about systemic issues, well known for a number of reasons. So that is still part of the challenge.

• (1640)

Mrs. Kelly Block: Okay. We've heard from other commissioners that education is key in terms of the acts and legislation. I'm wondering what proactive steps your office has taken to prevent these sorts of complaints, given that you have noticed that pattern.

Ms. Christiane Ouimet: I have one example, Mr. Chair, if I may. I think those who are called the middle managers, those people who are really very close to Canadians, very close to the delivery of the programs, play a pivotal role in addition to the leaders. I've reached out to them; in fact, I've spoken to hundreds of them across Canada. In the first part of my mandate, of course, you need to talk to the executive team to make sure they have a disclosure regime, that their employees know about the system. I've issued what is called a mandate letter and it is posted on my website. I would very much appreciate if members would take a look at it, offer comments. I think the next generation or the middle managers will play a pivotal role in the strength of our institution, and we really try to reach out to them.

Mrs. Kelly Block: Thank you.

The Chair: Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

Commissioner, in your last annual report you talked about anonymous allegations and how you deal with them. I wonder if you could talk to us a bit about that process and what that looks like.

Ms. Christiane Ouimet: Again, we have looked at what other jurisdictions do. Under the act we cannot deal with an anonymous complaint, because you can't verify good faith. But I did ask senior executives if they would like to know if there was an anonymous complaint about their organization. Everybody said unanimously yes. And you never know what this could lead to. So while we have no jurisdiction, we do not stay inactive, or as much, and we will share to the extent possible these allegations.

Mr. Bill Siksay: Are there any mechanisms to protect a person who may have made that complaint anonymously, given that they might be identifiable when the complaint goes forward, as you share that information?

Ms. Christiane Ouimet: As soon as they put something in writing, of course, there is some expectation that the matter will be brought to the attention of the chief executive. In fact, the whole act has been built on the premise that you want to bring to the leader of the organization, the chief executive, potential wrongdoing and to make a recommendation. So of course there has to be some expectation that the issue will be brought forward.

Mr. Bill Siksay: Has there been a decline in the number of anonymous allegations you receive?

Ms. Christiane Ouimet: In fact, there are fewer, because people do understand that under the regime you have to.... In fact, we have a full questionnaire on our website that guides people about the particulars that are needed. As I said, there are rights and obligations on all parts.

So we've had a few anonymous complaints, but not that many.

Mr. Bill Siksay: Is an anonymous complaint an indication of the fear level within the public service about making this kind of disclosure? Or is it something you'd be analyzing to answer that question you raised in your presentation?

Ms. Christiane Ouimet: We haven't received that many to be able to make any conclusion.

Mr. Bill Siksay: Okay.

Also, in your annual report, there was a section about best practices. You mentioned the National Energy Board as one organization that you thought had best practices around this.

Can you talk a little bit about what they do, which you thought was worthy of that kind of mention?

Ms. Christiane Ouimet: In fact, I was invited to make a presentation to hundreds of people. The president of the National Energy Board stood in front of every employee and said, the commissioner whom we met is here, and anybody who has a concern can come to me, or you can go to her directly.

They have also held on an annual basis—and I can't remember what the title was—an integrity day or a sensitization or education day, and I happened to be there then. I understand it is an annual event at which they do talk very candidly about values and ethics.

I've been told this is what works. First, it comes from the leader—as we've heard from the private sector—who walks the talk and reaches out to employees and explains values and ethics. So it's not the amount of rules or enforcement or investigation that will change an organization; it's really the leadership.

Mr. Bill Siksay: You also referred to the Public Servants Disclosure Protection Tribunal. Can you talk about your relationship with that? I don't know what that is or its background.

• (1645)

Ms. Christiane Ouimet: Very early in the mandate, we met with the then chair, Justice Blais, who has since been given other responsibility. The three other members, Rick Mosley, Luc Martineau, and Judith Snider, of course, operate at arm's length. But very early on, they consulted us on the rules of practice required under the act.

The tribunal has a very defined role under the act. Only I can apply to the tribunal to determine if there has been a reprisal or not. If, in fact, all efforts have failed with respect to an investigation and conciliation process—which has to be done with the consent of all the parties—they can also recommend redress if there is conciliation. The tribunal members, of course, have other responsibilities in addition to sitting as a panel, or alone. Also, one other particularity that I find very interesting is that they have *ade novo* role, meaning they would start the process over again.

