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

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**EVIDENCE**

**Tuesday, November 3, 2009**

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**Chair**

**Mr. Paul Szabo**



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

Tuesday, November 3, 2009

• (0920)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** Order.

This is meeting 35 of the Standing Committee on Access to Information, Privacy and Ethics. Our order of the day, pursuant to Standing Order 32(5), is the annual report of the Information Commissioner of Canada for the fiscal year ended March 31, 2009, referred to the committee on Monday, April 6, 2009.

Our witnesses today, from the Office of the Information Commissioner of Canada, are Suzanne Legault, interim Information Commissioner; Lisa M. Campbell, interim assistant information commissioner, policy, communication and operations; and Andrea J. Neill, assistant commissioner, complaints resolution and compliance.

Welcome to all of you yet again. We appreciate your coming before us to tell us all of the wonderful developments since last spring, almost since close to June. I know there are some important developments in the commissioner's office. As you know, we had Mr. Marleau before us, more for a little farewell than anything else, but we certainly did appreciate the opportunity to speak with him again.

Madam Legault, I understand you have an opening statement for the committee. Then we'll move on to our questions and our usual practice.

Please proceed—

Mr. Del Mastro on a point of order.

**Mr. Dean Del Mastro (Peterborough, CPC):** Yes, thank you, Mr. Chair.

My point of order is that on Friday morning, in line with the standing orders of this committee, I moved a notice of motion for a motion to be votable today that read:

November 1st 2009 represents the fourth anniversary—

**The Chair:** Order.

I wonder if the clerk would report what happened here.

**The Clerk of the Committee (Mr. Jacques Maziade):** I had an e-mail from Mr. Del Mastro's office at 11:39.

I spoke with your assistant Lindsay Gordon, and told her that according to Standing Order 119, only members of the committee could move a motion. Too, I sent an e-mail explaining that to her at 3:37 in the afternoon.

**The Chair:** So pursuant to the standing orders, it was not receivable.

**Mr. Dean Del Mastro:** Okay. Thank you.

That's not actually related to where I was going with my point of order, but I do appreciate the clarification.

**The Chair:** Please carry on with your point of order.

**Mr. Dean Del Mastro:** Thank you.

As I said, on Friday morning I moved the following motion:

November 1st 2009 represents the fourth anniversary of the first report of the Commission of Inquiry into the Sponsorship Program and—

**The Chair:** I think we already dealt with a...

**Mr. Dean Del Mastro:** No, we dealt with why the motion wasn't accepted Friday. But I do have a point that I'm looking to get to.

**The Chair:** There is no motion before the committee right now, and I really don't want to go there at this point.

Is there a point of order? Could you refer to the standing orders with regard to the nature of the point of order?

**Mr. Dean Del Mastro:** It's procedural, Mr. Chairman.

**The Chair:** We don't have to hear the motion, because there is no motion before us.

Please get to the point of your point of order.

**Mr. Dean Del Mastro:** The point of my point of order, Mr. Chairman, since you're obstructing what I'm trying to accomplish, is to make members aware—

**The Chair:** Order.

Mr. Del Mastro, do you want to withdraw those remarks, please?

**Mr. Dean Del Mastro:** Well, I think it's clear for everyone here that you're obstructing my point of order, Mr. Chairman.

**The Chair:** Do you want to withdraw the remarks, Mr. Del Mastro?

**Mr. Dean Del Mastro:** Okay. I will withdraw the word "obstructing" and use the words "being difficult" in allowing me to convey what I'm trying to get at.

**The Chair:** I'm going to ask you to move directly to your point of order so we can get on with our business. I don't want a speech. A point of order has to be precise and it has to refer to matters that are outlined in Marleau & Montpetit. There are four particular areas in which a point of order can be raised.

Please complete your point of order.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

It is procedural. As I indicated, I moved a motion on Friday that was not accepted because, as the clerk stated, as an associate member of the committee, I was not entitled to move the motion. However, procedure states that this committee may in fact waive the time requirement for a motion by unanimous consent.

I would like to ask members for unanimous consent—

**The Chair:** Order.

**Mr. Dean Del Mastro:** —to move that motion today—

**The Chair:** Order.

**Mr. Dean Del Mastro:** —and for it to be considered—

**The Chair:** Order.

When I say “order”, Mr. Del Mastro, that means that you stop speaking.

You cannot move a motion on a point of order.

So you are out of order, sir.

**Mr. Dean Del Mastro:** By unanimous consent—

**The Chair:** No, that's enough. That's it. You're done.

You cannot move a motion on a point of order. That's just following the rules. I have to apply the rules the same in any situation that's the same or similar. It's not personal, sir, but it is improper for you to do that.

I'm going to move on now, because you no longer have the floor.

I'm going to move to Madam Legault for her opening statement.

Please proceed.

• (0925)

**Ms. Suzanne Legault (Interim Information Commissioner, Office of the Information Commissioner of Canada):** Thank you, Mr. Chairman.

[*Translation*]

As you know, I was appointed interim Information Commissioner on June 30, 2009, and I am delighted to appear before this Committee today in that capacity. As you said, with me are my esteemed colleagues, who provide day to day support for all the work done at the Office of the Commissioner.

[*English*]

Our discussion today is all the more timely given what various experts as well as ordinary citizens had to say during our recent Right To Know Week on the importance of freedom of information and the urgency to improve our access regime.

I would like to address three main issues. First, I will provide you with a brief overview of the OIC's annual report for 2008-09, which is indeed a reflection of the excellent leadership of former Commissioner Marleau. Second, I would like to comment on the government response to the eleventh report of this committee, entitled “The Access to Information Act: First Steps Towards Renewal”. Third, I will outline briefly my priorities as interim Information Commissioner.

[*Translation*]

You should have received a folder with supporting information to assist with our discussion this morning. You will find in it updated information on the OIC's case load and resources. As stated in our Annual Report, this Office owes to former Commissioner Marleau a major realignment of operations and resources designed to improve, amongst other things, our core investigative function.

[*English*]

In 2008-09 we moved ahead with the development of a new business model to streamline the investigative process while promoting greater institutional compliance with the act. We sought and obtained a significant increase in our base budget to support this new model. The new funding will be included in the office's budget in the next fiscal year.

As a result of our new way of doing business, we were able to close an unprecedented number of cases in 2008-09. I am also pleased to report that between April 1 and September 30, 2009, for the first time in history the office closed more complaints than it received. Thus, I am confident that we have reached a turning point in tackling the recurring carry-over of inventory. Also, as you can see in tab 5 in your folder, our inventory of pre-April 1, 2008, cases has diminished by about 50%. These are early indicators that our new business model is actually working.

Mr. Chairman, I stand behind the recommendations made to this committee by Commissioner Marleau in the spring of 2009; therefore, I share this committee's—and indeed, many stakeholders'—disappointment in the government response to those recommendations. In my view, reform of the act is necessary and urgent. Driven by the rapid proliferation and sophistication of information technologies, world economies are increasingly becoming interdependent. Our own economy has mutated from a manufacturing base to a knowledge-based economy. To fuel innovation, researchers and entrepreneurs require timely access to government data that they can mash up, repurpose, and make their own.

Ordinary citizens have moved from a conventional paper world to a world of texting, blogging, and twittering, and their requirements and expectations for government information has changed drastically. Our legislation needs to reflect this new environment.

[*Translation*]

My focus since taking on the interim position has been to implement the OIC's new business model to ensure an effective, thorough, fair and transparent investigative process, while preserving the requirements of confidentiality.

At Commissioner Marleau's request, our intake and early resolution unit was the subject of an early audit conducted last spring. This audit revealed several areas for improvement, including the time to obtain documents from institutions which spanned an average of 90 days.

● (0930)

[English]

I issued in September a management response to this audit report with a thorough action plan to address each shortcoming. This included the publication of a clear OIC directive on requesting records from institutions.

On the systemic front, I published in July a three-year plan that covers both report cards and systemic investigations. This plan takes an integrated approach to the assessment of delays in responding to access requests, while encouraging greater proactive compliance from institutions.

This year's report cards process expands the sample of institutions to be reviewed from 10 to 24. We will specifically look at delays in the average lifespan of requests in these institutions. Simultaneously, we will investigate chronic delays related to extensions and consultations. These delays have a strong detrimental effect across all federal institutions and severely prolong responses to requesters.

We plan to communicate our findings before the end of this fiscal year. My goal is to present a clear diagnosis, with recommendations to remedy specific institutional problems with compliance. This will assist in holding the relevant authorities accountable.

My approach as interim commissioner is simple. I will work diligently to fully implement the OIC's business model and maximize efficiencies in our investigative process while ensuring a thorough and fair process for all parties involved. In doing so, I will use all the tools at my disposal under the current legislation to ensure that requesters' rights are protected. Meanwhile, I will continue to work relentlessly with all stakeholders, including requesters, parliamentarians, and government officials, to modernize our access to information regime and ensure its continued relevance to Canadians.

Thank you. I am now ready to answer your questions.

**The Chair:** Thank you kindly.

We're going to go right to Madam Simson, please.

**Mrs. Michelle Simson (Scarborough Southwest, Lib.):** Thank you, Chair.

Thank you, Ms. Legault, for appearing before the committee. I'd like to congratulate your office for a comprehensive and informative annual report and update for this year.

In your update, I notice you said, "In my view, reform of the act is necessary and urgent." Could you expand a little more on the urgency of the matter as you see it? I'd really appreciate your comments on that.

**Ms. Suzanne Legault:** We live in the age of instant information—this is 2009—and we have a system that is taking longer and longer. What we have in some departments is various lacunae in terms of handling digital information. The system has a very weak

compliance model, so there are no real incentives in the legislation or anywhere in the system to ensure that there are timely responses to access to information requests. In this day and age of instant information, of 24-hour media, if it takes one, two, or three years to receive information, then the right of access is no longer relevant.

**Mrs. Michelle Simson:** Thank you.

In reading your report, I note that, under the outcome for the 2008-09 complaints, 652 complaints were discontinued, which is a rather dramatic increase from the 2007-08 year, in which there were 108. We heard testimony from former Commissioner Marleau that it was his feeling that there was a sense that people were giving up in terms of not even bothering to file complaints because it was taking longer and longer.

Would you share that opinion, that people are starting to give up, that there's a fog of apathy descending on access to information?

**Ms. Suzanne Legault:** First of all, you will find that I'm very much a data person. The 652 discontinued complaints, I would say, are more evidence of the fact that we dealt with the old inventory of cases. Last year, when we looked at that inventory, there was some very low-hanging fruit. It's true that some of those cases were so old that the requesters were no longer interested in the information.

As to whether there is apathy, I will refer to some of the testimony we heard during Right to Know Week, particularly from journalists, who indicated that in fact it is taking so long that they no longer bother to make requests.

● (0935)

**Mrs. Michelle Simson:** Thank you.

I'll turn it over to my associate.

**Mr. Borys Wrzesnewskyj (Etobicoke Centre, Lib.):** Thank you.

Let me begin with the support you provided us with. I find it interesting that the Privy Council Office is one of the biggest generators of complaints. In total, how many hundreds of departments and crown corporations as individual institutions are under the Access to Information Act?

**Ms. Suzanne Legault:** It's around 250 now with the passage of the Federal Accountability Act.

**Mr. Borys Wrzesnewskyj:** So 250 and yet the Privy Council Office in the last three years has been in the top three or four in terms of the number of complaints generated to your office. We can understand Revenue Canada, people not happy with some of the information on their taxes, etc., generating lots of reports, but the Privy Council Office? I can't help but think something else is going on.

When I look at your numbers for the three years sequentially, the current government in their first incarnation, 2006-07 when they took over, 6.5% of the complaints that year were from the Privy Council Office. In 2007-08 the Privy Council Office was up to 10% of all complaints.

