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Chair

Mr. Paul Szabo

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Standing Committee on Access to Information, Privacy and Ethics

Wednesday, June 3, 2009

• (1635)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): This is meeting number 25 of the Standing Committee on Access to Information, Privacy and Ethics. Pursuant to Standing Order 81(5), we are examining supplementary estimates (A) 2009-2010, vote 40a under Justice, referred to the committee on Thursday, May 14, 2009.

Our witnesses today are from the Office of the Information Commissioner of Canada: the Information Commissioner, Mr. Robert Marleau; Andrea Neill, assistant commissioner, complaints resolution and compliance; and Suzanne Legault, assistant commissioner, policy, communications, and operations.

Welcome to all of you again. We apologize for the delay due to votes in the House, but we'd like to move swiftly into supplementary estimates (A) so that we can dispose of this matter today.

Mr. Marleau, if you would, please proceed with your opening comments.

[Translation]

Mr. Robert Marleau (Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chair, for inviting me to address you again on the issue of the supplementary estimates tabled in the House on May 14.

When I appeared before this committee on May 13, I talked about the profound institutional changes I made over the last two years to address inherent weaknesses that were limiting our ability to do our job. I also said that, while progress has been made in a number of areas, there continues to be a capacity shortfall in key functions.

That is why my office undertook a comprehensive review of our operations and funding levels in 2008-2009 to determine whether we had sufficient resources to be able to deliver on our mandate.

[English]

At the same time, my office developed a multi-faceted human resources strategy, which includes changing our competency profile for investigators from knowledge-based recruitment to one based on investigative ability, recruiting employees from universities and from outside government, developing standing offers to hire investigators on contract, reviewing learning plans and focusing on training, targeting underrepresented employment equity groups, and looking at ways to improve our employees' workplace.

In light of the conclusions of our A-base review, and after discussions with the Treasury Board Secretariat, we submitted a request for \$2.72 million for additional funding for 2009-2010, and

in March 2009 between \$3.6 million and \$3 million ongoing to the advisory panel on the funding and oversight of officers of Parliament. We felt that these additional funds were necessary to fully implement our business model, which will significantly improve the effectiveness of our operations and maximize compliance across the regime.

The Treasury Board minister approved \$2.36 million of new funding for 2009-2010, and between \$3 million and \$2.3 million ongoing. If approved by Parliament, this new funding will help supplement our current budget and enhance our capacity to fulfill our mandate. However, I'm concerned with the Treasury Board's decision not to approve the full complement of resources requested and recommended by the advisory panel.

The submission for about \$360,000 in additional resources for systemic investigations, report cards, and advocacy activities for 2009-2010 and about \$600,000 ongoing was denied. This work is an essential part of our business model. The new funding would have allowed us to make the most efficient use of our investigative resources.

It's not just about the money. It's also about mandate. I understand that we're going through tough economic times right now. Therefore, in light of the Treasury Board ministers' decision, we'll make adjustments internally. I want to reassure the committee that we will continue our systemic reviews, we will continue to file report cards with Parliament, and we will maintain our advocacy activities, albeit on a different scale from that originally planned. This work is simply too important to abandon.

In the meantime, we will continue our discussions with the Treasury Board and the Department of Justice on the funding for systemic issues. We'll report back to this committee on how these adjustments have impacted our operations and how we're doing financially.

By way of caveat, Mr. Chairman, Treasury Board submissions and responses thereto are treated as cabinet confidences, so in answering your questions, I will have to be mindful of that convention.

[Translation]

Once again, thank you, Mr. Chair, for inviting me to talk about our request for additional funding. My colleagues and I would be pleased to answer any questions you may have.

[English]

The Chair: Thank you, Mr. Commissioner.

Having served on the panel and looking at this, I'm acutely aware of the unusual nature of how this thing evolved, but let me see if I can find out how serious this might be.

Do your requests assume a full complement of staff throughout the entire fiscal period?

Mr. Robert Marleau: We had broken down our requests for staffing over two years. For the current year as a supplementary, we were going to staff only 50% of that request and build it up into the next year. The total request was for 30 FTEs, and we've received 24.

The Chair: And that is likely to be what will actually turn out, so there will be lapsed....

• (1640)

Mr. Robert Marleau: Without further funding, we'll now be operating with 106 FTEs going forward, as forecasted for the next six years.

The Chair: Okay, we'll move on now.

We'll start with Mr. Dhaliwal, *s'il vous plaît*.

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

I'd like to thank Information Commissioner Marleau along with Assistant Commissioner Neill and Assistant Commissioner Legault for coming here today.

Because I'm filling in today, I'm going to ask you the following question. Commissioner, you said that you already received \$2.36 million of new funding for 2009-2010, and then you're asking for an additional \$360,000 and also \$600,000 ongoing. Is that on top of those amounts that we're seeing?

Mr. Robert Marleau: No, sir. The \$360,000 is the amount we asked for for this fiscal year, which was refused by the Treasury Board. The \$600,000 ongoing was also refused by the Treasury Board for subsequent years.

Mr. Sukh Dhaliwal: You say that this is an essential part of your business model. Can you tell us how it will negatively affect that business model if you don't get this funding?