So this is a very clear indication that Parliament was very thorough in providing all of the tools to reassure those who are concerned about reprisals, specifically, so that there are very fulsome mechanisms at their disposal.

Mr. Bill Siksay: Thank you.

Thank you, Chair.

The Chair: Madam Simson, please.

Mrs. Michelle Simson: I'm very curious, having had some experience with similar types of departments in private corporations, if you could just take me through the process. Say that somebody has a complaint with respect to the misuse of funds, and they work for a particular agency that comes under your jurisdiction; they can't come to you and anonymously file a complaint as a public servant. Does it all have to be done out in the open?

Ms. Christiane Ouimet: Yes, I think probably the analogy you're making has to—

Mrs. Michelle Simson: No. So they have to identify themselves all the way along in the process.

Ms. Christiane Ouimet: Yes. They have to sign their name. We have to be able to go to them, ask them to provide details, and ask them to ensure that the file is complete so we can take it to the next level.

Mrs. Michelle Simson: Why would they need you to disclose an issue? It would seem to me that they would stay within their own organization. I see the merit on the reprisal, you know, to protect, but I don't understand why they would necessarily elect to go outside their particular agency right off the bat.

Ms. Christiane Ouimet: We do keep their identities confidential even though they have to identify themselves to us. Because if it's an anonymous letter, it means we can't verify the information with anybody, other than going to the organization, so the act says that we'll protect the identity of the discloser to the extent possible.

Number one, they might come to us because maybe they've raised the issue internally and they weren't satisfied with the results. Or they might come to us because it's a small organization and they fear being identified. Also, they might come to us as we're an independent organization. In fact, I've even had suggestions from leaders of the organizations that they might want us to investigate the matter to ensure that it is completely at arm's length and is seen as fully independent.

That's the way the act was constructed.

Mrs. Michelle Simson: I'm also trying to get a sense of how, on a go-forward basis, you can actually gauge the effectiveness of this particular commission. For instance, you said you had 76 disclosers. How many of those were follow-up reprisal complainants, for instance? Do you have any sense of that? Is there perhaps a higher rate of reprisal for going outside the agency and speaking to you? If you're following up on that, I'd be interested in knowing that. If they're dealing with your office, let's say, how many then subsequently come back and say, "Guess what, I've been punished" or say that there have been reprisals?

Ms. Christiane Ouimet: This is a very good point, Mr. Chair, because whether the disclosure, the allegation of wrongdoing, is founded or not, the individual should not be exposed to any form of reprisal. Of course, we rely on the individual coming to us because of the protection that is offered for reprisal, which is the core jurisdiction, and the exclusive jurisdiction, that our office has. I've explained as well the role of the tribunal. We will obviously monitor very clearly and very carefully that the legislation is applied, but we have to rely on the discloser to come to us.

• (1650)

Mrs. Michelle Simson: But is that something that can be made available on a go-forward basis?

Ms. Christiane Ouimet: We're also exploring another tool, perhaps a survey, to monitor exactly the level of comfort. I don't know what the members of Parliament might think about that and whether this is something that could be pursued by the human resources agency.

I think we need to be able to find out. Our public servants know that we exist. For those who do know, what has been their perception, what is the value-added, and what are the performance indicators? In the meantime, we are conducting from within, by the deputy commissioner, an independent review of every decision that we made and the lessons learned. So we're trying to vet this, because these are very valid questions that you're raising.

Mrs. Michelle Simson: It isn't just for Parliament. In terms of the public servants who may or may not decide to utilize your office, I think part of it is that they have to know how effective it is, or that maybe there's a higher rate of reprisal for coming to you as opposed to keeping it in-house. That could all be part of the education process, not just for committees or parliamentarians, but also for the people who potentially may have to utilize the office.

Ms. Christiane Ouimet: It's a very good point, Mr. Chair. We'll pursue this.

The Chair: Okay.

I must admit that this is like walking through memory lane; I can think of a zillion questions to ask, but it's not our jurisdiction.

This act also applies to members of the public. Have you received many public complaints?

Ms. Christiane Ouimet: We have received some. I think we break it down, and in the next annual report we will have more details on this.

