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Tuesday, March 30, 2010

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Chair

Mr. Paul Szabo

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•(1110)

[English]

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

This is the fourth meeting of the Standing Committee on Access to Information, Privacy and Ethics. Our order of the day, pursuant to Standing Order 81(4), is main estimates for 2010-11: vote 40 under Justice, referred to the committee on Wednesday, March 3, 2010.

Our witnesses today, from the Office of the Information Commissioner of Canada, are Suzanne Legault, interim information commissioner, and Andrea Neill, assistant commissioner, complaints resolution and compliance.

Welcome to you.

I would like to very quickly deal with a housekeeping matter for the attention of members. Yesterday I spoke with the ethics commissioner, Mary Dawson. An unavoidable personal matter has come up, and she will be unable to be with us on Thursday, April 15. We had scheduled the report cards for Thursday, April 22, which were going to be presented by the information commissioner. As it turns out, they're going to be presented and available on April 13. So what I'm proposing, with the committee's concurrence, is that we simply flip the two meetings. We will have the report cards on April 15 instead of Mary Dawson for her estimates, and on April 22 Ms. Dawson will appear. We've already discussed it with the important people who are carrying the ball on the report cards, and it's a little tight, but they're ready.

Now, welcome to both of you. I understand you have some brief opening remarks. Please proceed.

Ms. Suzanne Legault (Interim Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chairman, and congratulations on your re-election as chair of this committee. It is indeed a pleasure to appear before what you so aptly described as the best and hardest-working committee on Parliament Hill.

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Who said that?

Ms. Suzanne Legault: Today I will review some of this year's successes and highlight my priorities for the year ahead in light of the main estimates.

[Translation]

Three years ago, in response to considerable challenges in delivering on our mandate, former Commissioner Marleau initiated major structural and operational changes. The goal was to improve

our core investigative function and ensure diligent stewardship of our operations, in order to deliver high quality services to Canadians. In so doing, Mr. Marleau laid down the foundations of our new business model, tailored to our current and unique challenges. After a little more than a year of implementation, ongoing monitoring and adjustments, I am proud to say that my Office is now breaking new ground in terms of operational and strategic efficiencies.

[English]

Since I started my term as interim commissioner, my priority has been to improve the efficiency of our investigative process. I have supported this effort with a strong integrated human resources strategy. Here are some of the early results. Whereas it took an average of 176 days to process administrative complaints, the average turnaround time since October of this past year is 107 days. I'm very confident that we will meet our objective next year to close 85% of our administrative complaints within a 90-day timeframe. We have also made a significant dent in our inventory of pre-April 2008 complaints. This inventory has been reduced from slightly under 1,600 in November 2008 to 388 as of last week.

However, Mr. Chairman, the most significant accomplishment this year is no doubt the number of cases completed, which stands at 2,062.

[Translation]

Since last summer, I have made full use of my investigative powers. I am making greater use of the formal reporting process under section 37 of the Act and recommending that heads of institutions disclose the additional information. This approach has proven very effective for the release of additional records to complainants. I have also used subpoenas and conducted examinations under oath in appropriate cases.

[English]

This success on the operational front has been accompanied by a number of precedent-setting cases.

Last summer my office sought and obtained leave to appeal to the Supreme Court of Canada in the cases that are known as the "Prime Minister's agenda" cases. A hearing date is set for October 2010.

Last summer I also issued subpoenas to the CBC for the production of records. The institution is challenging my authority to review documents subject to the new exclusions under section 68.1 of the act, and this case is now before the Federal Court.

In the case of the National Gallery of Canada, I have, for the first time since the provision has come into effect in the act, referred a matter to the Attorney General of Canada in relation to the possible commission of an offence under section 67.1 of the act. This section provides for criminal sanctions for wilful destruction, falsification, or concealment of a record, or counselling any person to do so.

Achieving the benefits of the business model also required that I fully staff the investigator positions. We are ending the year, and starting the new one, with a full complement of investigators. In fact, Mr. Chairman, I'm actually overstaffed. Moreover, I have established a structured in-house training program to provide investigators with the extra skills and knowledge they need for optimal performance.

I have adopted an integrated approach to systemic issues through the three-year plan that I published last July.

My first step was to look into the pervasive problems of delays through this year's report cards process. This year we expanded our sample to 24 institutions, which represent 88% of all the access requests received by the federal institutions. This will provide a sound, fact-based assessment of the situation, and I hope it will provide the path to solutions.

I will be tabling the report in Parliament on April 13. I look forward to discussing it in more detail, not on April 22, as my speech states, but on April 15.

•(1115)

[*Translation*]

In terms of this year's Main Estimates, Mr. Chairman, our total planned spending is \$12 million in 2010-2011, and our number of full-time employees is 106. As you will see in the documents I have provided, if temporary employees and consultants are included, we actually have a total of 123 employees. These numbers reflect additional funding obtained in 2009-2010.