Mr. Robert Marleau: Just by way of background, I did circulate a copy of the business model, Mr. Chairman. The business model is founded on the issues that I discovered when I arrived as commissioner, bearing in mind this very large backlog and the need to do systemic investigations at the same time. There was one pool of investigators by and large, although in 2005-2006 Parliament did vote some supplementary investigating money for systemic issues.

A new business model really seeks to segregate the activities of compliance, in terms of individual complaints, and the activities of operations, and to rally under one activity all of the systemic issues that demand our attention from time to time. We have enhanced the report cards to try to extract more of those in the future.

So this means we had asked for five FTEs to devote to investigative issues and one for advocacy, and we'll have to adjust and make do with the resources we have now and make some internal reallocations accordingly.

Mr. Sukh Dhaliwal: So when you say backlog, has it improved since last year, or how far behind are we now with the backlog?

Mr. Robert Marleau: I'm happy to report that we've made some considerable progress, and I'll ask the assistant commissioner to give you the specific figures.

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

We entered into a backlog of about 1,600 complaints, and in five months we were able to reduce them by 31%. And as of last Friday, I'm happy to report that we are now down to 999 of those 1,600 left to complete.

Mr. Sukh Dhaliwal: So how much money is going towards reducing the number of complaints, and how much of the money that you're asking for will go towards the infrastructure part of things?

Ms. Suzanne Legault (Assistant Commissioner, Policy, Communications and Operations, Office of the Information Commissioner of Canada): Essentially, the breakdown in terms of percentage is about 70% for compliance and 30% for operations. This is a little bit different for this year and the next few years because part of the submission included a renewal of our infrastructure in terms of technology. So we have an IM/IT strategy, which accounts for about \$600,000 for the next few years.

Mr. Sukh Dhaliwal: So if you don't get this money, what will the negative effects be? That's what I want to know precisely, so that we can weigh on one side what will happen if we give you the dollars, and on the other side what the drawbacks will be if we do not make those funds available to you.

• (1645)

Mr. Robert Marleau: In 2005-2006 we voted extra moneys for extra investigators to deal with the backlog, and that was to sunset this year. It was on a sunset timeline. The A-base review looked at that. And now what is being proposed will carry us forward in terms of meeting our program mandate.

If Parliament does not vote the supplementary estimates (A) at this juncture in this fiscal year, I will have no choice but to go into aggressive cash management to stay within the vote. I will lose those five that were voted in 2005-2006, and I'll be looking at cancelling contracts and laying off staff.

Mr. Sukh Dhaliwal: When you say cancelling contracts, with the unemployment numbers so high now, do you have easy access to the employees and the contractors you need? Are you still feeling the same challenges and difficulties that you did a year ago when I was on this committee?

Mr. Robert Marleau: The ATIP community at large is challenged in trying to find qualified people. That's why in my opening remarks I said we've changed our human resources strategy to go from knowledge-based—we used to recruit people who knew something about the statute—to looking at competency profiles that show they have the ability to investigate, and we will train them on the content of the statute.

I'm confident that we can certainly staff up to a full complement, although contractors are getting to be quite rare. And we'd like to wean ourselves off contracts as we go forward.

Mr. Sukh Dhaliwal: Thank you.

The Chair: Mr. Nadeau, *s'il vous plaît*.

[Translation]

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

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

Let us talk about your funding. Unfortunately, we cannot really change it, because, if we decided to increase it, or even decrease it, it could cause a vote of confidence in the House, because the budget would be affected. But still...

Mr. Marleau, does the Office of the Information Commissioner of Canada feel pressure from the government or from the general public? Do you feel the need to be always up-to-date with your files, by which I mean to achieve a certain response rate of 30 or 60 days? Is there pressure like that on your office?

Mr. Robert Marleau: Mr. Chair, clearly, ever since we started receiving a large number of complaints about our backlog, the complaint from our clients—if you will—is that the office took far too much time to complete its investigations. That was especially the case with administrative complaints. As my colleague said, we have done a lot of catching-up and the backlog has been reduced. We have implemented a new model—especially in receiving, registering and quick resolution—to keep the backlog from getting any bigger.

We feel that we are in control over what is coming in and that the backlog ought to be more or less eliminated by the end of the current fiscal year.

Yes, we feel pressure from our clients, but I feel that we really have improved the situation in a very short time.

Mr. Richard Nadeau: Let us turn to the Supplementary Estimates (A). Does the budget let you maintain adequate performance? There is always the human factor that we cannot assess as easily as we would like.

Does the government need to provide additional assistance so that the office of the commissioner is state-of-the-art and always able to maintain a pace that, while it may not be ideal, is at least reasonable?

•(1650)

Mr. Robert Marleau: That was the main objective of the comprehensive review we conducted. The review forms the basis of

this submission. For example, in the past, we expected investigators to be able to handle about 45 files per year. Now we are looking at an efficiency rate that will increase that number to 60 per year.

However, that remains to be determined. The analysis that we did with the help of an outside firm, IBM, shows that our business model is solid. Now we have to make sure that our performance is too.

Mr. Richard Nadeau: From what you said earlier, what we are offering here is not exactly what you asked for. Do you feel that your tasks can be reduced in some areas, in spite of the increased expectations and in spite of all your determination to carry out your mission?