The Chair: Okay. Finally, on this whole idea of protecting anonymity, it is so darned important that there is a confidence level there. I know at government operations and estimates committee, when we did the investigation of a former Privacy Commissioner, we held the meetings in camera, and the employees who were coming forward were actually spirited in through the back halls and back stairways to a separate entry door into the committee room, and everybody was sworn to secrecy, because we knew reprisals were a big issue.

What specifically do you do to safeguard an employee so that no one could figure out where they went? How do you do that?

Ms. Christiane Ouimet: All of the above. We certainly make sure that we meet at the place of choice of the individual. Within our own office there are some very special measures taken, including how we record the name, how it's safeguarded, understanding, as well, that the act protects the identity but of course there is a process of natural justice. We will do everything that is possible to ensure confidentiality, but as the Honourable Patrick Ryan from New Brunswick indicated—and his presentation is on the website—there is occasionally some qualified protection because it can be done at the expense of natural justice. But always the focus is, of course, confidentiality.

The Chair: I'm sure you have good relationships with the other officers of Parliament, the Privacy Commissioner and the Information Commissioner, whom we deal with directly. I'm sure you will be bringing to the attention of Mr. Marleau and Madam Stoddart any areas of interest or concern that could ultimately come to our committee, as they relate to privacy or access issues. I think it's very important that the synergies take place between privacy, access, and your commission.

Ms. Christiane Ouimet: I could not agree more.

Mr. Borys Wrzesnewskyj: On a point of order, if I could, I'll just reconfirm that the commissioner will provide to us the information that's been sent out informing rank-and-file RCMP officers of their ability, with this new office, to turn to your good offices in cases such as these. Thank you.

• (1655)

The Chair: Thank you.

We have one other matter of business, but I think we're finished with you now. Thank you kindly. We wish you much success in executing the values and importance of the act.

Ms. Christiane Ouimet: Thank you very much.

The Chair: Thank you. You're excused.

Colleagues, we have another item on the agenda. As I understand, we're not ready right now to proceed. Do we want to have a little discussion about this?

Mr. Pierre Poilievre: We are ready. I'm ready.

The Chair: We are?

Mr. Pierre Poilievre: Yes. I have the original motion, which I understand you and some other members had some concerns with, so I've had a chance to discuss them briefly with you, with Madame Thāi Thi Lac, and with Mr. Siksay. I have some amendments that I will propose as friendly ones, which I think will allay all of your concerns.

If you have the motion in front of you right now, I'd be pleased to tell you the changes that I have made to allay your concerns. Does everyone have the motion?

What we propose, one, is to add in the second sentence, "and Canpages". Canpages is the other company that does this type of technology and is using it within the confines of the Canadian borders.

The second change appears after the words "or his Canadian representative". Right there you will see the beginning of my second amendment, which reads as follows: "and Olivier Vincent, the Chairman and CEO of Canpages, or his representative".

The third and final amendment begins after the word "subject", and it deletes everything starting with "as part of the committee's study on modernizing Canada's privacy laws." All of that is eliminated. You had pointed out, Chairman, that this issue was not appropriate for the privacy act discussion because it's a commercial matter, and that therefore it falls under the PIPEDA legislation.

So those are the changes that I proposed. I've never had a chance to properly introduce the motion. If I could do that now, with your leave, Chairman, I would like to proceed in so doing.

[Translation]

The Chair: One moment, please.

[English]

The original motion that was brought to the committee had proper notice but was not moved.

Mr. Russ Hiebert: I'll move the change.

The Chair: No, no; it was not moved because I ruled it out of order. It was dealing with PIPEDA, not with privacy.

I think I had made the request, if we check back with the transcripts, that a revised motion be submitted to the committee.

Mr. Pierre Poilievre: Actually, Mr. Chair, you did not rule it out of order. You said you "may" rule it out of order—

The Chair: If it was moved.

Mr. Pierre Poilievre: But you didn't confirm that.

The Chair: Notwithstanding, I think everybody understands where we're going.

Mr. Poilievre has given us notice of the issue, and I'll accept that. I think the changes he's made here are consequential to, I guess, new information, one being Canpages and the second being—

[Translation]

Mr. Richard Nadeau: I don't want to play the heavy, but I would like it if we could read it with the amendments made by Mr. Poilievre. This would allow us to ensure that we are talking about the same thing.