Mr. Chairman, we are currently using every dollar appropriated to the Office. My budget is extremely stretched and we are operating at full capacity. The changes introduced in the Budget will place a heavy burden on my organization, since 70% of our budget is allocated to salaries, and an additional approximately 20% is allocated to the OIC's fixed operating costs.

This means we will have very difficult choices to make in the coming years, in order to keep within our appropriations, while still delivering on our mandate and maintaining excellence in corporate governance.

[*English*]

That said, we are developing significant efficiencies.

The intelligence and expertise gained during these past months allow us to be more strategic and proactive in the way we conduct our investigations. In particular, the in-depth knowledge of our complaints inventory, through its composition and evolution, enables

us to devise new strategies to resolve complaints more quickly and efficiently.

We're also in a good position to proactively determine where we need to focus our investigative and training efforts.

As part of our three-year plan, in the next fiscal year I'm undertaking a systemic investigation into delays and time extensions. As I announced on March 2, and following recent events, I will expand the scope and focus of this systemic investigation to examine whether interference in the processing of access requests is a cause of delay or unduly restricts disclosure under the act. In parallel, my office will undertake a report cards assessment of new institutions that became subject to the act under the Federal Accountability Act.

To be strategic and proactive also implies making full use of new technologies to provide greater guidance and to serve as a model in providing access to information. Through our revamped website, we intend to substantially increase public disclosure of our own information. Our virtual reading room will give timely access to all OIC decisions and major corporate documents as well as list the access to information requests we have received and processed. In addition, we will develop more practice directions regarding our own interpretation of the act and our own investigative process.

[*Translation*]

Mr. Chairman, my approach as interim Commissioner is very simple. I intend to work diligently to fulfill my mandate by fully implementing the OIC's business model and maximizing efficiencies in our investigative process. To that end, I will use all the tools at my disposal under the current legislation, and I remain committed to working closely with parliamentarians, institutions and complainants.

[*English*]

In closing, Mr. Chairman, if you will allow me, I would like to take this opportunity to put on the public record before this committee my most sincere appreciation for the unwavering support and dedication of my staff at the OIC in this time of transition.

With this, Mr. Chairman, I thank you, and Assistant Commissioner Neill and myself are happy to answer your questions.

The Chair: Thank you very much.

I'm going to start with Ms. Foote, please.

Ms. Judy Foote (Random—Burin—St. George's, Lib.): Good morning, and thank you for appearing before the committee. We appreciate having you here, obviously.

Ms. Suzanne Legault: Good morning.

Ms. Judy Foote: I just want to touch on your interim appointment. This is your second interim appointment. Why is it, I wonder, that you've not been appointed in a full-time capacity or that you're not in a permanent position? Do you find at all that it's impacting on the job you're trying to do?

Ms. Suzanne Legault: I really don't know why the position has not become permanent, why a process has not started. This is something that you would have to ask the government rather than me.

Has it impacted what I do and how I act? I would say no. I conduct myself within the full mandate. I have full delegated authority and I have conducted myself accordingly. I have a high standard of integrity and that's the way I'm doing my job.

• (1120)

Ms. Judy Foote: Do you have any idea when the position will be made permanent?

Ms. Suzanne Legault: I really don't know. My second interim term expires in June. I believe it's June 30.

Ms. Judy Foote: Thank you.

I'm just looking here at the increase in the number of complaints and the fact that so many positions within the department went unfilled for an extended period of time. I'm wondering why that was and how that impacted the work you're charged with doing.

Ms. Suzanne Legault: I can speak for the situation now. If you look at your handouts, you actually have in there a little bar graph that shows the increase in human resources that we've had in the office. It actually looks like this one in your handout. You see in the past year, starting in April, we've basically gone from 93 people to 113. What I've done this year is I've basically been heavily supplemented using the operational budget with additional investigators and additional administrative staff in investigations. It is having a clear positive impact on the number of files that we can close. It's also presenting its own challenges, because we have to train all of these new people. So we're doing that at the same time.

Ms. Judy Foote: My question was, why would they have gone unfilled at a time when we saw an increase in the number of complaints?

Ms. Suzanne Legault: If I go back three years ago, we had a complement of about 57 to 60 people but we didn't have additional funding. We've had two Treasury Board submissions in the last three years; the full payment of these Treasury Board dollars basically came this year and we had additional moneys for next fiscal year. Basically what I've done this year is I've done anticipated staffing so we're starting the year already fully staffed based on the budget we're getting as of April 1.

As for the reasons why it wasn't staffed before, we did have a difficult time staffing people. We became more aggressive in the last year and Andrea—

Ms. Judy Foote: You mean a difficult time in terms of finding people with the required qualifications?