Mr. Robert Marleau: For investigations of specific, individual complaints, I am reasonably hopeful that we will have the necessary resources to make sure that, not only do we process them better, but also, to some extent, the clients' satisfaction level is acceptable. We are reluctant to set deadlines, whether they be ten, six or four months, because we have to consider the complexity of each case.

Where I will have difficulty, this year especially, but also in the years to come, is with the programming that we had planned and designed as a result of the study we did with IBM. These are the systemic investigations that we want to do. We are going to have to rethink the approach and the scope of those investigations, but not the business model.

The performance report cards that we presented at the beginning of March were the beginnings of the systemic investigations. You may remember that we discovered that, even though they were acceptable legally, the extended deadlines were too numerous and too long. We need resources to do that kind of analysis from one end of a system to the other. At least for the moment, it has been decided not to provide the office with those kinds of resources.

Mr. Richard Nadeau: I am against the principle that I am going to mention, but I am going to ask your opinion about it anyway.

if you have a smaller budget, you have to streamline. You have no choice. Letting staff go, reducing the organization's investigative capacity, using contractors, is that the kind of streamlining you could do? Would that create more work managing staff that it would help with the organization's mission?

Mr. Robert Marleau: Mr. Chair, I am not sure I understood the question.

Are you asking whether it would be preferable to use contractors rather than permanent staff for our work?

Mr. Richard Nadeau: That is it in a nutshell, really. Personally, I am against budget-cutting and bargain-basement operations. But I am wondering if you are basically trapped.

Mr. Robert Marleau: We are. We had no other choice but to use contracting as a way to deal with the backlog.

But our human resources strategy was to eliminate contracting and to train qualified staff, especially in legal matters. In the longer term, that staff will be a better resource for the government in access to information matters. On average, a contractor costs twice as much as a permanent employee.

[English]

The Chair: Thank you.

Mr. Siksay, please.

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

Thank you for being here again, Commissioner, with your colleagues.

Commissioner, you've talked about your new business model. I was just wondering if there was ever any buy-in from anyone outside of your office, from Treasury Board or from the advisory panel. Or is that something you developed within the commission? Has there been any review of or support for that program outside of your own office?

Mr. Robert Marleau: It's a business model that we developed in-house, but with the assistance, as I said, of IBM as the A-base review consultant. It was the platform, if you like, on which we based our submission to Treasury Board.

I can say that in terms of the Treasury Board Secretariat performing its challenge function, as it should do and do well, it was very well received and supported as the platform for justification of the supplementary resources. Also, the A-base review took reference points or benchmarks, if you like, in other similar organizations of similar size in order to justify each one of those resources.

•(1655)

Mr. Bill Siksay: Is the A-base review something based in government, or is it something from the private sector? I don't quite understand the A-base review.

Mr. Robert Marleau: Your annual voted amount is your A-base. Every year you re-challenge it. It's kind of like going to zero budget. Normally, going forward, you should be able to defend A-base. Anything above that has to be justified. We had not gone through one in the OIC for several years, but cyclically organizations will go right back to zero. In this case, we just wanted to implement a new business model to reach efficiency and justify not just the existing resources but the increased resources against that model. The A-base is something you do with an outside third-party consultant who specializes in that. They have a challenge function. It's not just a question of selling you a product. They have to live by and behind their recommendations as well.

Mr. Bill Siksay: Is this shortfall in your request part of any across-the-board government cutback to all departments, or is it something facing the commission individually?

Mr. Robert Marleau: I can't speak for other organizations. I can tell you that if it were part of a larger fiscal restraint measure such as 5% off the top for everybody, or targeted elements such as travel across the organization, I'd have fewer issues with it. But no, it's a specific component that we had for advocacy and for systemic issues that was withdrawn from approval.

When I say it's not just about the money—I have very competent managers, and we're going to manage within this envelope if Parliament votes it—it's about mandate. I'm concerned—and I have no rationale, so I can't and won't speculate—that the Treasury Board ministers denied a component that goes to the core mandate.

Mr. Bill Siksay: It sounds like a fairly serious concern or allegation coming from someone of your experience in government. It sounds as though you're saying that the responsible ministers have concerns about the advocacy and systemic review that's done by your office.

Mr. Robert Marleau: As I said to my colleague, it's hard for us to go to Sparks Street and bleed right now, because we got 24 FTEs out of 30. Those will considerably enhance our program delivery. The fact that systemic issues were treated in the fashion they were causes me concern.

I'm willing to have the dialogue. I'm willing to have the debate privately and publicly. That's not the issue. We haven't had that opportunity. As I said in my opening remarks, a good part of this is cabinet confidence, and I don't want to go into some of the details and conversations I've had around this, but I've certainly expressed my views clearly and, I would say, fairly frankly.

Mr. Bill Siksay: Madam Legault, you talked about a 70-30 split. I can't remember if that was for funding or staffing resources.

Ms. Suzanne Legault: That's for overall resources that we asked for, including both the FTEs and the O&M, operating money. It comes down to a split of about 70% that's allocated to the program and 30% to internal services.

Mr. Bill Siksay: Can you tell me what kind of staffing goes with those numbers in terms of the staff working in those two areas?