In 2008-09, if we take out CBC, Telefilm Canada, the crown corporations, so that we're using similar data, because the crown corporations just kicked in, we had a total of just over 1,700 complaints, 198 Privy Council Office, so 11.6%. We've seen a doubling over the span of this government in terms of complaints against the PCO.

You've heard from journalists; let me tell you, as an MP, I've given up on access to information. The mechanism most often used is cabinet confidence. Of the 50-odd Commonwealth countries, is it correct that only two countries, South Africa and Canada, do not allow the commissioner the ability to take a look if what is being cited as cabinet confidence in fact is a cabinet confidence?

**Ms. Suzanne Legault:** I would not be prepared to say that only South Africa and Canada have that exclusion in their legislation. I would have to verify that and do a bit more of a comparative analysis for you, which I can provide.

More to the point is probably the jurisdictions in Canada. At the federal level, we are one of the few jurisdictions, if not the only one, that has cabinet confidence as an exclusion under the legislation—i. e., there's no right of review from the commissioner's office, which really goes against the fundamental tenet of access to information where we want to have an independent oversight mechanism.

**Mr. Borys Wrzesnewskyj:** Thank you.

I looked at these last three years and the data and the doubling of complaints against PCO. Parallel to that, you see that under the Conservative government, the average processing times have gone from 30 days to 60 days—in the time prior to this government—to 150 days, 250 days, and in some cases beyond. We're going from a couple of months to almost a year, in many cases.

There seems to be a new tactic being employed by PCO. A letter like this goes out after someone has been stalled out for, let's say, half a year: We're aware that a certain time has passed since your request was originally received; we sincerely apologize for the delay; and in an attempt to clear the heavy backlog, please complete the following—namely, do you still require that information, yes or no?

Isn't that somewhat Orwellian?

• (0940)

**The Chair:** You're at seven and a half minutes already.

**Mr. Borys Wrzesnewskyj:** Oh, sorry.

**The Chair:** Madam, do you have a response?

**Ms. Suzanne Legault:** It's important to clarify one thing with complaints against PCO. Historically, and even last year when we were reporting on data against the Privy Council Office, there was a practice at the OIC, which we have changed, of double-counting. When we had a matter related to cabinet confidences, a complaint would be opened against the Privy Council's Access to Information and Privacy Office as well as a complaint in the originating institution. There was a high number of complaints against the Privy

Council that were in fact double-counted. This practice has changed. I suspect that when we report on the Privy Council Office this year, you will probably see a decrease.

That doesn't solve the fact that at this point there is no measure of the number of matters that are being consulted with the Privy Council's Legislation and House Planning Secretariat in relation to cabinet confidences. That only gets counted against the originating institution. Statistically speaking, there is little data on cabinet confidences in relation to the Legislation and House Planning Secretariat, and this is more to the point of your question.

**The Chair:** Thank you.

*Madame Freeman, s'il vous plaît.*

[*Translation*]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** Thank you for being here today, Ms. Legault, Ms. Campbell and Ms. Neill.

You have obviously seen the response of the Minister, Mr. Nicholson, to the recommendations made by the committee. Mr. Marleau, the former Information Commissioner, has testified before the committee in his personal capacity so he could comment on that response. In his preamble, he even talked about something missing, that the public's democratic access to government information could be cut off. In his report, he said: "How much longer will Parliament stand by and tolerate this pervasive neglect and the attrition of a fundamental democratic right?"

Mr. Marleau was a senior public servant and had a rather full career in Parliament. He talked about his attachment to the institution of Parliament and said that it deserved at least a substantive response. The Minister's response, in his view, was very cavalier. In our view, it was more than cavalier; it was frustrating and inappropriate.

Given the work done by the committee and the recommendations made by the Commissioner after that response was received, what are your priorities for giving the public better access to information, despite the fact that none of our recommendations has really been adopted?

**Ms. Suzanne Legault:** Mr. Chair, as I said in my opening address, I have an Act to apply, and it makes certain powers and mechanisms available to me. My intention is to apply the Act using the powers set out in it. That is the first step.

I am a problem-solver. In the government's response, I see two things. First, the Minister says there should be further consultations. I understand that some access to information actors are disappointed to see that comment. If the government insists on holding additional consultations, I would like to see the exercise developed in a structured way by the government, so there could be results at the end of the day.

Second, in the Minister's response, he says that the administrative process could be improved. In his letter, he simply refers to renewal of the access to information policy. In my view, a lot more has to be done. We already have extensive information about administrative reforms, and I can talk about that more, if you are interested.

• (0945)

**Mrs. Carole Freeman:** Yes.

**Ms. Suzanne Legault:** In my opinion, a lot of things can be done at the administrative level. If that is where the government wants to go, then let's have more concrete things proposed.

First, let's examine proactive disclosure. The new Quebec legislation contains new provisions that will come into force in December 2009. They deal with proactive disclosure, including disclosure of requests and responses, that will be published on the Internet.

As well, statistics that are...

**Mrs. Carole Freeman:** Excuse me for interrupting. What is there on the Internet

**Ms. Suzanne Legault:** Access requests...

**Mrs. Carole Freeman:** Are they made directly?

**Ms. Suzanne Legault:** They are, along with the responses. The new provisions of the Quebec legislation that will come into force in 2009 provide that it will be mandatory on government institutions' Internet sites.

There is nothing that says we have to have legislation to do something like that. We can do it administratively, at the federal level.

**Mrs. Carole Freeman:** Could you implement that kind of solution?

**Ms. Suzanne Legault:** The Department of National Defence already does it.

**Mrs. Carole Freeman:** You are the Commissioner, you act as ombud, you receive the complaints. Could you put the complaints on a website?

**Ms. Suzanne Legault:** Complaints are protected by very specific confidentiality provisions. However, when the Federal Accountability Act was passed, we became subject to the rules governing access to information. If there is a request, when the complaints are completely finished, the documents produced by the Office of the Commissioner are subject to the rules governing access to information.

**Mrs. Carole Freeman:** Could you put that on the website?

**Ms. Suzanne Legault:** I would say that our intention this year is to put the access requests we receive on the website, along with the

responses. If there are specific questions relating to completed investigations, that would be published.

**Mrs. Carole Freeman:** You just said that the Department of National Defence puts access to information requests directly on its site. Does that Department do this of its own accord?

**Ms. Suzanne Legault:** Yes.

**Mrs. Carole Freeman:** You don't have any coercive measures to compel an institution to do it.

**Ms. Suzanne Legault:** No.

**Mrs. Carole Freeman:** So it is at their discretion.

**Ms. Suzanne Legault:** That's right. That's why I say that this measure can be adopted administratively within the federal public service.

**Mrs. Carole Freeman:** But when there is a problem and some institutions are doing it not particularly well—you examined 10 institutions and six of them were in breach because their performance did not meet the criteria well enough—you have no coercive measures.

**Ms. Suzanne Legault:** Obviously...

**Mrs. Carole Freeman:** You are very limited, you have good intentions, but you have no sanctions. Your actions are therefore limited.

**Ms. Suzanne Legault:** You understand, Mr. Chair, that we are talking about administrative measures. That is the big difference. If we are talking about legislative measures, obviously there is a legal obligation.

Where there is an administrative measure, and this is the big difference, it is applied within the public service. In these circumstances, it should be administered by Treasury Board Secretariat. It is responsible for administering access to information policies. That is not the function of the Office of the Commissioner, it is the function of Treasury Board Secretariat.

**Mrs. Carole Freeman:** At present, do you find that it is satisfactory?

**Ms. Suzanne Legault:** If we are talking about administrative improvements, proactive disclosure is one. I think another measure would be essential and should have a major impact: extensions and consultations within the system. There is no legislation that limits the time for extensions and consultations. In the extension and consultation system, we see 200 or 300 or 400 or 1,000 days in some cases. There is no legislation to put time limits on these things.

If you want to do something at the administrative level, that is it. That would have an immediate impact in the system. It would have to be administered by Treasury Board Secretariat.

**Mrs. Carole Freeman:** There would also have to be legislation to support...

**Ms. Suzanne Legault:** I would prefer that there be legislation, but if you are asking me what administrative measure would have the most impact, my answer is that this is one.

• (0950)

**Mrs. Carole Freeman:** Thank you.

[English]

**The Chair:** Thank you.

We'll now move to Mr. Siksay.

Welcome back. It's good to see you, sir.

Probably all of us can assure you that your colleague Mr. Martin ably represented you.

You can read the transcripts to see how much.

**Voices:** Oh, oh!

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** I have already.

**The Chair:** In any event, members, the first few rounds went a bit longer, so the other two parties will have equitable time.

You will have about eight and a half minutes.

**Mr. Bill Siksay:** Thank you, Chair, I appreciate that.

I'll pass on your compliments to Mr. Martin. He is always keen to be at this committee, because it's a subject that has been very dear to him in his political work over a long period of time.

Thank you for being here again, Ms. Legault, with your colleagues. It's nice to see you in the middle chair for a change. That's a good thing.

I want to go back to something you said in response to Ms. Simson. I found it quite disturbing, actually. You said that some requesters have given up on the process and have told you they no longer make requests. I see that as a victory for closed government. It's a very serious development that anyone who has attempted to use the system would give up in frustration.

I wonder if you could say a bit more about that. How widespread is that kind of response and that kind of frustration?

**Ms. Suzanne Legault:** I don't have any data in terms of who has decided not to make an access request. Obviously that would be very difficult to measure.

What I would say, and I have said this many times, is that the way the system works now is not conducive to Internet generations making access requests. You have to send a letter and you have to send a \$5 cheque.

I will share this with you without naming anyone, but I have actually received complaints where people think government departments are using a delay tactic by obliging them to send a \$5 cheque. My 20-year-old children do not use cheques; they don't own a chequebook. Something in the system is so arcane that it's just not responsive to the tech-savvy generation of people. They don't expect to have to write a \$5 cheque—which probably costs around \$70 for the government to process— instead of sending something by PayPal.

So it's not only that it's taking a long time, it is no longer living in modern times.

**Mr. Bill Siksay:** Do you see a real generational change in terms of attitudes toward access to information generally?

**Ms. Suzanne Legault:** My children actually laughed at me when I explained how you go about doing it.

**The Chair:** They'd laugh at all of us.

**Voices:** Oh, oh!

**Ms. Suzanne Legault:** They just don't even have the tools anymore. It's as simple as that.

**Mr. Bill Siksay:** And it's your belief that Treasury Board could change that tomorrow if it wished? They could change that system administratively?

**Ms. Suzanne Legault:** I think that's administrative in nature, yes.

**Mr. Bill Siksay:** I want to come back, as well, to Madam Freeman's question and your response to her. I think you were saying there was some hope the government might engage further consultations, that there might be some possibility of that.

Is there any evidence that the government is undertaking further consultations on access to information now? You were commenting on the minister's response to the committee report saying there was a need to do that. Have you seen any evidence through your office or networks that those kinds of consultations are happening?

**Ms. Suzanne Legault:** Mr. Chair, what I meant is that, to me, when I read the letter...and when a government states that we need more consultation, then I think we have to make sure this doesn't turn into—I'll use this for parliamentarians—a Sir Humphrey exercise.

If we're claiming that we need more consultation, and this is something that should be a government-led piece of legislation, then let's have a plan for consultation. Let's do it. Let's have a plan for getting results from consultations and let's have a plan for tabling legislation.

I'm just saying that if the minister's response actually says that, then.... I like to see things getting done, so let's get them done, if we need more consultations.

That is my only comment.

**Mr. Bill Siksay:** But you have seen no evidence of that kind of plan from the government or the minister.

● (0955)

**Ms. Suzanne Legault:** I have not.

**Mr. Bill Siksay:** Okay.

I want to come back to the issue of systemic investigations. In your remarks today you said you tabled a plan in July about a three-year plan around systemic investigations. I wonder if you could share some of that.

The other concern I have is how the budgeting issue affects those special investigations. I know that was one aspect of the budget request that had been approved by the parliamentary process but wasn't accepted by the government. Could you tell us about the plan? Is there going to be any effect of that budget shortfall for those kinds of investigations?