[English]

The Chair: Sure.

To give us more productive time, I would like the committee's okay that this motion, with the changes Mr. Poilievre has generally outlined to us, be considered at this meeting without the proper notice, and that he be permitted to move it now.

The motion that is being proposed to us is therefore as follows:

That the committee study the privacy implications of camera surveillance such as "Google's Street View" and "Canpages" and other issues related to video surveillance, and that the committee ask Eric Schmidt, the chairman and CEO of Google, or his Canadian representative, and Olivier Vincent, the chairman and CEO of Canpages, or his representative, to testify before the committee on this subject.

Are you prepared to move that motion, Mr. Poilievre?

• (1700)

Mr. Pierre Poilievre: I am.

The Chair: Is it acceptable to the committee that we address it now?

Some hon. members: Agreed.

The Chair: Do you have further comments to make, Mr. Poilievre?

Mr. Pierre Poilievre: Yes, I'll keep them very brief

This is a new and, I believe, exciting technology. It's also a controversial one. So to ensure that Google and Canpages, the two leading providers of street-level surveillance, are in compliance with PIPEDA, the Personal Information Protection and Electronic Documents Act, and that the privacy concerns of Canadians are protected, I believe that a discussion on this matter is now warranted.

For background, Google recently sparked a new discussion about privacy laws with the announcement that it had already begun photographing Canadian cities for its 3D online mapping service, Street View. The company's vehicles travel throughout major Canadian cities with their 360° cameras, recording images for curious webservers to view around the world. Companies like Canpages are attempting to provide a similar service.

The Privacy Commissioner has raised concerns specifically relating to the technology. In an August 2007 open letter to Google, and restated in a fact sheet that was circulated to some members of this committee, the Privacy Commissioner has raised questions about this 3D online mapping service and whether or not it is in compliance with PIPEDA.

The commissioner has refused to render a final judgment. As of this week, there is no final judgment on whether or not it's permitted, and there will be no judgment until there is a complaint for her to consider. And that won't happen until the service is online with Canadian images on it. Unfortunately, by then it might be too late. We think it would be profitable for the country to have this discussion before committee prior to any conflicts.

There have been concerns raised around the world. There have been the frivolous concerns, where men in Speedos have claimed that their images on the Internet have been horrifying people around the world. And there have been more serious ones, where people who run homeless shelters have been concerned that pictures of the people who use their services might be put on the Internet and their privacy might be jeopardized, that women's shelters might be on the Internet and the people who stay at those shelters might be identified. There was one argument made by a California legislator who suggested a link between a similar Google technology that he claimed was used by terrorists who attacked Mumbai.

Subsequently the BBC has reported that Privacy International has requested the ICO temporarily shut down Google Street View, alleging the application has caused clear embarrassment and damage to many Britons. There was one town in England that physically blocked the Street View car from coming into the town by the people locking their arms on the street.

So there's a lot of discussion. I think some of the discussion has been a little hyperbolic, and I think there has been some exaggeration of the dangers of this technology. But at the same time, there are also legitimate concerns about where the images will be stored, whether we want millions of images of Canadians to be kept in one place, what blurring will be done, whether the blurring will not only be for the Internet but also for the records of Google, and whether all the laws will be respected as this is carried out.

I think we have an interesting discussion here and a lot to offer from the expertise of this committee. So without further ado, I move my motion.

Thank you.

• (1705)

The Chair: For the information of members, when we deal with motions from members, there is no time limit really. Members are expected to make their case on matters of interest, and there's no speaking order. So if you would like to speak on this, you should catch the attention of the chair or the clerk, and we'll put your name down.

Mr. Siksay.

Mr. Bill Siksay: Thank you, Chair.

I want to thank Mr. Poilievre for tabling this motion, because it is something we should be taking a look at. I have a particular interest since Canpages is based in my constituency, in Burnaby, and they are a step ahead of Google on this motion. Their street scene service went up on March 16. It is more limited than what Google is proposing, in my understanding. It is focusing on commercial districts in Vancouver, Whistler, and Squamish in British Columbia at this time, but they hope to expand it. If folks want to see a Canadian expression of this kind of service, they could visit canpages.ca and take a look at it.