Ms. Suzanne Legault: It's 24 additional FTEs. The breakdown of that 24 is essentially about fifteen and nine.

•(1700)

Mr. Bill Siksay: Sorry, out of the 24 FTEs, it's...?

Ms. Suzanne Legault: It's fifteen for program and nine for internal services.

Mr. Bill Siksay: In terms of the overall staff component and not just the additional that you were seeking, how is that divided between compliance and operation?

Ms. Suzanne Legault: The total staff we're going to have, once all of the FTEs are staffed, will be 106. We currently have 82. Out of those, 24 are the new FTEs that we would be getting out of the supplementary estimates (A). The way they are divided, there would be 35 that would be strictly dealing with investigations. In addition to that, there are lawyers who are dedicated to the program. There would be people dealing with systemic issues and people dedicated to parliamentary relations, which are part of the program for an agent of Parliament.

Mr. Bill Siksay: How does it break down in terms of management and other staff in the office?

Mr. Robert Marleau: That's the only split we didn't come with. It's 70%—it's down to 64% with the reductions—for what you would call operations, which would include management.

Mr. Bill Siksay: So operations include management.

The Chair: Mrs. Block, please.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you, Mr. Chair.

Welcome back, Mr. Marleau, and welcome to your colleagues.

Just so I'm clear, based on what I've seen in your estimates, your opening remarks, and perhaps some comments that my colleague has made, your budget has not been cut this year, but you have asked for additional funding. Is that correct?

Mr. Robert Marleau: That's correct. The budget was not cut, and we asked for additional funding. We got less than we requested after going through the Treasury Board Secretariat process and the advisory panel.

Mrs. Kelly Block: Okay. It was less than what was requested, but there was no cut to your original budget.

Mr. Robert Marleau: If we do not get these supplementary estimates, the original budget will go into position and be minus five investigators. But that's not a cut from this year. That was a sunset provision put on those when granted in 2005-06.

Mrs. Kelly Block: You've clearly done some costing based on the A-base review that you referred to in your opening comments. We have another report from you that we're looking at, some recommendations. What I'm interested in is whether you have done any additional costing on those recommendations—in particular, extending the act worldwide and instituting a public education mandate.

Mr. Robert Marleau: No. The costing of this submission in the A-base review is based on the existing statute, the existing mandate. We did have a discussion with Treasury Board at one point about mandate creep on some of the issues, but we resolved those. No, it is based on the statute as it sits.

Mrs. Kelly Block: Okay.

Do you have any idea what increasing your mandate to include a public education piece would be for your department?

Mr. Robert Marleau: No, we didn't do the A-base study, but in terms of the impact of the legislative amendment proposals that I've made, we've looked at them as low, high, medium, and for the education mandate we came out with high in terms of the cost, the base increase, if you like, to our budget, but not to the system.

There are good reference points. The Privacy Commissioner, for instance, or PIPEDA, has an education mandate. But there we'd have to do a proposal, develop it, cost it out, and submit for extra estimates. I don't want to pick a figure out of the air. It would depend on what the mandate is.

• (1705)

Mrs. Kelly Block: Thank you.

The Chair: Thank you.

Mr. Marleau, I want to follow up on a very good point that Mr. Siksay was trying to get at. I didn't give him enough time to develop it, and I'm sorry, but he's on the list again and he will get a chance.

With the report cards that you have just given in the last report, which were not very encouraging for the ten, would it be fair to assume that the rate of new complaints will continue at similar levels to what we've had in the past year?

Mr. Robert Marleau: The line has flattened, if I can put it that way. Issues of the day can cause it to go back up. It seems to have flattened. We have that under some control. Our early resolution process is starting to show real benefits, but we have no control over what comes in the door and what causes it to come in the door.

The report cards are about systemic issues, things we identify that need attention, either from a compliance or performance point of view.

The Chair: I'm trying to identify the factors that may lead one to conclude that there may be a movement in the number of new complaints coming in, and I thought we might have some performance problems identified in at least some of those.

Another factor would be that we do have an economic situation that is going to impact pretty well all departments, and this is a very serious issue. I suspect that may also spur more people to make requests and consequentially more complaints to ultimately come. Would that be a fair assumption?

Mr. Robert Marleau: It's hard for me to say if that's a fair assumption. I would say that it is an assumption that warrants consideration. When the act was changed and broadened, we got a large increase in complaints. It has now flatlined. Going forward, as part of our A-base, we're estimating 2,000 to 2,100 per year. That's up from about 1,500, historically. The bulge we had in 2007-2008 was about 2,300 to 2,400, so it's flattening out at around 2,000. But with AECL, Chalk River, isotopes, who knows?

The Chair: The inevitable expenditure review may be a 5% target for all departments to start finding.

What priority does servicing ATIP requests generally get within departments, in respect of their susceptibility to being part of the cut?

Mr. Robert Marleau: It's hard for me to answer that question, since I'm on this side of the fence. When public servants are asked to do more with less, I suspect that it cuts right across the board. This legislation can't be suspended—it's there. It's difficult for me to say what impact this would have on a particular departmental ATIP office.

The Chair: We'll see how that goes.

Mrs. Hall Findlay.

Ms. Martha Hall Findlay (Willowdale, Lib.): Ms. Hall Findlay, I haven't been a Mrs. for a while.