**Ms. Suzanne Legault:** Mr. Chair, first of all, the three-year plan is very transparent and the idea is to foster self-compliance in institutions. In essence, if I tell people right off the bat that next year we'll be doing a report card on them, the idea is that they'll start putting their house in order this year. That's the first idea behind the three-year plan, to foster self-compliance.

This year, the first leg of the plan is to follow up on last year's report card—i.e., hold departments accountable for the recommendations in the action plan they stated they were going to follow. The second is that we're increasing the number of institutions. Last year, we were only able to do ten. This year, we're doing 24. They are 24 institutions where we have received at least five complaints in the preceding year.

We're expanding the scope because we wanted to have a better sample and a better understanding. These 24 institutions also encompass the 15 institutions where we have the most complaints in our office year to year, so they are essentially the departments where there are more issues.

We are targeting consultations and extensions and delays of any kind this year. At the same time we're doing the report cards, we're actually doing a specific systemic investigation on consultations and extensions related to consultations. The reason is that at this time, there are no statistics being collected by the Treasury Board Secretariat on the actual time taken for extensions. We've recommended that they take those statistics, but at this time they are not collected. What that means is that we have some evidence of the times of these consultations, but we don't have any complete data. We need to have a diagnostic and we need to hold the consulted institutions accountable.

Right now the way it works is that department A receives a request. It needs to consult with department B. Department B asks for a 300-day extension. Department A then says it needs 310 days to process department B's request, and if the consulted institution doesn't give department A the response in time, it's department A that gets dinged from our office while the consulted institution has no accountability. That's why we are targeting those institutions and those specific issues.

Next year, we're doing new institutions that became subject to the act in 2006-07, including the crown corporations and the agents of Parliament. The third year, we will have to assess, depending on what the two first years gather in terms of information. My goal is that in the third year we will no longer be dealing with delays in consultations. I'm hoping that the diagnostic will have made a difference.

In terms of budget, what we have done this year...because there was about \$500,000 that did not get allocated to us this year because of the decision of Treasury Board in relation to systemic issues. We have reallocated part of our funding to continue to do systemic investigations.

We are actually working at a skeleton level. What we're going to do next year is negotiate—Lisa here, assistant commissioner Campbell, has basically started—with Treasury Board Secretariat in relation to this matter. But it will also be done in the context of the implementation of the business model.

As we move along in the implementation, we'll have a better sense of how the resources are being utilized, how effective the business model is, and whether the resource requirement is actually effective in complying with the business model.

For now, we're okay. We're moving ahead. We're continuing discussions with Treasury Board on the budget.

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

Mr. Del Mastro, please.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

Thank you to our witnesses for the testimony this morning.

Perhaps I could seek your indulgence for a moment.

Committee members, as I indicated earlier in my intervention, I did bring a motion on Friday. The motion, which I wanted to make you all aware of, reads:

November 1st 2009 represents the fourth anniversary of the first report of the Commission of Inquiry into the Sponsorship Program and Advertising Activities, presided over by Justice Gomery. Despite the time that has passed—

● (1000)

**The Chair:** I see Mr. Wrzesnewskyj on a point of order.

**Mr. Borys Wrzesnewskyj:** Mr. Chair, I'm aware of the text of what is being read, and I don't see any relevance to the proceedings that have been scheduled at this time with the Information Commissioner.

**The Chair:** Mr. Del Mastro, I have booked this meeting until 12 o'clock noon as opposed to just the two hours that 11 o'clock would have given us. We will have ample time to fully exhaust your commentary on another matter.

I would ask you, maybe; let's just move on to dealing with the witnesses so that we can discharge that information and move on with that other committee business.

Okay?

**Mr. Dean Del Mastro:** This will take about 30 seconds, Mr. Chair.

With due respect to Mr. Wrzesnewskyj, it's my time. I can use it how I see fit.

**The Chair:** Mr. Del Mastro, if you want me to force it, the point of order was in order. It was on the basis of relevance.

I'm familiar with your motion, and I'm very familiar with the fact that the interim Information Commissioner has absolutely nothing to do with your motion.

I'm going to ask you to move on to matters that are relevant to the interim Information Commissioner—now.

**Mr. Dean Del Mastro:** Mr. Chairman, as a member of this committee—I signed into this committee—I do have rights within this committee. I've been granted time to speak. I would like to use my time to speak. That's a matter of my personal privilege.

**The Chair:** I've made a ruling, okay? You're not relevant, sir, on raising a matter that we are going to raise under committee business.

You have to understand, I've got to take a decision. And it's not debatable, sir. It's not debatable.

Let's just move on.

**Mr. Dean Del Mastro:** I'd like to challenge the ruling of the chair that I may not use my time as I see fit. I'd like to challenge the ruling of the chair.

**The Chair:** That's fine. Challenge the chair.

Colleagues—

**Mr. Dean Del Mastro:** I'd like a recorded vote, please.

**The Chair:** Okay.

Mr. Wrzesnewskij, on a point of order, raised relevance. I accepted it: that in fact it is in order, that in fact the matter being raised is not relevant to the matter currently on the table before the committee, that in fact it is a matter that is coming after we excuse our witnesses.

The chair ruled that the point of order is correct, and that Mr. Del Mastro should, on the basis of relevance, move on to matters related to the commissioner. Mr. Del Mastro has challenged my decision. It is not debatable, and we must go to a vote. A recorded vote has been asked for.

Shall the decision of the chair be sustained?

(Ruling of the chair sustained: yeas 5; nays 5)

**The Chair:** Thank you.

Mr. Del Mastro, you will proceed with relevant questioning, please.

**Mr. Dean Del Mastro:** Mr. Chair, I appreciate that. Frankly, you may have succeeded in preventing me from making the committee members aware of this for now, but not for long.

I'll pass the rest of my time to Ms. Davidson.

**The Chair:** Ms. Davidson, we have eight minutes left.

**Mrs. Patricia Davidson (Sarnia—Lambton, CPC):** Thank you very much.

Ms. Legault and your colleagues, thank you very much for appearing before us this morning. I certainly enjoyed reading your report and listening to your comments. The further information you've supplied to us has been extremely useful.

When I was going through your report I noticed the chart on page 17 entitled "Summary of caseload, 2006-2007 to 2008-2009". When I look at those numbers, in just about every case there's an increase. But what I don't see is the number of complaints by individual.

I say that because at our last meeting, when Mr. Marleau was here, he gave this committee evidence that 29% of the complaints received last year came from only two individuals, and the top 10 complainants account for almost half of all the complaints received by your office. That seems to be rather excessive, on the point of a couple of individuals, with the caseload and workload you're experiencing.

I do note that in the information you gave us today in this extra handout there are some further figures and facts.

Can you comment further, without naming the individuals in question, on what percentage of the complaints came from your top complainant?

•(1005)

**Ms. Suzanne Legault:** It's about 50% of our business.

It's important for me to put this on the record, Mr. Chairman, because this is probably the only area where I disagree with former Commissioner Marleau.

The top complainants actually represent other individuals or other interests. I think those figures are relevant to us in terms of the client service perspective, because we are sometimes able to deal with matters in bulk, or with matters with portfolio against certain institutions. But my view, as interim commissioner, is that these complainants are providing a service. Some of them represent other individuals, and some of them represent the media.

Therefore, they represent a much broader public interest set of individuals requesting information than just the number of complainants.

**Mrs. Patricia Davidson:** Given that answer, are these users who might be reselling the information? Are they getting it on behalf of clients, and they would be reselling that information too, for profit?

**Ms. Suzanne Legault:** Some of them are doing that.

**Mrs. Patricia Davidson:** Is there any cost-recovery mechanism in place to deal with these types of users?

**Ms. Suzanne Legault:** No, there isn't.

**Mrs. Patricia Davidson:** Would that help in handling the number of complaints? Would that make a difference, in your opinion, in terms of the number of complaints issued?

**Ms. Suzanne Legault:** In my opinion—this is really in accordance with international standards—access to information should not be framed on a cost-recovery basis. However, there are some models where this is done. In B.C. there is cost recovery for commercial users. Normally I would suggest that this be done with a complement of understanding that there should be a waiving of certain fees for public interest or non-governmental organizations or academic-type research work.

That being said, I would suggest that the most effective means of dealing with complaints would be to have discretion on which complaints our office investigates. Right now under the legislation there's an obligation to investigate every single complaint. Having discretion would help, and having the discretion to not deal with frivolous or vexatious complaints would help. It's something that is found in other pieces of legislation.

In my view, those two measures would be more effective than cost recovery.

•(1010)

**Mrs. Patricia Davidson:** Thank you.

I'm looking at the information we received this morning, and it's not numbered, but it's under new complaints by institution. I'm looking at some of the figures that my colleague opposite was referring to. It's interesting, what kind of spin you can put on some of these numbers. Although the actual PCO number has decreased in 2008-09 from 2007-08, there has been a statement made that percentages are different. We can put whatever spin we want on numbers, we all know that, but the question I wanted to ask you is in regard to your comment about the double-counting with PCO.

Does that happen with any of these other areas, or is it just PCO that becomes double-counted?

**Ms. Suzanne Legault:** It was only with regard to the Privy Council Office in relation to cabinet confidence matters. This was something that was occurring in the previous administration, which we changed, because we felt it was not accurate in terms of reporting.

**Mrs. Patricia Davidson:** You indicated in your statements to us this morning that you're moving ahead with the development of a new business model to streamline that process. Is that new model going to correct the double-counting of PCO?

**Ms. Suzanne Legault:** The double-counting has already been corrected.

**Mrs. Patricia Davidson:** And that will show in the new statistics that we'll be getting?

**Ms. Suzanne Legault:** Correct.

**Mrs. Patricia Davidson:** It is reflected in the statistics that you have included for the first nine months of 2009?

**Ms. Suzanne Legault:** We no longer double-count. I think this practice was stopped at the end of last fiscal year, so it's no longer reflected in the numbers that you have there.

**Mrs. Patricia Davidson:** So when I turn to the page with complaints received versus complaints closed, to September 30, 2009, it indicates that there were 747 new complaints and 902 complaints were closed.

So the 747 would not include double-counted complaints. Is that correct?

**Ms. Suzanne Legault:** That's correct.

**Mrs. Patricia Davidson:** Okay.

Regarding your exemptions, exclusions, cited under refusal complaints, they're against the CRA, National Defence, CBC, etc. I see that different sections are referred to. I'm assuming that is what they're excluded or exempted under—statutory provisions, international affairs or defence, CBC exclusion....

Let's look at that one in particular. What's a "CBC exclusion"?

**Ms. Suzanne Legault:** There is a new provision under the legislation that came into effect in 2006 under the Federal Accountability Act. It deals specifically with information that is under the control of the Canadian Broadcasting Corporation. It's section 68.1 of the act, which excludes from the application of the

act information in relation to the programming, creative material, and journalistic sources of the Canadian Broadcasting Corporation.

**Mrs. Patricia Davidson:** Thank you.

**The Chair:** Thank you, Madam Davidson.

And that was a very good line of questioning; good for you.

We move on to round two.

Mr. Wrzesnewskyj, five minutes.

**Mr. Borys Wrzesnewskyj:** Thank you, Chair.

Thank you for that clarification that the methodology in your tabulation has changed as of this fiscal year only.

The data we have here are similar in nature, so if we look at complaints against PCO in 2006-07—I did use percentages—they were 6.5%, and once again, if we exclude crown corporations, they've gone up to 11.6%. So it's a doubling. And there's a clear trend here that coincides with what I believe are new approaches to dealing with these matters.

Now, I had finished off my last round by noting that we've gone from 30 days to 60 days to 150, 250, 300 days for requests, and when people call to find out what's going on, most often the response is that it's in PCO consultation. So they're actually the gatekeepers on this information.

We also have this new innovation that they send out notes to the requesters saying that it's been such a long time—in some cases, I guess, a year—and asking if it's still of relevance, encouraging people to drop these particular cases.