I've spoken with Olivier Vincent, who is the president and CEO, not chairman and CEO, so maybe we could correct that in the motion on Canpages. He is very interested in appearing before the committee to talk about issues of privacy, the way Canpages has decided to deal with those issues, to deal with the question of what's happening to the original images, the non-blurred images they use,

how people can report concerns about images that appear. In talking with him, he has made efforts to put in place a regime that addresses privacy concerns, and it would be of interest to committee members to hear him speak on those matters.

I would like to encourage committee members to support it. I think it is something that is very timely and merits our consideration.

The Chair: Thank you.

Madame Thi Lac, *s'il vous plaît*.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: Mr. Poilievre, we will not oppose your motion, since it deserves to be studied. However I don't want it to become the priority and to have it delay our current study or the study of motions that have already been voted on during the current session. My colleague Ms. Freeman passed a motion on the "in and out" and I wouldn't want your motion to short-circuit the work that is already underway.

[English]

The Chair: Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: I remember travelling in the former Soviet Union, where it was impossible to receive maps of cities because those were restricted. You were restricted on where you could travel. It is part of a free and open society that we allow people to access information of various sorts, but there is also a fine line here.

Mr. Poilievre mentioned potential terrorist concerns. I'm not particularly perturbed about that. If people have that sort of intent, they will scout out subway lines, etc. I don't see that as a real threat, but there are individuals who are vulnerable.

Mr. Poilievre mentioned women's shelters. There is a clear case to be made for those types of institutions to be protected from this type of surveillance, because that's what it is, and postings. Others who are vulnerable are children. We don't want this service to become an intermediary for those who would survey children's playgrounds or schools, etc.

We're into a new technology, a new area, and although all of us tremendously respect the freedoms we're guaranteed in democracies, there is also an acknowledgement of vulnerabilities in that there are members of society who are vulnerable and need protection.

There is legitimate concern about certain types of government institutions and government facilities. That needs to be worked through to figure out what type within what limitations. We obviously wouldn't be concerned if they were filming the Parliament Buildings, but we certainly would be concerned if a detailed video of nuclear facilities were put on line. They aren't government institutions directly. All that needs to be worked through.

Then there is the whole issue of personal privacy, something that we protect. I understand on that particular aspect these companies have done some work, such as the blurring of faces, licence plates, and that sort of thing. We should take a look at that, but it's the former that I am more concerned about, and the vulnerable in society. This is something we should spend a little time on.

• (1710)

The Chair: There being no further interventions, I'm going to put the question.

Yes.

[Translation]

Mr. Nadeau, please.

Mr. Richard Nadeau: I just want to confirm something, Mr. Szabo. It concerns what my colleague said earlier. We do want to make sure that, in supporting this motion, the work that must be begun will be started before we study this motion. Do we have that guarantee?

[English]

The Chair: I thank you for that. This should be clear.

I have been working with our clerk and researchers on the materials and a binder is going to be circulated to you tomorrow. After I took out all of the news reports and the third party stuff that wasn't directly related, we have it down—including the testimony—so that it's all in one book for you. We'll have almost a whole month to look at that, and you'll get it tomorrow.

We have some privacy and access work to tidy up, which we are working on. We have our estimates, and we're certainly going to work on those. In the meantime, should the committee decide to embrace and pass this motion, we'll make the necessary inquiries to find out the availability of people. Should a time slot become free because of the unavailability of other witnesses for other work, I won't let that meeting go by. I will try to slot them in. However, if we are jam-packed solid, it may not happen until just before we leave for the summer.

It would appear that it's two people, or their representatives, to come before us on a pretty topical issue that's getting some attention. I don't think it would be considered a matter that would be interfering with the previously approved work of the committee at this time.

Madam Thi Lac.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: Mr. Chair, are you suggesting adding meetings in order to study this matter?

[English]

The Chair: No, not according to the motion. It says to invite these two people to come and talk to us.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: When you said one month, you said that you would provide us with the documents and that we would look at the documents received within one month.

[English]

The Chair: Oh, on the in-and-out, okay.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: Could you explain this to me?

[English]

The Chair: I think members will recall that when we discussed this, the first point was to get relevant information into the hands of members because of the lack of continuity of members on the committee. They would have an opportunity to review and prepare for it, and then we would have meetings to more fully formalize the work plan with witnesses.