The Chair: My apologies.

Ms. Martha Hall Findlay: My thanks to all three of you for being here.

I have been paying some attention to the challenges you have been facing in obtaining sufficient resources. From your prior testimony, public comments, and reports, I know that there have been significant problems, in some places more than in others. I have inferred that what you required, besides funding, was an attitudinal shift that with the right leadership would bring forth the necessary tools and resources. What were the reasons given to you for not being given the funding for the systemic and the advocacy pieces you are missing?

• (1710)

Mr. Robert Marleau: There is a question of cabinet confidences with respect to how these submissions are treated. Without violating any of that, I can say that I was given no reason. Based on discussions I had before it went to Treasury Board, I have an idea of what the reasons might have been. But it would be a violation of cabinet confidence to go into it.

Ms. Martha Hall Findlay: Understood. We don't want to put you on the spot, but it is a matter of some interest to us, because we feel strongly that access to information is important for a functioning democracy.

I note prior testimony that related to President Obama's unusual and commendable move on his first full day in office to change the default attitude in the United States towards freedom of information. He shifted the burden: instead of releasing information only when it can be proved that it's required, information in the U.S. will now be released unless it can be proved that it should not be disclosed. I'm trying to get a sense of whether we are still in the situation previously in effect in the U.S. I'm unsure about whether one can make that conclusion. We would certainly love to see this government adopt a more positive attitude toward disclosure.

Can you comment on this?

Mr. Robert Marleau: Mr. Chairman, I appreciate the honourable member's indulgence about cabinet confidence, and I might say parenthetically that it's a highly uncomfortable position for an information commissioner to say he can't answer a question.

Ms. Martha Hall Findlay: That's understood.

Mr. Robert Marleau: I refer you to my recommendations about cabinet confidences as a solution, maybe—close parentheses.

I said in my opening remarks that it's not just about the money; it's about mandate. I'm going to have to pursue that, and I intend to pursue it pretty aggressively. I don't think I should say any more on that.

Ms. Martha Hall Findlay: I think I'm running out of time. Am I, Mr. Chair?

The Chair: You have one minute.

Ms. Martha Hall Findlay: With the one minute, maybe you can provide a brief explanation, then—I'll take you into a more comfortable zone—with a couple of examples of the advocacy work that you would like to have been able to do, had you been given the funds.

Mr. Robert Marleau: The advocacy side was a very small part of it, actually. It was one FTE, essentially someone to track trends that we need to address, places we need to be internationally and nationally, what buttons to push and when, drafting speeches, and that sort of thing.

The systemic issues are more important. We had a three-year plan on which, if I may, I'll ask the assistant commissioner to comment; a three-year planned follow-up on systemic issues flowing from the report cards. We're going to have to revisit that.

To give you an idea of what we were going to do, I'll ask Ms. Legault to answer.

Ms. Suzanne Legault: Essentially, the idea behind systemic investigations is to take a much more strategic approach to them and make sure that we follow up on the recommendations. One of the issues that occurred before is that we would make recommendations and really not have the resources on a yearly basis to go back to ensure that the recommendations had been implemented. The strategic approach to systemic issues now is to basically look at the trends we can identify from our complaints, extract those trends, and then target them through systemic investigations, which are more widespread than just being based on a single case.

This puts us in a position to make much more widespread recommendations to the various institutions or to central agencies, as we did in the special report. It also allows us to follow up on these recommendations and to do formal systemic investigations on a recurring basis to target broad-based serious and systemic issues.

They are very resource-intensive, because they apply to several federal institutions.

• (1715)

Ms. Martha Hall Findlay: It sounds as though an investment in that kind of work might ultimately lead to the entire work that you do becoming more efficient and, I would argue, cost-effective.

Thank you for your answer. I think I'm done. Thank you very much.

The Chair: Yes, you are, but I was trying to be nice for having blown your name.

Mr. Dreeshen, please.

Mr. Earl Dreeshen (Red Deer, CPC): Thank you, Mr. Chairman.

If I can, I'd like to share my time with Mr. Cannan.

The Chair: Absolutely.

Mr. Earl Dreeshen: Thank you, Mr. Marleau and Ms. Neill and Ms. Legault, for coming here again today.

My question, being new, is whether it is customary for a department to come to a parliamentary committee asking for additional funds at the last minute.

Mr. Robert Marleau: I would say it's not customary, no, and this is really not a last-minute request. We spent a whole year working on the A-base review in tandem with Treasury Board Secretariat. We initially wanted to include it as part of the main estimates. At the Treasury Board Secretariat's suggestion, we moved it into the supplementary estimates (A). It was also convenient for us.

So it's part of the normal supply process. Supply is the main estimates, supplementary estimates (A), supplementary estimates (B), supplementary estimates (C). Supplementary estimates (A) occur in this trimester, supplementary estimates (B) occur before Christmas, and supplementary estimates (C) just before the end. If I were to be here on supplementary estimates (C) next March, I would be last-minute and I'd better have a good excuse.

Mr. Earl Dreeshen: The question I was getting at, though, is this. We've asked what the amounts would be for costing certain of the recommendations you're looking at for next year or that you would like to see put into acts. You talked about the potential mandate creep that you see, but before it becomes a mandate avalanche, let's try to make sure we know what is going to be taking place. That's part of the concern we have about all of the recommendations, and I guess that's where I'm coming from.