Does this disturb you, the trend in terms of the number of times PCO blocks access to information citing cabinet confidences, the trend of journalists or members of Parliament giving up on the system, this new innovation and being told that it's in PCO consultation?

What do you make of it? Do you find this disturbing?

•(1015)

**Ms. Suzanne Legault:** Mr. Chairman, I find the whole consultation process under the Access to Information Act probably the most disturbing aspect of the regime currently.

There are several departments for which the Treasury Board Secretariat actually states there should be mandatory consultations. It's not just the Privy Council Office; there is anything having to do with law enforcement, so we're dealing with the RCMP. There's also anything having to do with international relations, so we have DFAIT and DND.

As I said before, there is no timeline at all in the legislation for consultations. So there is very little measure of how long these consultations are. They're not measured in the statistics that are collected by the Treasury Board Secretariat. We have only a small sample of those that come to us as complaints.

We do know from experience that the consultations are very long in certain respects. Cabinet confidences consultations are very long. Anything having to do with consultations on international relations takes a long time. So because there's no measure, there's also no accountability, and as I stated before, the consulted department has no responsibility or accountability under the current legislation or under the current administrative regime.

So because of that, there is probably excess in relation to consultations right now, and because these are core departments on very important issues for Canadians, that has a widespread systemic and negative effect on access to information.

**Mr. Borys Wrzesnewskij:** Thank you.

You provided a pie chart showing types of complaints against PCO for 2008-09. The vast majority, 41%, were cited as being cabinet confidences; that was the excuse provided.

If we were to look at previous years, has that proportion increased or decreased?

The reason I am asking is we've seen a doubling of complaints against the PCO since the Conservative government has come into power. We see that in this one year, cabinet confidences as the excuse given by PCO are the root cause of the vast majority of the complaints. Has the pie chart changed in its slicing? Did cabinet confidences always account for 40%? As we've seen this doubling, have we also seen a proportionate increase in the citation of cabinet confidences?

**Ms. Suzanne Legault:** I don't know this, Mr. Chairman.

I'm going to ask Ms. Neill if she has this information.

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

I don't have that specific information. What we do keep track of is the total number of complaints that relate to cabinet confidence exclusion. We can have anywhere from 2% to 4% of our entire number of complaints on the issue of cabinet confidences.

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

Mr. Dechert.

**Mr. Bob Dechert (Mississauga—Erindale, CPC):** Thank you, Mr. Chair.

Good morning, Ms. Legault. I'd like to thank you for your report and your staff for all their hard work in preparing it.

I notice on page 31 of your report that you refer to the government's ending of the CAIRS system, and that you will be describing your investigations on this matter in your next report. This is something that I've been interested in for a while.

There was an interesting article published in the *Toronto Star* by a reporter named Ann Rees, who is actually an academic herself, entitled "Red File Alert: Public Access at Risk". It was dated November 1, 2003. It talked about the CAIRS system and the amber lighting that happened when certain requests came from the media or members of Parliament.

It refers to and records the comments of Professor Alasdair Roberts, whom I'm sure you're familiar with. He's a law professor and a well-regarded expert in the area of access to information. He said that no other country in the world maintains a database like CAIRS. He went on to note that, "CAIRS is the product of a political system in which centralized control is an obsession."

That was under the previous government.

I appreciate Mr. Wrzesnewskij's line of questions regarding requests to PCO.

Former Information Commissioner John Reid was also quoted in that same article:

"What we are seeing," he says, "is a greater use of the time-delay factors that are built into the act: 'We can't do it in 30 days, we need 90 days.'"

"I have now instigated a study to find out whether there is anything going on at all."

Delays are the order of the day for Red File requests to the Privy Council Office, which handles requests for information involving the Prime Minister and his staff.

I'm a little confused about the difference between a red file and an amber light. Anyway, he went on to say that

Records of all PCO requests completed last year show one out of every four media requests—14 of 58 requests—were tagged for further review. The average time to process these requests was eight months.

That would have been in 2002, I assume.

That's pretty interesting. It sounds like there has been a great delay coming from the Prime Minister's Office for a lot of years.

Have you studied Professor Roberts' analysis in your review of the CAIRS system? Are you revealing what he's written on that system and what took place before and during 2003?

• (1020)

**Ms. Suzanne Legault:** I must say that we have an active complaint in relation to CAIRS. We are in the process of investigating these complaints, but they're not completed. It's part of our review. In our office, there have been two other instances of complaints in relation to the CAIRS system. Our office reviewed all of this information. It's true that at the onset the CAIRS system was being used to develop a centralized view of complex cases. It raised different types of issues, and it was criticized for this.

In recent years, the CAIRS system has actually morphed into a new use. It became useful for requesters, who took the information collected in CAIRS, which they gathered through access to information requests, and used it as a central database. David McKie collected this information and created the database. Now Michael Geist at the University of Ottawa has done the same thing. In fact, the CAIRS system has evolved over the years from a government tool to a requester's tool.

When we were consulted about the discontinuance of CAIRS, our office took the public position that CAIRS should be continued until a better or newer process was available, even though we were aware of some issues with the technology underlying CAIRS. Indeed, CAIRS has evolved into a tool for requesters, as opposed to a tool for government.

**Mr. Bob Dechert:** Are you aware that Information Commissioner Reid had a concern that CAIRS was being used by the Prime Minister's Office of the day to slow down the response to requests from media and MPs? Are you aware of that?

**Ms. Suzanne Legault:** Yes, I'm aware of that, Mr. Chairman. I'm also aware of the fact that indeed the OIC, under Commissioner Reid's tenure, did make recommendations for the CAIRS system to be made available on a web-based system.

Indeed, Mr. Reid's position must have evolved, because the OIC, under his tenure, took the position that CAIRS should be available on a web-based system to all users.

• (1025)

**Mr. Bob Dechert:** Will you be talking to Professor Roberts about his views in the course of your investigation?

**Ms. Suzanne Legault:** I'm very familiar with Professor Roberts' views. In fact, when CAIRS was discontinued, Mr. Roberts, as I recall, was interviewed in the media.

So I'm aware of his position on the CAIRS file.

**The Chair:** Thank you.

I can come back to you if we have time later.

*Monsieur Dorion, s'il vous plaît. Tu as la parole.*

[Translation]

**Mr. Jean Dorion (Longueuil—Pierre-Boucher, BQ):** Thank you for being with us today, Ms. Legault, Ms. Campbell and Ms. Neill. You are certainly to be congratulated on your testimony, Ms. Legault. It was a very fine illustration of independent thinking, the kind of independence that anyone in your position should in fact demonstrate. That same freedom of thought is found in Mr. Marleau's report, in particular where he says:

Still, much more is needed to bring about a true culture of openness and transparency, and allow Canada to regain its status as a leader in the area of access to information.

This means that there has been negative progress in recent years. It is natural that a public service will to some extent tend not to be very open, given that it wants to protect itself against the judgments that might be made of some of its decisions. The public service has not really changed, but the government has changed. When we see that government policies relating to obtaining information are regressing, we may well wonder.

In your testimony, you said that a percentage of access requests were slowed down because of the time for analysis and approval required by Privy Council. Is that correct?

**Ms. Suzanne Legault:** I said, regarding Cabinet confidences, that it was like the other consultation processes, for national defence or security. There is no incentive in the Act and we find that there are huge excesses when it comes to consultation. Regarding Cabinet

confidences, it applies not only to Privy Council, but also to the other departments where there are mandatory consultations.

**Mr. Jean Dorion:** In percentage terms, how many requests are submitted to Cabinet or Privy Council for mandatory consultation?

**Ms. Suzanne Legault:** I don't have the numbers. Those statistics are collected by Treasury Board Secretariat, or could be. You would have to ask it.

**Mr. Jean Dorion:** Do you have the impression it is a large proportion?

**Ms. Suzanne Legault:** Have of the complaints we receive are administrative. For example, out of 2,000 complaints, 50% were administrative, last year. Within that 50%, about 40% related to time extensions. So about 400 complaints out of the 2,000 we received last year related to time, including the time for consultations.

**Mr. Jean Dorion:** Are consultations one cause among several or a very important cause, in your opinion? What does that represent in terms of quantity?

**Ms. Suzanne Legault:** Out of 2,000 complaints last year, 400 related to a time extension.

**Mr. Jean Dorion:** I quoted a comment taken from the introduction to Mr. Marleau's report, but he has also made statements to the media about the need to establish a culture that promotes access to information in the public service of Canada.

Do you have the impression that such a culture does not exist at this time?

• (1030)

**Ms. Suzanne Legault:** Mr. Chair, I would say it is very obvious, based on the report cars we prepared last year, that there is a lot of leadership in some departments and that makes a huge difference in terms of the application of the Act. For example, there is a lot of leadership in the Department of Justice, and that department achieves excellent access to information results. And yet it is one of the departments that has mandatory consultations. In the area of solicitor-client privilege, that department has an excellent track record.

Leadership in institutions and among deputy ministers and assistant deputy ministers truly produces results. Obviously it has a major impact in policy terms. As Commissioner Marleau has said several times in the past, clearly, if a Privy Council directive were to require that 85% of requests receive responses within 30 days, the public service would get into action. In a word, leadership does have a huge impact.

A few weeks ago, I heard Senator Fox suggest in the Senate that deputy ministers' performance in respect of access to information be included in the performance agreements.

**The Chair:** Thank you.

Mr. Rickford.

[English]

**Mr. Greg Rickford (Kenora, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses today.

I appreciate the opportunity to speak with the Information Commissioner. I want to continue on with the line of questioning that I had the opportunity to work through with your predecessor, Mr. Marleau, for whom I have tremendous respect and with whom I had worked on another subcommittee.

I'm going to move to page 42 of your report. In the context of the length of the report overall, a thoughtful reflection on advocating for legislative reform, I spent some time looking at more than a dozen substantive recommendations and some other commentary. I want, for the record, for the benefit of the committee, and certainly for Canadians, to reflect on that 25 years and get an appreciation for some of the things that transpired.

Last week we heard Mr. Marleau testify at this committee that the Conservative Federal Accountability Act was the most significant reform to the Access to Information Act, the act itself, since it was first passed in 1983. Do you share that view?

**Ms. Suzanne Legault:** There were essentially two reforms since 1983. There was the reform to add section 67 of the act, Madame Beaumier's private member's bill to make it a criminal offence to wilfully thwart the efforts of the Information Commissioner, and the Federal Accountability Act. The Federal Accountability Act, in my view, made numerous amendments. Whether or not they had a significant impact in matters of actually reforming the access to information regime, I would say that it had little impact, because it changed nothing to the compliance model, which I consider to be very weak.

**Mr. Greg Rickford:** In terms of your comments on section 67 of the Federal Accountability Act, isn't it true, though, that there were significant changes in reform to access to information in the context of the number of departments, institutions, crown corporations, etc., that would be therefore subject to a higher-level scrutiny or accountability, if you will, vis-à-vis that act?

Is that a fair statement?

**Ms. Suzanne Legault:** Yes, it's a fact that the Federal Accountability Act added 69 institutions to the coverage of the act.

**Mr. Greg Rickford:** In fairness, right in the last sentence in paragraph one, after the word "sadly," it's clear that you have some... and you mentioned that in your discussion about some of the technological challenges we face moving forward in this dynamic environment. Certainly it changes rapidly, that's for sure.

But again, for the record and the benefit of the committee, I think it's important to understand that there was a period of time under the previous government, for 13 years, where this was left untouched. Clearly, we have statistics that show us a massive expansion of the scope of accountability through the Federal Accountability Act.

Indeed, are you aware that the government in 2005 voted against a motion to extend access to information laws, particularly to crown corporations?

•(1035)

**Ms. Suzanne Legault:** No, I wasn't aware of that.

**Mr. Greg Rickford:** Well, perhaps now you are, but in any event, we can build on that and just appreciate the number of departments....