It was anticipated that would commence after the summer. To my recollection, that is what was agreed to by the committee. There's a lot of reading to prepare.

And then to bring witnesses, our experience has been that it takes quite a while to find people and to rationalize times. The idea was that the instructions from the committee to the chair and the clerk would be given before we rise for the summer. That's so our resource people could help us put together the witnesses required in an orderly fashion for those hearings to start when the House resumes after the summer.

• (1715)

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: I understand that preparatory work must be done, either by our clerk or by the analysts, but I was saying earlier that this must not short-circuit the work already underway. I don't know how many meetings are still left for the current study. My colleague Ms. Freeman, from the Bloc Québécois, tabled a motion requesting that the issue of the "in and out" be discussed next. We expect that one of the next meetings will be on that issue. You are suggesting resuming this work in the fall session. However, if I agree to this motion and we have not had the opportunity to look at the "in and out" by the end of the summer, I don't want this matter to be put on the agenda when we come back, even if there have been studies and just because it's the beginning of the parliamentary session. When I suggest putting this motion after the ones already passed, I mean after Ms. Freeman's motion. The motion will get my support and that of my colleague only if that condition is met. However, if our motion was adopted at the beginning of the parliamentary session, I wouldn't want Mr. Poilievre's motion to take precedence over Ms. Freeman's motion. That is my concern: if it has to pass, then it should be placed after the motions already passed. My concern does not necessarily relate, as you say, to the production of documents.

With regard to our study on the "in and out", I know that a lot of research has already been done because this study was undertaken during the previous Parliament and we want to continue it.

I want to make sure that this is clear before I support this motion. Otherwise, I will amend it so that it can be studied following the motions already passed by this committee.

[English]

The Chair: I'm going to ask the clerk. This matter was discussed at the steering committee meeting, and a proposal on how we were going to handle it was discussed and agreed upon. It came before the full committee and the committee agreed with the calendarization of the in-and-out review that we would be doing.

Because there is so much information, just for your information, the first thing to be done is to get together the information that the researchers, the clerk, and I felt was necessary for everyone on the committee to understand the nature of the matter, where we are, what's left to be done, and to give authorization or direction to the chair and the clerk and the researchers on how to proceed to book witnesses—who and when and in what order. There are still some details that have to be discussed. That is going to happen as soon as we have a free meeting after the privacy project, the access project, and estimates. Once those are done, then we're having a meeting on the in-and-out review. That's when it will start. That was agreed upon by the committee.

We have had some problems with sometimes the ministers thinking they're okay and then they back out. If there happens to come a meeting in which we have no work to do, I'm not going to say there will be no meeting; I would slot in this discussion. It's something we can do at our next meeting if we have to, because we have a problem with Canadian Bar Association next week on Wednesday. They're still giving us the gears. But that may be an open meeting; I don't know yet.

In the meantime, we're going to find out about availability. I don't know how quickly this can happen. But Madam Freeman is very much aware of the discussion; she's on the steering committee, and she certainly was there to represent her interests.

I think the committee agreed that we would put it in and we'd do it properly, and we would do it when all members who are going to participate in the completion of that work are comfortable with the history and the plan for moving forward and how we are going to complete it. So I can only give you that undertaking. But I can't say

that we are not absolutely 100% never going to discuss Google and Canpages until next fall. I can't tell you that. Okay?

All right. I think we're there. What do you think?

An hon. member: We're there.

The Chair: Okay.

• (1720)

[*Translation*]

Mr. Richard Nadeau: As amended.

[*English*]

The Chair: Okay, sure.

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

The Chair: Okay, it's unanimous. *Merci*.

We'll do what we can to find out where we are on that.

Colleagues, for our next meeting on Wednesday, this is just a reminder, Mr. Clerk, that we do have the draft report on privacy. We were going to deal with the 12 items. We were going to try our best to see if there's a consensus on each of those items and an approach on how we would move forward. That will help the researchers to start working on a draft report for us. We'd better find out, conceptually, what it looks like and whether we're going to take a position on one or more or any of them. But that's something we should deal with, so could you please come prepared to discuss the 12 items?

Thank you.

We're adjourned.

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