I wonder whether you would expect this to be the norm for the future, then, coming with your supplementary estimates (A), (B), and (C) requests and things perhaps getting a bit out of hand.

Mr. Robert Marleau: All I can say is that this component—the mains plus these supplementaries, if granted.... I manage the act that I have, not the act that I want or the act that I propose we should have. All of this is predicated exactly on the statute as it is.

As to costing of some of the recommendations I've made, that could come, if they move forward. What we did with the recommendations was consult a base of users, practitioners, and academics and build a body of consensus around what needs to be done to improve ATIA. There are costs attendant on doing it, I grant you that, but some of them are government costs. Many of them will be in departments; some will be in the courts; some will reflect on me.

It's not really my responsibility or accountability to cost future legislative initiatives, if they occur. I don't deny that there are costs attendant upon any of the recommendations I've made. It's premature, I think, to try to cost them out, and certainly to cost them within my own budget.

The Chair: Ron.

Mr. Ron Cannan (Kelowna—Lake Country, CPC): Thank you, Mr. Chair.

This is supplemental to my colleague's questions. I'm just filling in, but I did some reading prior to having the opportunity to speak to you this afternoon.

I'm all for open, transparent, and accountable government, whatever party is in government, to make sure that our tax dollars are being spent prudently. Looking through the information in the report and the recommendations—there are some 12 recommendations and a variety of concerns—I would say that coming from any other committee or previous business experience, you would make a recommendation and you would obviously use the prudent and responsible measure and look at cost from a budgetary perspective. You can't expect anybody to make a recommendation and put a report to the House without any sort of cost attached or some accountability to a tangible business plan. Otherwise, you're just asking parliamentarians to put forward a blank cheque.

● (1720)

Mr. Robert Marleau: The background to the legislative recommendations or legislative change that I put before the committee flows from a long debate in this committee, going back to 2003, I believe. My predecessor tabled draft legislation at that time.

One of the concerns that was expressed by both the justice minister and Treasury Board at the time was that it would be very expensive. Many of the recommendations were costed out at the time by them, and I have some issues with how some of the costs were arrived at. The strategy here was to give the committee a focus of 12 recommendations, which are interlinked. Implementing them could be done fairly easily and quickly, potentially at less cost than the whole revamp of the statute.

But it's not a business plan that I put before the committee, and it's not my responsibility to cost out all those aspects—what the Federal Court might spend, etc. It's a bit like asking, what does the charter cost? When we brought the charter in, did you cost out every aspect of it before it was passed?

This is a fundamental right of Canadians. What I tabled before the committee is what is wrong in the near reality and what should be fixed as quickly as possible.

Mr. Ron Cannan: Further, if there have been six years of debate, obviously there's some pretty good research and some numbers. If you're saying they're too high, then you would have some information on why you figure you can bring your recommendations forward at a lower cost. But right here it's zero: we don't have any number to work with. If you had something—"This is what we're recommending"—as to why you feel it could be brought forward at this price and for this and this reason.... Otherwise and right now, as I mentioned, it's a blank slate.

You say that every Canadian absolutely has the right to have access to the Access to Information Act, which is a fundamental right of every Canadian. But there's also a responsibility for every Canadian and every person employed in the Government of Canada—or any employee—to be accountable and responsible, whether in the private or the public sector. At least you have a moral responsibility, if not a legal one.

Mr. Robert Marleau: I have to say, sir, I think that accountability and responsibility lie with the executive, not with the—

Mr. Ron Cannan: So you don't feel you're accountable for your work?

Mr. Robert Marleau: I didn't say that. I said that the responsibility for costing this out lies with the executive. It has to be an executive initiative, because the financial initiative of the crown is tied to any future bill. I've said that in prior testimony.

I'm accountable for the moneys that Parliament votes to me. I'm here today under supplementary estimates to account for the request I've made and have you decide whether we warrant that supplementary funding. But as far as global accountability for delivery of service to Canadians under ATIA, that lies with the Government of Canada.

Mr. Ron Cannan: So what is the cost right now to process an application for access to information?

Mr. Robert Marleau: It's \$1,425.04. In prior testimony, it works out to one Timmy's double-double per Canadian for the total cost of the program.

Mr. Ron Cannan: But how many programs are there across Canada? There are a lot of Timmys.

The Chair: Colleagues, we have Madam Thi Lac, Mr. Siksay, and Mr. Dhaliwal on the list. I think that's everyone. When we finish that we'll quickly go in camera to deal with that and discuss the itinerary of the committee. There are some things I would like to propose, and I think we could do it much quicker in camera. So if that's acceptable, we'll have these last three and then go in camera.

Madam Thi Lac, please.

[*Translation*]

Mrs. Ève-Mary Thāi Thi Lac (Saint-Hyacinthe—Bagot, BQ): I am not going to use the five minutes, given that we do not have a lot of time. I am going to ask a question with several parts.

You said that, in the past, you had difficulty getting candidates interested in the positions you had to fill. You explained that the challenges of the job and the matter of advancement were at the root of the difficulty.