In 2006-07, there were 186 institutions subject to the act. Since the coming into force of the Federal Accountability Act, you're aware now that 255 institutions are now subject to the Access to Information Act.

In your view, would you describe that as sweeping reform to the extent that more institutions, departments, and crown corporations, particularly crown corporations, are affected?

**Ms. Suzanne Legault:** No, I wouldn't call it sweeping. I would call a sweeping reform of the Access to Information Act in terms of coverage when the act actually covers anywhere people's and taxpayers' money is being spent—i.e., parliamentarians' administrative offices, courts' administrative offices, and so on.

That's what I would a sweeping reform.

**Mr. Greg Rickford:** But isn't it true that since September 1, 2007, the Government of Canada is more accessible with a larger number of institutions covered under the Access to Information Act?

**Ms. Suzanne Legault:** Mr. Chairman, I will say, in all fairness, that it's true: 69 institutions were added. What I would also say, however...because this is very much at the forefront of what my office is going through right now.

For instance, we added the Canadian Broadcasting Corporation, but we added them with an exclusion under the act. I'm now finding myself in court with an institution that refuses to provide documents for us to effect our review.

So yes, we added some institutions, but we also created some exclusions and some mandatory exemptions.

**The Chair:** Thank you.

It was a good line of questioning.

**Mr. Greg Rickford:** Thank you, Chair.

**The Chair:** It's important to get these things out.

Mr. Siksay, please.

**Mr. Bill Siksay:** I hope I have a good line of questioning too, Chair. You're passing out the compliments today.

**The Chair:** Everybody's giving reports, so if you want a report card....

**Mr. Bill Siksay:** Thank you, Chair.

Ms. Legault, with regard to the special investigation into the so-called amber lighting of complaints, the office made three recommendations to Treasury Board. Has Treasury Board accepted those recommendations and implemented them?

**Ms. Suzanne Legault:** They have accepted the recommendations. The first one was targeted at the 21 institutions.

In terms of the statistics, I know that Treasury Board Secretariat is pursuing the collection of additional statistics. I have a letter in my office waiting for my signature because Treasury Board Secretariat has also consulted us in the matter.

I must say that in terms of the follow-up to the CNA investigation, the Canadian Newspaper Association, we did look into this also. We did the follow-up to the investigation with the 21 institutions and we also looked at this matter in the report cards of last year. There is still some concern in one institution in particular that has not completely eliminated the additional delays that some institutions attach to sensitive or amber-lighted requests.

**Mr. Bill Siksay:** Is that Health Canada? Is that the institution?

**Ms. Suzanne Legault:** It is Health Canada.

**Mr. Bill Siksay:** What's your follow-up at this point with those recommendations and their implementation?

**Ms. Suzanne Legault:** We're following through this year as part of our report card process, so when we publish our special report with our report cards, there will be the *compte rendu*, the summary of that follow-up that will be published in a special report.

**Mr. Bill Siksay:** With regard to the CAIRS complaint investigation, when do you expect that to be completed? Is there a timeline on that?

**Ms. Suzanne Legault:** It should be completed fairly soon, Mr. Chairman. As you know, the secretary of the Treasury Board changed, and we had a change in our office so we had to re-engage the conversation on the CAIRS file. That's what caused the additional delays. But it should be fairly soon; certainly before Christmas, I'm hoping.

**Mr. Bill Siksay:** One of the things your annual report talks about is the internal audits the office has under way in a number of areas. Have there been any results on any of those internal audits? I notice you say they will be available on the website as they become available. Have any of those been posted, and which ones?

• (1040)

**Ms. Suzanne Legault:** In terms of the internal audit function, when we speak about proactive disclosure, all the information in relation to the first audit is published. It was a very critical audit of our intake in early resolution function. As I said in my opening remarks, they highlighted to us several shortcomings in our new unit, which we addressed this summer and this fall. All the details of the action plan are published on the website.

**Mr. Bill Siksay:** Are there more audit results expected soon, or is that the only one that was expected?

**Ms. Suzanne Legault:** We did only one this fiscal year. It was our first year with the internal audit function. We are reviewing our internal audit plan with committee members this fall. There hasn't been a final decision, to my recollection of our last meeting on interim audit, but we are debating whether we are going to do one or two a year. They are quite resource-intensive and that's our concern.

**Mr. Bill Siksay:** This is a bit off track, but the first act of President Obama's presidency was to call for a new access to information commitment in government in the United States. Many folks saw that as a way of trying to establish a new culture of access in an open government in the United States.

Have you had any discussions with American colleagues or do you have any sense of the effect of that early decision by the Obama government? Has it made a difference? Are people seeing results from that course of action?

**Ms. Suzanne Legault:** I have had discussions with certain people in the States, with some people from the Carter Center—that's Jimmy Carter—that has a strong component of access to information, and also with the director of the justice department who is responsible for access to information within the Obama organization.

Yes, it was hailed as a major success in terms of reiterating the president's position to the administration in relation to the presumption of disclosure in the administration of the act. Has it had tangible results? I don't know that there has been any data collected in that respect. What I do know is that one of the major initiatives of the Obama administration has been this new open government website, Data.gov, which basically puts forth raw data in relation to several initiatives. For instance, in regard to the budget information, they did not produce a PDF version of the budget; they actually produced the raw data that was used to produce the budget.

So that is a completely new initiative in the States, and it has already generated quite a lot of usage.

**Mr. Bill Siksay:** You mentioned in your opening statement the Right to Know Week. Could you tell us more about that? You said it had been a significant week and there were some significant outcomes from it. Can you share some of that with us?

**Ms. Suzanne Legault:** Right to Know Week originated in Bulgaria in 1999. The day of September 28 is actually Right to Know Day internationally.

In Canada, we celebrate it as a weekly event. We collaborate with our provincial and territorial colleagues. It was significant this year because we were actually able to have a national event for the first time. We shared a common trademark for Right to Know Week. We shared seminars via webcast. We had four events. Mr. Chairman participated in one of the panels. We had a legal panel, an international panel, a session on the new age of government information disclosure with Senator Fox, and an evening with journalists and academics in relation to access to information. CPAC collaborated with us, so at virtually no cost it was televised across Canada.

For me, the major success of Right to Know Week, which is to bring access to information to Canadians, is that my father was able to watch it in his living room. To me, that's what Right to Know Week is all about; it's to actually spread the word about the importance of access to information.

We also collaborated with the Canada School of Public Service, which webcast the Senator Fox seminar so that it would be available to all public servants.

So for us, this year, it was not only significant because we were able to have several events in collaboration with universities as well—the University of Ottawa and Carleton University—but also that it was done in a manner that was accessible to all Canadians across Canada, in both official languages, and that we had tremendous collaboration from our provincial and territorial colleagues.

• (1045)

**The Chair:** Mr. Wrzesnewskyj, please.

**Mr. Borys Wrzesnewskyj:** Thank you, Chair.

Would it be possible to provide the breakout of how many of the complaints to the Privy Council Office in the years prior to 2008-09 were due to cabinet confidences? Could that be provided to the committee?

**Ms. Suzanne Legault:** Certainly.

**Mr. Borys Wrzesnewskyj:** Thank you.

In 2006, in the Conservative Party election platform, “Stand up for Canada”, there was reference made over and over to making a decision that cabinet confidences would be subject to review by the Information Commissioner and that powers would be granted so that the commissioner could review and release that information. Has that occurred?

**Ms. Suzanne Legault:** No.

**Mr. Borys Wrzesnewskyj:** Also in that same election platform, the following was stated, which the Conservative Party pledged to do, and I quote: “provide a general public interest override for all exemptions”. Has that occurred?

**Ms. Suzanne Legault:** No.

**Mr. Borys Wrzesnewskyj:** That's quite a track record.

It's interesting; there are two ways to block access to information. One is to put up a wall. Another method is to create a frustrating maze, at the end of which people just give up. We've seen numbers increase, double. I'm referencing the Privy Council Office and these new mechanisms put in place whereby departments say, “Well, it's in PCO consultations”. Things are dragging out as long as almost a year now, up from the 30 to 60 days that existed previously.

I can't help but think of the TV commercial that we see these days of a little boy with a red truck that's been given to him by a banker. After 30 seconds, time's up and the truck gets taken away, the boy gets a cut-out cardboard truck, and the banker says, “Sorry, read the fine print”. You see the disappointment in the child's face.

There is incredible disappointment; I almost feel that I'm being treated in a similar manner as an elected representative when I try to make these access to information requests.

You've clearly stated that disappointment not only exists among MPs and journalists—people are giving up—but there's a tremendous amount of disappointment in your office. Do you intend to once again follow in Mr. Marleau's footsteps and say, “We need some quick fixes”? Perhaps we've reached a point where we say we need a general overhaul; let's take a look at the open system in New Zealand, where everything immediately gets posted on the Internet.

The minister has basically thrown our report out—work that all of us agreed to, pretty much unanimously, 12 recommendations for

quick fixes. It's clear there's no intention on behalf of the minister to address any of this. Ten sessions were spent to work quite meticulously on those recommendations.

Is it time to say, okay, enough of this, let's just overhaul the whole system? We have the opposite of access to information. We have a culture of secrecy.

**Ms. Suzanne Legault:** Mr. Chairman, as I said in my opening remarks, I do stand behind the 12 quick fixes that were presented to this committee by Commissioner Marleau.

It's obviously a matter for legislators to decide how they wish to reform the access to information regime at the federal level.

From my end, my job is to implement the act as it currently stands, which I'm doing.

Second, if this committee or the government wishes to continue reform initiatives, I will provide my staff and myself in terms of participating in those efforts.

• (1050)

**Mr. Borys Wrzesnewskyj:** If we see current trends, how many years of frustration do you think you could put up with?

**Ms. Suzanne Legault:** I'm not an easily frustrated person.

**Mr. Borys Wrzesnewskyj:** That's encouraging. Thank you.

In 2001, under the Anti-terrorism Act, the Attorney General of Canada was given new powers to issue certificates to halt investigations under the act. Are you aware of whether over the last year, or in previous years, any such certificates have been issued by the Attorney General?

**Ms. Suzanne Legault:** I'm not aware; I would have to verify and provide you with that information.

**Mr. Borys Wrzesnewskyj:** That would be appreciated.

Thank you.

**The Chair:** Mr. Dechert, please.

**Mr. Bob Dechert:** Thank you, Mr. Chair.

Ms. Legault, you mentioned, in answer to a question from Ms. Davidson earlier, that of the top complainants to your office, you thought some of them were providing a service to others. You also said that some of them were resellers of information.

I note from the statistics that were provided previously by Mr. Marleau that 25% of all the complaints to the Office of the Information Commissioner come from two individuals or organizations, described as, in one case, business—that's the largest number—and 12% from media.

Would it be fair to say that if 25% of the complaints to your office are from those types of organizations, 25% of the access to information requests are similarly from those sorts of organizations?

Would that be a reasonable assumption?

**Ms. Suzanne Legault:** I'm not quite sure I understand your question.



**Mr. Bob Dechert:** Mr. Marleau provided us with some statistics that say that 25% of the complaints to the commissioner's office come from two individuals or organizations. Would it be fair to say that 25% of all access to information requests come from those same two organizations?

**Ms. Suzanne Legault:** The statistics in terms of the requests are published by Treasury Board Secretariat. The statistics published by Info Source for last year, because those are the ones that are published, show that roughly 42% are from businesses. That's 42% of the total requests.

**Mr. Bob Dechert:** That's an even more significant number.

**Ms. Suzanne Legault:** As well, 34% are received from the public, 14% from the media, 9% from organizations, and 0.8% from academics.

**Mr. Bob Dechert:** All right. I appreciate that.

What this says to me is that an even greater percentage of the access to information requests are coming from either media or business. In fact, 42%, almost half, are coming from business, which are for-profit organizations.

Now, you mentioned earlier that some of these organizations or complainants are representing others. Do you mean media or do you mean businesses that are reselling the information?