Have you managed to solve the recruiting problem? We know that we now have to do the same research and offer the same training when hiring contractors as when hiring permanent staff. You are right to say that the costs are astronomical, given that the employees are only going to be there temporarily.

Could you tell me the employee turnover rate and the percentage of contract employees to permanent ones? Have things changed there?

• (1725)

Mr. Robert Marleau: Yes, things have changed. That is why, Mr. Chair, I made it clear in my opening remarks that we had developed a human resources strategy as part of this submission and of our budget analysis. We specifically want to stop relying on contract workers, especially for our investigations.

At the moment, we have 17 consultants. They are not permanent employees. Of that number, 4 are in administrative support. In all cases, we choose permanent employment as quickly as we can.

For the investigators, I have just been given the exact figures. Instead of everyone starting at PM-5 level, as was the case in the past, they start at PM-2 and then move to PM-3, PM-4 and PM-5 levels. That gives them some career progression.

Mrs. Ève-Mary Thāi Thi Lac: On average, how long before people leave your organization?

Mr. Robert Marleau: There were several departures two years ago, especially among the investigators. They had all reached the PM-5 ceiling and there was a shortage in the public service. Several of them got steady jobs providing training, or dealing with access to information requests in a department.

The departure problem has been solved. We have a strategy for replacing those people and it is going very well. Now the people who leave our organization are temporary employees and consultants. The pace of the departures has changed.

[*English*]

The Chair: Merci.

We'll go to Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

Mr. Marleau, has there been a situation in the past when the recommendations of the advisory panel have been dramatically changed by the Treasury Board ministers with regard to the budget for the office of the commissioner?

Mr. Robert Marleau: I know of no other situation in the past. I know of one situation when a commissioner asked for x and the panel said no, it's x minus y , and that was recommended to Treasury Board. But I don't know of a case in which an agent of Parliament went through the challenge function of Treasury Board Secretariat and a recommendation from the panel and what came out was different. I don't know of a case.

Mr. Bill Siksay: So this is the first time this kind of situation has developed, to your knowledge.

Mr. Robert Marleau: To my knowledge it is, yes.

Mr. Bill Siksay: When you say Treasury Board ministers made the approval, which ministers were involved? Which Treasury Board ministers were involved?

Mr. Robert Marleau: The President of Treasury Board chairs. It's a cabinet committee. For the life of me, I can't remember who the other members are, but I can find out for you.

Mr. Bill Siksay: Okay.

Mr. Marleau, do you think this is a punitive action by the government because they don't like the systemic analysis in the most recent set of report cards?

Mr. Robert Marleau: Mr. Chairman, with your indulgence, I don't think I should speculate on whether it's punitive or deliberate.

Mr. Bill Siksay: You did say you sit at pleasure.

Mr. Robert Marleau: I need to correct that, Mr. Chairman. I sit at the pleasure of Parliament. To remove me, you need a resolution of the Senate and of the House of Commons. So unlike other officers who serve at pleasure, I have a certain comfort about being disliked.

No, I will only respond as I responded to Ms. Hall Findlay earlier: I intend to pursue this, and I intend to pursue it aggressively.

• (1730)

Mr. Bill Siksay: When you say that you intend to pursue it aggressively, what means are at your disposal to do that?

Mr. Robert Marleau: My first pass would be to resubmit, and maybe you'll see me here for the supplementary (B)s in the fall, if they approve.

Mr. Bill Siksay: Okay.

Do you think this is another indication of the lack of political will to deal seriously with access to information and the implications of it for government?

Mr. Robert Marleau: I think my comments in the past I stand by. A lot could be achieved with leadership administratively, without necessarily reopening the statute and without spending a whole lot of money. A strong signal from the top would bring about, I think, a quite different performance and improvement.

I don't want to comment on political motive or will except to say that on the positive side of the ledger I've seen, for instance in the Department of Justice, what deliberate executive leadership can do in terms of improving performance under ATIA.

Mr. Bill Siksay: Is this situation an indication of some kind of conflict of interest between the interests of the government and the interests of Parliament and the interests of Canadians in ensuring their quasi-constitutional right to having access to information? Are the two things at odds there? Is it a conflict of interest for the government to have this ability to reduce your budget when you're doing this work?

Mr. Robert Marleau: Mr. Chairman, for years several agents of Parliament have expressed that concern.

Mr. Ron Cannan: A point of order, Mr. Chairman. I thought I heard earlier that his budget wasn't reduced.

The Chair: Thank you. That's debate. Let's move on.

Mr. Robert Marleau: For years several parliamentary agents have expressed discomfort with the fact that they are accountable to Parliament and yet are subject to the executive in funding their mandate. The whole concept of the panel, which was brought in in 2004, was to try to alleviate that.

In fact, agents of Parliament are now more accountable because of this, because the submission has to be reviewed by a parliamentary panel and the Treasury Board Secretariat before it's translated into a supplementary estimate at the Treasury Board. So there's a challenge

function from the secretariat, there's a challenge function from the panel, there's a challenge function from Treasury Board ministers when they look at it, and then of course there's your challenge function as part of the supply process.

I think the panel was a great improvement. It brought transparency to the process. I don't think there's a procedure provided for Treasury Board to feed back to the panel a decision that is different from the recommendation, and that may be a flaw in the model.