**Ms. Suzanne Legault:** Access to information requesters do so anonymously. We cannot question their motives—

**Mr. Bob Dechert:** But you can see the complaints.

**Ms. Suzanne Legault:** —under the legislation. So in fact I don't know, in terms of the total number of requests, what interests they represent.

**Mr. Bob Dechert:** Well, somebody is tracking the information, right? That's how you have that information, that 42% come from business. So you must know—

**Ms. Suzanne Legault:** We would know that the complaint...

Do you mean in terms of the Info Source statistics?

**Mr. Bob Dechert:** Yes.

**Ms. Suzanne Legault:** It's Treasury Board Secretariat that collects the statistics. I don't see all of those requests.

**Mr. Bob Dechert:** Okay.

When we were considering Mr. Marleau's suggestions on how to improve the system earlier this year, we examined this one individual witness who's a journalist, a freelance journalist. He freely admitted that he made several hundred access to information requests a year, and that a fair number of those resulted in complaints to your office.

As I understand it, his business is looking for stories. He makes hundreds of requests for all kinds of information from all kinds of departments each year. When he finds something that he thinks will make a good story, he then writes the story and sells it to a number of publications.

That's his business. Fair enough, it's a business. And I assume a good public service is being provided there as well. But if he's earning income, profiting from that, shouldn't there be some cost to

him in obtaining that information, which he's then turning around and reselling for profit?

Similarly, there are businesses—lobby firms, law firms, data collection firms like Dun & Bradstreet—that are reselling their information to other businesses that are also doing things for profit. Doesn't it make sense that some of the burden of the provision of this information...?

As you know, all of this money comes from hard-working Canadians. We tax them, we get this information, and then we give free services to people like Dun & Bradstreet, who will charge probably a significant markup on the cost of their service to resell it to their customers.

Mr. Marleau told us that the average cost to fulfill an access to information request is approaching \$1,500.

Doesn't it make sense to try to segregate those for-profit business organizations and charge them something of a reasonable fee for that service?

•(1055)

**Ms. Suzanne Legault:** Mr. Chair, as I stated before, to do so, in my view, would be going against the trend internationally in terms of the access to information regime. That being said, whether or not to move to a certain cost recovery system is a policy decision .

I would perhaps issue a word of caution about administering a cost recovery system. One has to look at how much it would cost to administer that versus its benefits. I think the corollary has to be that in the public interest, for non-governmental organizations, non-profit organizations, and academics, fees should be waived.

As to whether it exists in other legislation, we know it exists in British Columbia, so there are examples to follow.

**Mr. Bob Dechert:** Could you tell us a bit about the B.C. experience and how you've looked into that?

**Ms. Suzanne Legault:** We could provide you with more detail following this meeting, but I know that under their legislation there is a certain cost recovery system for commercial users.

**Mr. Bob Dechert:** How's it working?

**Ms. Suzanne Legault:** It seems to work fine. If I recall, when David Loukidelis, the commissioner for B.C., was here testifying in the spring, he did make some comments that it was working fairly well.

**Mr. Bob Dechert:** Have you done any study of that system and how it works?

**Ms. Suzanne Legault:** We have not.

**Mr. Bob Dechert:** Okay, thank you.

**The Chair:** Colleagues, I have to suspend this meeting just for a bio break. It's been over two hours.

We'll take five minutes, please.

•(1055)

(Pause)

•(1105)

**The Chair:** We're resuming our meeting.

Thank you for your indulgence, colleagues. It seems that whenever there is a bio break, there seems to be also a meeting break, and many people are catching up on their BlackBerry messages, etc.

I have three more people on my list, plus anybody else who cares to be added.

The whole issue of access to information, the act and its operation, and related matters such as the ones Mr. Dechert brought up, are extremely important. We've invested a lot of time, and I hope we don't rush to any conclusion that we tried some stuff and nothing worked, so we'll come back to this another time.

I think that ultimately we do have to come to a point at which we say what's next. I hope we'll have an opportunity as a committee to discuss that—think about it first, but then discuss it.

Mr. Wrzesnewskyj, please.

**Mr. Borys Wrzesnewskyj:** Thank you, Mr. Chair.

Back on June 11, 2007, in a public accounts committee meeting, there was testimony from the officer in charge of the ATIP section for the RCMP, on a file, by the name of Michel Joyal, who appeared before the committee and made some very serious allegations. He stated that on an access request, he received a call from a deputy commissioner, Deputy Commissioner Gauvin, who then requested that he bring his file and then met with him in the commissioner's office—the commissioner of the day was Mr. Zaccardelli—with several other officials. Commissioner Zaccardelli was not there, but Deputy Commissioner Gauvin was there and several of his officials. They had prepared a separate docket for release—not the ATIP docket documents but their own—and attempted to do a switcheroo, which Mr. Joyal refused to do.

This was confirmed in testimony before the committee by Superintendent Christian Picard.

This is our federal police force. These were very serious allegations that touched on a deputy commissioner directly and, indirectly, the office of the commissioner.

Was there ever an investigation initiated? I understand that there has to be a complaint on an ATIP. If there wasn't, this is of tremendous concern.

We also heard testimony that documents would at times go missing, or would be improperly labelled so it would be difficult or impossible sometimes to find them or access them.

If there wasn't an investigation of these very serious allegations, is there a mechanism...? It's not an actual ATIP complaint. It's a complaint regarding the conduct. With the legislation passed in 1999, it would appear that this sort of action would be criminal in nature under the amendment to the legislation.

What has happened with this, and how would one proceed?

• (1110)

**Ms. Suzanne Legault:** Mr. Chair, I'm not familiar with this case in particular, but the fact is that if there were to be a complaint to my office in relation to this matter, it would be confidential. I would not be in a position to comment.

In surmising from the comments of the honourable member, it seems to me that there are ways within institutions to actually disclose wrongdoing. This would seem to me, under the circumstance, to be more appropriate, and it would be to a different commissioner.

If there is a matter of specific complaint in relation to the destruction of records or the concealment of records, or the counselling and concealment or destruction of records under section 67, then we would conduct an investigation. However, I would say to the honourable member that this provision in our legislation probably needs to be amended, following the Federal Accountability Act, because it still makes reference to the Attorney General and should probably make reference to the Director of Public Prosecutions.

There has also never been such an investigation conducted under our legislation. What I can share with members of this committee is that I am actually looking into this specific provision and how we would conduct an investigation in partnership with, perhaps, the Attorney General, as the law currently states, or the Director of Public Prosecutions. I have engaged in these types of discussions this summer because I am concerned about how it would actually be applied in practice, as it has never been done.

**Mr. Borys Wrzesnewskyj:** Thank you. That's quite helpful.

I've looked up some information in a report called, *Fallen Behind: Canada's Access to Information Act in the World Context*, by Stanley Tromp in 2008. He did in fact find that of all the Commonwealth countries, the 50-odd countries, there are only two that do not provide for independent review of the citing of cabinet confidence: South Africa and Canada.

So just as his report is called, we've certainly fallen way behind. But even more interesting, what we find among Commonwealth and OSCE countries is that the average request response time is two weeks, and in many countries it's just 10 days.

How is it that virtually all western democracies are able to do this in 10 days to two weeks, yet in Canada, with this new mechanism of using the PCO, so that it's in PCO consultations, it's now taking as long as a year?

**Ms. Suzanne Legault:** Recent pieces of legislation at the international level have a very strong compliance model. When we talk about our act having a weak compliance model, this is what we are talking about. They have specific times for responding to requests and specific times for extensions. If you want to go beyond the extension provided in the legislation, which is usually a short timeline, you have to get approval or have a review to get a further extension. Similarly with consultations, there are very specific timelines, including for investigations and decisions to be made on investigations. So that's the difference.

I was in Mexico last week; people do not like me using the Mexican example, but their average turnaround time is 8.5 days.

You know, you have to put it in the context of the federal government. In Canada, we're a modern democracy. We have complex files. I understand that it does take longer, because we do have a complex system. But the fact that there's a very weak compliance model actually generates excesses in terms of extensions of delays.

• (1115)

**Mr. Borys Wrzesnewskyj:** Thank you.

**The Chair:** Madam Simson, please.

**Mrs. Michelle Simson:** Thank you, Chair.

Ms. Legault, I just want to go back to the minister's response, because it was extremely frustrating. To me it seemed like a total waste of time, having spent time in this committee and working together on quick fixes and examining witnesses at great monetary cost to the taxpayers of this country, including flying witnesses in, and then to get a response, which Mr. Marleau, in his testimony, was kind enough to point out to us, amounted to 300 words, and to be dismissed out of hand.

I guess I do want to ask you this question. The minister states that the Access to Information Act is a strong piece of legislation. Would you agree with that?

**Ms. Suzanne Legault:** The way I think about the Access to Information Act—I remember that Monsieur Marleau used this expression in his opening remarks in the spring—is the same way I speak about our legislation internationally: I consider our legislation to be the grandmother of legislation.

So yes, it does have some fundamental tenets that are very well enshrined. And we do have, let's face it, the benefit of having implemented the legislation within our institutions for 26 years. In that respect, we are ahead of many other countries.

Legislation is not sufficient: that being said, the act has fallen behind. Stanley Tromp's piece is actually very accurate, because we have fallen behind, not only internationally but also compared with our provincial and territorial counterparts, whose legislation has either been amended recently or has come into force after our own federal legislation.

**Mrs. Michelle Simson:** Thank you.

Would it be fair to say that the act, because it's so old—to use your grandmother analogy—although it's been described as perhaps significant...? “Significant” isn't always a positive thing. You can have some significant impacts that are negative.

Mr. Marleau also testified that what he sees happening, because we haven't changed the infrastructure, meaning the actual legislation, and updated it, is that we are now seeing the Federal Accountability Act causing the Access to Information Act itself to buckle.

Would that basically be a fair assessment?

**Ms. Suzanne Legault:** As I said before, we've added some institutions, but the compliance model has not been changed. There is no public interest override; there is no harms test; there is no order-making power; and there is no specific timeline for extensions or consultations. In my view, these are important amendments that we need to have.

There is the duty to assist, which I consider as probably the most positive addition in the Federal Accountability Act, in terms of it imposing a positive legislative duty on institutions to assist requesters. I think that should make a difference.

**Mrs. Michelle Simson:** Going back to his letter, I must confess, I found it bizarre to read one of the rationales for not even elaborating on why he disagreed or why the justice ministry disagreed. It says:

Still other recommendations would involve increased oversight and procedural and redress reforms including, for example, requiring a Parliamentary review of the ATIA every five years....

Is there something I'm missing, or is there a problem with that? Would that not be a good thing to help us avoid trying to fix something that's over a quarter of a century old by reviewing it every five years and updating it because of technology?

• (1120)

**Ms. Suzanne Legault:** Having a parliamentary review was one of our recommendations, one of our 12 quick fixes. I think it's totally important to have a parliamentary review of important pieces of legislation as a matter of course.

**The Chair:** One more question only.

**Mrs. Michelle Simson:** Thank you.

I asked Mr. Marleau the following and will ask you for your opinion of it too. Based on what we've done and the fact the minister responded by saying that more consultation was required, what did we as a committee miss the first time around, in terms of witnesses, providing information, analyzing information? I ask just so that we can avoid wasting time.

**Ms. Suzanne Legault:** I think this committee is the master of its own process and procedure; therefore, it is entirely up to this committee to make that decision. It is really not for me to comment.

**Mrs. Michelle Simson:** Thank you.

**The Chair:** Thank you.

*Madame Freeman, s'il vous plaît.*

[*Translation*]

**Mrs. Carole Freeman:** A minute ago you answered fairly clearly. The Act is said to be outdated because it has been there for 26 years now. I think committees have been looking at it since 1987. There have been various initiatives to improve the Act, and several motions have been introduced. I introduced a motion myself asking that the government introduce a bill reflecting what Commissioner Reid had already prepared. It went nowhere. When you were asked about the need to completely rewrite the Act, you said you were confining yourself to the 12 recommendations.

Do you think those 12 recommendations are sufficient to protect the Canadian public's access to information?

**Ms. Suzanne Legault:** What I said earlier, if I may clarify it, is that I definitely support the 12 recommendations. When we made them, in the spring, it was really what we call quick fixes, things to be done urgently. That doesn't mean that we do not support a more thorough-going reform of the Act. What is important to us, given that there is a minority government, is to have something quick and effective that could be put in place fairly quickly. That being said, a more thorough-going reform would be appropriate, in my opinion.

**Mrs. Carole Freeman:** In response to all of Commissioner Marleau's recommendations, which the committee examined for several weeks, the Minister said he did not want to expand the scope of the Act. What are your comments on that?

**Ms. Suzanne Legault:** I think that all areas where public funds are spent should be covered by an access to information scheme. It is very simple: everywhere that funds are spent by the government, wherever it is, whether in administering the courts, in administering parliamentarians' expenses or in any body that uses public funds, the Act should apply.

[English]

**The Chair:** Pardon me, Madam. Mr. Dechert has a point of order.

**Mr. Bob Dechert:** Yes, Mr. Chair. Earlier today you ruled against Mr. Del Mastro on the basis that in his comments or his questions he was not referring directly to the commissioner's report and therefore they weren't relevant. You ruled that out of order. That was sustained by the majority of the committee.

The last several rounds of questions have dealt primarily with the minister's letter and not the commissioner's report at all, so shouldn't the same ruling apply? Either it's a member's time and they can talk about whatever they want or it has to be relevant to what the witness is discussing and is here to report on.

• (1125)

**The Chair:** The common element in all of it is the Access to Information Act, whether it be the response of a minister, an annual report and its report on the operation of that act, or whatever.

I do understand that some focus may be brought to this, but we are still in the midst of assessing how we move forward on it. I would also indicate to you that I don't recall that the chair has ever invoked a relevance opinion unilaterally. It has come from members, as it does in the House. You rarely would see the Speaker rise when a member is speaking and suggest that the member is not being relevant. It is pursuant to a point of order raised by an honourable member.

In this regard on these questions, that has not happened, and I'm not going to....

So on your point of order that the line of questioning, presently by Madam Freeman—

**Mr. Bob Dechert:** Ms. Simson and Ms. Freeman have both—

**The Chair:** —but previously...is not relevant to the order, before other business.

**Mr. Bob Dechert:** Well, I've been letting a lot of it go throughout the session today, but I read the commissioner's report in detail and I listened to her comments earlier today in her opening statement. Clearly, none of it refers to the minister's letter of response to this committee's report, so I fail to see how this is relevant.

Either the member's time is his or her own to make whatever comments he or she feels is relevant to the people they represent, or it should be specifically related to the matter that the witness is here to report on, which in this case is the annual report for 2008-09 of the Information Commissioner of Canada.

**The Chair:** On the same point of order, in order of interventions, we have Mr. Siksay, Madam Freeman, and Mr. Wrzesnewskij. We'll go in that order, please.

Mr. Siksay.

**Mr. Bill Siksay:** Thank you, Chair.

I think this is a matter of relevance. In fact, the acting commissioner raised the issue of the government response in her statement this morning to the committee, on page 3, where she talked about sharing the committee's "and indeed many stakeholders' disappointment in the government response to these recommendations".

So I think this is a perfectly appropriate line of questioning. That's my point.

**The Chair:** Madam Freeman.

[Translation]

**Mrs. Carole Freeman:** I wanted to stress this aspect and also note that on pages 42 and 43 of the annual report there is a plea for legislative reform. That is part of the annual report.

Thank you, sir.

[English]

**The Chair:** *Merci.*

Mr. Wrzesnewskij, please.

**An hon. member:** [Inaudible—Editor]

**The Chair:** Order.

**Mr. Borys Wrzesnewskij:** When you look at the problems with the access to information system that we have in place, we're looking at the results of a report.... When you go to the actual root causes and the culture of secrecy that has evolved to the point where you have a dysfunction in the access to information system, it's quite relevant that this committee spent 10 sessions going through 12 recommendations for fixes to provide a true access to information system for the Canadian public.

We're actually addressing the root causes of the dysfunction and finding ways to resolve the current situation, so it's of tremendous relevance that we discuss and bring up questions as to why the minister would deem to be so dismissive in his letter, with, as was pointed out by the previous commissioner, 300 words to a well-thought-out report that was tabled by this committee in a very non-partisan way in the House of Commons. I think it has tremendous relevance.

**An hon. member:** [Inaudible—Editor]

**An hon. member:** No.

**The Chair:** I'm sorry, we're not going to get into that discussion.

When we have a point of order, members have an opportunity to intervene and give their opinions without taking more time than is absolutely necessary and being repetitive or not relevant. I think members have had an opportunity to make their points.

The arguments raised by the members are self-explanatory and reflect the facts, therefore I'm going to rule the point of order out of order.

We'll move back to Madam Freeman.

You have two and a half minutes left.

• (1130)

[Translation]

**Mrs. Carole Freeman:** Thank you, Mr. Chair.

In his response to the committee's recommendations, Mr. Nicholson said he did not want to create expanded powers of a quasi-judicial nature for the Commissioner. He referred to recommendation 5, under which the Access to Information Act would give the Commissioner an education mandate. He doesn't want to give us quasi-judicial powers. I have some trouble understanding the connection, but you may be able to see something I don't see.

Recommendation 6 says: "That the Access to Information Act provide an advisory mandate to the Information Commissioner on proposed legislative initiatives." That also gives you expanded quasi-judicial powers. He also referred to recommendation 9, which says: "That the Access to Information Act require the approval of the Information Commissioner for all extensions beyond sixty days," and again said he does not want to create

Is his response really referring to quasi-judicial powers?

**Ms. Suzanne Legault:** Mr. Chair, quasi-judicial powers mainly refer to powers to make orders in administrative cases, which would create an order-making power that would be like a quasi-judicial power. That is how I understand his response.

**Mrs. Carole Freeman:** Do you think a public education mandate gives you a quasi-judicial function?

**Ms. Suzanne Legault:** No, I don't think so.

**Mrs. Carole Freeman:** Do you think that providing advice on legislative initiatives gives you a quasi-judicial function.

**Ms. Suzanne Legault:** No, I don't think so, there again.

**Mrs. Carole Freeman:** Do you think that the requirement that all extensions beyond 60 days be approved by the Information Commissioner gives you a quasi-judicial power?

**Ms. Suzanne Legault:** That point is a little more debatable, depending on how the provision were worded. It could give us a quasi-judicial power because that requirement goes with the recommendation that we have order-making power for administrative matters. That would be an administrative matter, so it would be included.

**Mrs. Carole Freeman:** If it is in the Act, it is administrative.

**Ms. Suzanne Legault:** If it goes together with an order-making power, yes, because it is an administrative matter. The two together might give us quasi-judicial powers.

**Mrs. Carole Freeman:** Okay. So two of the three to not confer quasi-judicial powers. That response is not entirely appropriate.

**Ms. Suzanne Legault:** That is my understanding.

**Mrs. Carole Freeman:** It's mine as well. Thank you.

[English]

**The Chair:** Mr. Siksay, please.

**Mr. Bill Siksay:** Thank you, Chair.

Ms. Legault, last Friday three organizations that have been very prominent in consideration of access to information issues—the Canadian Taxpayers Federation, the Canadian Newspaper Association, and the Freedom of Information and Privacy Association—sent a letter to the Prime Minister outlining their concerns about the government's response to the committee report and the commissioner's 12 quick-fix recommendations. They've very critical of the government and the Prime Minister for this response and the lack of follow-through on the commitments they made in election platforms.

I want to read one of the sections of their letter to the Prime Minister. Maybe you can expand on it and help me understand what they're suggesting here. They say:

The most constructive thing Minister Nicholson is able to suggest in terms of improving an Access to Information system that is verging on collapse is "enhanced guidance and training" which the minister suggests "can be equally effective to realize continued improvements".

Can you give me your understanding of "enhanced guidance and training"? Do you see it as something that would be equally effective in realizing improvements to the access to information regime?

**Ms. Suzanne Legault:** I think the increase in capacity in training of ATIP professionals within the federal public service is a key administrative improvement that can be made.

I would go further and refer you to the recommendations we made to the Treasury Board Secretariat in our special report of February 2009. We not only suggest there should be training and professionalization of ATIP professionals in the federal public service; there should also be an integrated human resources strategy led by the Treasury Board Secretariat to fill the gaps within the federal public service.

It is true that capacity and training are having a major impact within the federal institutions in responding to requests. As an investigative body we also feel the impact it has on the conduct of our investigations when the professionals within the federal institutions are not properly trained, or there are not enough of them in the various institutions. In our office we've needed to have a clear recruitment strategy in order to fill the gaps within our own ranks.

• (1135)

**Mr. Bill Siksay:** Do you see administrative change as being equal to an improved compliance regime, an improved legislation, in the effect they would have on making improvements to access to information?

**Ms. Suzanne Legault:** I think they are equally important. If you have a new piece of legislation but people are not properly trained in administering it, the delivery of the legislative changes is not efficient.

**Mr. Bill Siksay:** If we had that kind of training in place now, would it ameliorate the problems we're having with the access to information system now?

**Ms. Suzanne Legault:** I think it would have a positive impact.

**Mr. Bill Siksay:** But it wouldn't eliminate the problems.

**Ms. Suzanne Legault:** It wouldn't because it's a multifaceted issue. There are issues with records management, legislation, training, hiring, and capacity. It's a multifaceted problem.

**Mr. Bill Siksay:** Thank you, Mr. Chair.

**The Chair:** No further members have indicated that they wanted to speak.

I just had a little discussion with our analyst and researcher about where we are right now and your interventions today on your annual report. Certainly there is a significant overlap with the business item that this committee has been engaged in for the last two meetings, which is the response of the justice minister to the committee report on quick fixes to the Access to Information Act.

In the middle of that consideration Mr. Martin made a motion, which still has not been disposed of, but it is in fact not a new item of business. That happens to be a motion within an existing item of business, being the response of the justice minister to the act.

So we haven't quite resolved that and how the committee is going to deal with it. Certainly the motion is one aspect. It basically speaks for itself. It's just that the committee is not happy with the response, but that doesn't do anything to help us with the act.

This item will be on our business for Thursday. I've asked the researchers to prepare a list of items that are still outstanding concerns.

I am very concerned, Acting Commissioner, that the jousting that is going on not only among members but maybe even between the commission and the prior minister, etc., is not a healthy approach to moving forward on constructive measures related to the Access to Information Act.

I am very concerned that this could simply bang the gavel and the subject matter's closed. It's basically that the minister at this time is not open to any changes and the committee has put itself in a position where we can just say we don't agree with you. But this doesn't help the outstanding issues that we have.

I don't think it's in the best interest of the public and I don't think it's in the best interest of the committee that we terminate this discussion. I said earlier that we need to vet some of these things, whether it be the cost recovery issues that Mr. Dechert has been raising since the very beginning or some of the issues that you have raised today with regard to double-counting problems.

It's simply the fact that there are proxies out there who are requesting information on behalf of larger numbers of people. You probably will never understand or never know just how broad the interest and the concern is. If you eliminated all the proxy or all those commercial players, how many individuals would then come forward in the numbers?

I think the numbers have to be in terms of number of complaints, number of requests, etc. It has to be taken that every year we report is probably going to have the same level of fuzz in it, so that on a macro basis it's probably relatively comparative. I'm not overly

concerned about that, but I am concerned there are some issues that continue to be of concern to members.

The point I was going to try to make is that if we don't make changes in a minority government, it's very unlikely we will be making them in a majority government. This is the time, in my view. That's a comment. I don't want your response because it's unfair.