The Chair: Thank you.

Finally, we'll go to Mr. Dhaliwal.

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

Mr. Commissioner, when I look at a more than 30% decrease in the backlog, I'm looking at it from a private perspective. I was running a business. When the manager who runs my business brings in a 30% better performance than expected, and then comes back to me and says that he wants to reduce this backlog and clear this backlog.... The only motive I see, even though you might not agree, from this commerce perspective, is that they don't like to be open or transparent, and they want this backlog to grow.

How much longer will it take...?

The Chair: Let's be careful. Let's keep the partisanship down here. Let's see if we can just tidy off with points, facts.

An hon. member: Apologize.

Mr. Sukh Dhaliwal: No, I'm not going to apologize.

This is where I'm heading, Mr. Chair. I want to know. If there is a 30% performance on this side, and then we see every week the Minister of Finance coming up with billions of dollars in deficit, what is it we aren't doing to make sure this backlog is gone?

How much money do you think you need to totally clean up the backlog, and how long would it take, Commissioner?

Mr. Robert Marleau: The backlog will be pulverized, to use my colleague's language, by the end of this fiscal year, with this money. But this is not just about the backlog. This is part of the backlog strategy, but it's a new business model so we don't get back into a backlog. To be fair, we have the money to deal with the backlog, including this supplementary estimate. It was the systemic issues that were refused and will cause us to have to reallocate internally to try to deliver at least the status quo, if not status quo minus a little bit, on systemic issues. But as far as the backlog is concerned, I am confident that by the end of this fiscal year it will be dealt with.

The A-base plan takes us over six years, with a carry-over of about 500 cases a year because they come in at the tail end and that sort of thing. If we have an inventory of about 500 cases going forward from fiscal year to fiscal year, we will have managed the backlog.

I didn't invent the backlog; I inherited it. It's not just that one government didn't believe in the ATIA, because there were several governments in office over the life of the backlog. There's a whole series of issues, including underfunding. It would be unfair for me to say I can pin this on lack of will or specific will of any government.

• (1735)

Mr. Sukh Dhaliwal: In fact you're saying, directly or indirectly, that if you do not get this money, even though you'll be able to manage this backlog, you will also accumulate backlog. Is that true?

Mr. Robert Marleau: Let me restate that. If we don't get this money, the supplementary A, the backlog strategy is at peril. Not only is the backlog strategy at peril, but the program is at peril, because the five extra resources we got in 2005-2006 lapsed on March 31. I spent some of that money, and I'm going to have to recoup it going forward on the last three quarters, which means very hard cash management and definitely lay-offs.

Mr. Sukh Dhaliwal: That puts an even higher priority on this issue.

Mr. Robert Marleau: That's what I have laid before you and Parliament through the supplementary process.

Mr. Sukh Dhaliwal: You said it takes you twice as much to hire a private consultant on a contract basis. What is the payback period if you have full-time employees hired instead of those contract employees?

Mr. Robert Marleau: A contractor in ATI costs us about \$100,000 a year. I can hire a PM-2 and grade them up to PM-5 over a period of years, keep the expertise in-house, and develop the specialty in-house. It's hard to say the difference between one and the other, because the contract is very finite. I may have an employee who I recruit at PM-2 and keep him over three years before he reaches the cost of a contract.

Mr. Sukh Dhaliwal: Thank you.

The Chair: Mr. Commissioner, there was an undertaking for Mr. Dechert. Were you going to handle that in writing?

Mr. Robert Marleau: Mr. Dechert had asked me, on behalf of the committee I assume, to look into other models, including the B.C. one where cost recovery for commercial requesters was in place. We looked into that, and we certainly can provide that to you in writing, unless you want me to comment now.

The Chair: I don't recall whether the undertaking was to be in writing to Mr. Dechert to be shared with us, or to the clerk.

Mr. Robert Marleau: I'm in your hands as to where you would like me to direct it.

The Chair: Can you tell us your findings quickly?

Mr. Robert Marleau: Yes, I can very quickly.

The question was whether I knew of a system whereby an ATI request was processed at full cost recovery when the requester was a commercial organization. I said at the time that I didn't know of one, but Mr. Dechert was quite correct in saying B.C. has that model.

We looked into it. The B.C. model in fact has a provision for cost recovery. I've spoken with the commissioner there. I can certainly say that while in principle I'm against fees, a system in which cost recovery for a commercial organization would be developed—with the right to complain to the commissioner, the right of the commissioner to review, some of the administrative order-making powers that I recommended to the committee, and the discretion to investigate or not to investigate—could be made to work federally. The trick is in the definition of what a commercial enterprise is. The media is a for-profit industry, so it would clearly have to be excluded, I believe, and I certainly would argue. There are issues—as I said, I think, in my testimony—for which you might be able to get around it. But in B.C. it does work, and it's not a big issue.

• (1740)

The Chair: Okay, why don't we leave it at that? I'll refer this information to Mr. Dechert, and if he would like further details, he should be in contact with you directly.

Thank you kindly. You are excused.

We have to go in camera for just about three minutes, so we will suspend. All those who are not supposed to be in the room for in camera, please leave as quickly as you can.

[Proceedings continue in camera]

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