I appeared on the Right to Know Week panel, which you referred to in your opening remarks. First of all, I enjoyed it very much. I thought the panel that I was on just gave a wealth of information. I know you have captured an awful lot of that. I hope the members will have an opportunity to be apprised in one way or another of some of the wisdom that came out of those number of sessions. I was on only one panel of a large number of panels.

• (1140)

I would remind you that at the very end, the moderator of my panel said, "After you finish your remarks, I want you to give me your top two recommendations for consideration". I'm not sure if you recall, but I was the last speaker in a panel of about seven or eight people, and everything I wanted to say had already been said. So that made it really difficult.

I basically set my speech aside and concentrated on two areas. One was what came up today about the Mexico situation and proactive disclosure. It is something we have not really given serious thought to. It is something I think should be given serious thought, because it does mean that governments would not wait for a request but would simply post on the web all those matters that are accessible under the act. The only things that would not be posted would be matters of national security or cabinet confidences.

It would change the whole situation that we are talking about. It would solve so many of the problems.

I'm asking you whether or not proactive disclosure is an approach you believe this committee may want to consider, and whether we should maybe even visit or bring witnesses from the Mexican authorities to talk to us about the process they went through, where they are, and whether or not it is applicable to us.

Is that something you think this committee may want to consider?

**Ms. Suzanne Legault:** Mr. Chairman, I think proactive disclosure is the wave of the future. I can report to this committee that my colleagues at the provincial and territorial level decided, in September of this year, to make proactive disclosure one of our priorities in terms of what we want to recommend to governments.

With regard to authorities or international examples, I would suggest that the Mexican model may not be the best one even though they do have a web-based system, because there are new pieces of legislation.

For example, I mentioned the Quebec legislation, which is new. They have a new publication scheme under which there are two key areas in addition to what exists now at the federal level, which is disclosure of requests and the responses. That would be a leap forward, I think, at the federal level. As well, I think having public institutions gather statistics that are of public interest would go a long way in a knowledge-based society.

So the system in Quebec is a good example. There have also been recent pieces of legislation in the U.K., in Scotland, in two jurisdictions where they have just implemented publication schemes that I am aware of.

• (1145)

**The Chair:** Conceptually, though, this is something that will be on our agenda eventually.

My second recommendation for the panel had to do with the need for us to amend section 2 of the charter, regarding the rights. I have actually put in private member's Motion No. 445, which calls on the government to take all appropriate steps to amend the Charter of Rights to explicitly include the right of access to information that is under the custody or control of the government.

I still feel very strongly about that. I know it is very unlikely that it's going to happen very easily or very quickly, but there is a court case before the Supreme Court on this very question now regarding the whole debate about implicit right versus explicit right in the Constitution of Canada.

Can you tell us the status of that and what the substantive arguments are with regard to the issue before the Supreme Court right now?

**Ms. Suzanne Legault:** First of all, we're awaiting a decision from the Supreme Court of Canada. It's the case of the Criminal Lawyers' Association weekly. It is in reference to a provision in the Ontario legislation. The Ontario legislation is framed such that it has a public interest override in most of its provision. Most of its exemptions are subject to that public interest override, but it has no such override for solicitor-client privilege information and, if I'm understanding correctly, law enforcement as well.

The issue is whether, as part of the analysis of this exemption, there should be an overall override, if you wish, based on paragraph 2(b) of the charter, which is the freedom of expression. I'm giving you a very cursory example; I'm not the expert in this case. Essentially, the issue to be determined would be whether or not access to information is part and parcel of paragraph 2(b) of the charter, which is freedom of expression.

**The Chair:** Okay.

I do know that some of the arguments have been about such things as the right to vote. But the argument would go that the right to vote means you have the right to be informed, and if you have the right to be informed, you must have the right to access. This is the implicit linkage. I know we will slowly move that...but we await that decision.

I think it's extremely important, because if the Supreme Court does come down that—

**Mr. Bob Dechert:** I have a point of order, Mr. Chair.

**The Chair:** —it's no longer...

When the chair is speaking, it's in order.

**An hon. member:** Another new rule.

**The Chair:** That's the chairman's discretion.

When the decision does come down, this will be very significant, because it will stop the—

**Mr. Bob Dechert:** A point of order, Mr. Chair.

**The Chair:** I heard you. I'll get to you at the earliest opportunity, okay? That's what we do, okay?

**Mr. Bob Dechert:** That's what you do.

**The Chair:** I'm in the middle of a statement to the witness, okay?

The importance here is that this is not the first time it's come before the Supreme Court. There have been challenges to the right of access in the past, and in this one here, if the decision does not come down correctly, then we have a step backwards in terms of the implicit right to know and the right to access of information. It is a democratic right that we believe in now that's being challenged in the courts. So a lot of the things we have been talking about now may be moot because governments can just say they're not going to show the leadership, they're not going to respond on a timely basis, and nobody can do anything about it. You know, they can say, "Take us to court."

It is a very dangerous situation. I want to raise that with you because I hope we'll be able to have a further dialogue. You may come back to us, maybe after the decision comes out and with some of the fallout, because I think it's important. The committee is committed to, one way or another, addressing the current situation with regard to the Access to Information Act.

• (1150)

**Mr. Bob Dechert:** A point of order, Mr. Chair.

**The Chair:** Now, having said that, Mr. Dechert has a point of order.

Yes, sir.

**Mr. Bob Dechert:** Thank you, Mr. Chair.

By my calculation, you've been speaking for almost 20 minutes. Can you explain to me if you are speaking on a Liberal round of questions?

I'm not exactly sure what's going on here; I'm just trying to understand the rules.

**The Chair:** Thank you. That's not a point of order.

**Mr. Bob Dechert:** Well, it's a point of clarification. Can you explain what's going on right now?

**The Chair:** Thank you. I heard you.

**Mr. Bob Dechert:** Okay. Thank you.

**The Chair:** It hasn't been 20 minutes, I can assure you.

**Mr. Bob Dechert:** Yes, it has.

**The Chair:** It's been less than 10 minutes.

**Mr. Bob Dechert:** No, I started timing you at 10 minutes. You heard the beeper go about five minutes ago.

**The Chair:** There is a transcript and it shows times, and we'll deal with this outside of the meeting.

**Mr. Bob Dechert:** [*Inaudible—Editor*]

**The Chair:** Excuse me. Is it okay if I speak?

**Mr. Bob Dechert:** Absolutely. Please tell us what you're doing.

**The Chair:** Now, I also went around the room—to you explicitly—and I asked if you were finished. You said, yes, you were finished. I did the same for the NDP, the same for the Bloc, and the same for the Liberals.

Then the chair, because there were no more questioners who sought the floor, wanted to... As I indicated to you in the last meeting and explained to you in the last meeting, the chair has the responsibility to continue or to provide the continuity of things—the “where do we go from here?”

The chair has that discretion. If you would like to have some further input...

Excuse me, Mr. Del Mastro.

**Mr. Dean Del Mastro:** Oh, I'm sorry.

**The Chair:** I accept your apology.

If you believe that the chair has participated in this committee activity in an improper way or is out of order, you have tools to deal with that, if you care to do that.

**Mr. Bob Dechert:** Thank you for your clarification.

**The Chair:** You're welcome.

Madam Legault, Ms. Campbell, and Ms. Neill, I want to thank you very much for this. I'm going to invite you to continue our good relationship on this matter and to keep us informed on developments that relate to your mandate, because the committee would like to continue its dialogue on this. I know that it's been a very long meeting. It's been one of the longest we've had on the subject, but it deserves it.

We have some related or other business before us that I would like to go to before we have to adjourn at noon.

I thank you, again, on behalf of all the members. You are excused.

**Ms. Suzanne Legault:** Thank you very much, Mr. Chairman.

**The Chair:** We'll just wait a moment.

Colleagues, we now have the matter of the motion that was moved by Pat Martin, which has been circulated to you. It is a motion that arose during the consideration of the committee's business of the day, which was to consider the justice minister's response to our quick-fix recommendations on the Access to Information Act.

There is a point of order.

• (1155)

**Mr. Bob Dechert:** Yes.

**The Chair:** Okay.

**Mr. Bob Dechert:** With respect to the motion that's just been placed in front of us, my understanding is that this is the first time we've seen it in writing. Is that correct?

**The Chair:** You don't have to see it in writing, because it was made at the table.

**Mr. Bob Dechert:** But it is the first time we've seen it in writing.

**The Chair:** Was it circulated to members?

**Mr. Bob Dechert:** It's the first time I've seen it.

**The Chair:** Mr. Dechert has the floor. Your point of order, sir.

**Mr. Bob Dechert:** I believe that this is the first time any of us has seen it in writing, and Mr. Martin's not here to move it.

**The Chair:** It's been moved. That was already ruled on at the last meeting, sir. It's in the transcript of the meeting.

Do you have the transcript here, sir?

**Mr. Bill Siksay:** I do.

**The Chair:** You do? Maybe that would be helpful to Mr. Dechert.

**Mr. Bob Dechert:** Can you explain the process?

**The Chair:** Sorry, no.

Mr. Siksay, would you please read the extract from the transcript of the last meeting?

**Mr. Bill Siksay:** Yes, Chair. It's on page 25 of 34 in the record of the last meeting. It's actually you reporting what Mr. Martin submitted, that it was moved “That the committee reports to the House its profound disappointment with the response of the Minister of Justice to its 11th report entitled “The Access to Information Act: First Steps Towards Renewal”.”

**The Chair:** And if it goes on...

The question about, when Mr. Poilievre was proposing another motion...I had to interrupt him, because, unfortunately, we cannot entertain a second motion when we have one on the floor.

So it actually was on the floor.

We're resuming debate at this point.

**Mr. Bob Dechert:** Do we not need to see this in writing in order to continue debating?

**The Chair:** No, because when you are at the committee table, you can actually move a motion orally. It's acceptable orally, and only in one official language.

Is that correct, Mr. Poilievre?

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** I don't have the Standing Order in front of me.

**The Chair:** Okay.

We'll certainly check that out, but members who are sitting at the table can make a motion related to the business of the day that is in front of the committee. It doesn't have to be in writing. There's no notice requirement. It can be made right then and there on that day.

That's exactly what Mr. Martin did when he was here substituting for Mr. Siksay, who was unavailable to be here.

We do have this motion from Mr. Martin. I asked for it to be circulated to the committee.

Mr. Del Mastro.



**Mr. Dean Del Mastro:** On a point of order, Mr. Chair, this will be brief—very brief.

Thank you.

Mr. Chairman, the meeting started about 15 minutes late. I just noticed you checked your watch. I hope you're not going to bang the gavel at noon, as the meeting was late in starting.

**The Chair:** Thank you.

First, it's not a point of order. Second, the committee schedule was for 9 until noon. Members make their arrangements and obligations. The reason for the delay had nothing to do with the committee. As you know, it was a technical problem. That's unfortunate, but I cannot say to the members that I'm going to make it up on their time.

But the chair would entertain a motion either to adjourn right now or to extend this meeting a further 15 minutes, if that was the amount. I'm open.

It wasn't a point of order. You got the floor by saying it was a point of order, but I understand.

Mr. Del Mastro.

• (1200)

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

I'd like to put a motion on the floor that, seeing that the committee was delayed due to unforeseen technical circumstances this morning, we extend the meeting by 15 minutes.

Thank you.

**Mr. Borys Wrzesnewskyj:** On a point of order, Mr. Chair, I believe there's already a motion on the floor that we're looking at.

**The Chair:** This is a procedural, it's like....

This in fact is not debatable and a vote has to be put.

Is that correct, Mr. Clerk?

This is to change the order of the day and the timing of the meeting and it's self-explanatory. It's like moving for an adjournment. Effectively, this is to move an extension, so that's in order.

Shall we extend the meeting by 15 minutes to make up the time we lost?

All those in favour of extending the meeting?

(Motion negatived)

**The Chair:** We will not extend the meeting.

Given where we are, we're adjourned.

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