Ms. Suzanne Legault: Appropriate skills. We expanded the way we were recruiting people. Instead of asking for people with specific access-to-information experience, we expanded with audit experience, investigative experience. So we had a broader pool. We had a

university recruitment process as well, and we had deployments. We basically became more creative and more aggressive.

The other thing is this year... When I arrived, clearly Assistant Commissioner Neill had to do a lot of staffing in a very short period of time.

Ms. Judy Foote: When you say you're now overstaffed, what do you mean by that?

Ms. Suzanne Legault: I have 106 full-time equivalents in my budget. I have seven people employed permanently who are pressures on my budget. In addition to that, I have 20 people who are consultants or temporary help who I budget for out of the operational budget.

Ms. Judy Foote: If you're budgeting for employees out of the operational budget, how is that impacting on the work you're trying to accomplish?

Ms. Suzanne Legault: As I said, my priority this year is really investigations. We have a lot of cases in our inventory. We started the year at 2,500 cases and we're now at 2,100, which means we have made a dent. This is the most significant dent in the inventory of the OIC that's ever been made historically—about 400 in one year. That's the result of what I've done on overstaffing and the other work we've done on the investigative side. I felt it was necessary to allocate this operational money to additional resources to focus more on the investigations.

Ms. Judy Foote: Did something not get done as a result of you having to move money from one envelope to another?

• (1125)

Ms. Suzanne Legault: There wasn't that much this year. We had very little money left at the end of this fiscal year. I think I'm now at \$113,000 or so, which is 1% of our budget. That is very tight as far as government institutions go. We delayed some computer purchases and those kinds of things, but essentially we did everything we set out to do this year.

Ms. Judy Foote: When you say your budget is extremely stretched, what would you consider to be an appropriate budget for your organization?

Ms. Suzanne Legault: First I must clarify that the budget is tight because of the announcement in the federal budget that there will be a freeze in federal institutions' budgets. That means I will have to absorb the salary increases next year, and potentially the following years, within my existing budget. So this year, doing everything we've done, it's very tight. I'm basically having to delay stuff for next year. I know that next fiscal year, because I have to absorb the salary increases of most of my employees, I'll have a shortfall of \$200,000. So already at the beginning of the year I know I'm short \$100,000, just by this simple calculation.

The other thing is that we are now doing a really detailed review of the business model. This year, to really fulfill the expectations of the business model, I've had to overstaff and bolster the number of people on the investigative side to make sure we achieve the results we want.

Ms. Judy Foote: So you're extremely stretched now, and then you will have to absorb anything else that comes up within the existing budget. Is there any possibility that some of your employees will have to be laid off as a result of not having sufficient funding?

Ms. Suzanne Legault: At this time I do not expect that to be the case. However, I think there is that risk in the area of systemic investigations, because we're very tight there. The systemic investigations are resource-intensive, and if there is any increase in litigation it will cause great difficulty for my office.

The Chair: Thank you.

Madame Freeman, *s'il vous plaît*.

[Translation]

Mrs. Carole Freeman: Thank you, Ms. Legault and Ms. Neill, for appearing today.

I reviewed some of the comments that were made last year, on the same date. A number of issues were raised at the time with respect to the backlog, staffing, and so on. What you have been able to accomplish in such a short span of time is quite remarkable. I want to congratulate you on a job well done. You have succeeded in greatly reducing the backlog and in introducing a number of systems that greatly enhance your efficiency.

Of course, as we heard in your opening statement earlier, a staff increase was a contributing factor, in addition to your very effective management. Last year, we raised the issue of staffing and recruiting new employees. There was a problem retaining staff. The same problem was occurring elsewhere, in the area of privacy legislation. You had an extremely high staff turnover, to the point where the OIC was not able to properly fulfill its mandate.

Now, in a very short span of time, you find yourself with a surplus of highly efficient employees. What is your secret? How do you retain your employees? I understand you recruit them in universities, but how is it that someone does not come along and steal them, as was happening previously?

Ms. Suzanne Legault: Well, it's difficult to explain. I think there is a really special atmosphere at the OIC at the present time. It may be because of the number of cases we were able to complete this year, the strategies we have introduced, our investigative activities or Right To Know Week. We are seeing that staff are really excited about their work; they are really committed to what they do. We now

provide a lot of training. I would say that the working environment is truly excellent and that staff really believe in the OIC's mandate. Things are much more stable than they were previously. Three years ago, we were in the midst of a major transition.

Under Commissioner Marleau, significant changes were made, resulting in guidelines and foundations being laid down. I built the house on the foundations that were there, if you will. That is a different kind of work, but there was a need to take the time to put the proper foundations in place, and Assistant Commissioner Neill and myself were both there during Commissioner Marleau's mandate. That work is now in its third year. We have begun to build the walls, to paint the house, and people are happy to be there. I think that is all part of it, if I can use that analogy.

• (1130)

Mrs. Carole Freeman: I see. That's great; now I understand why you are able to retain your staff. You also have made use of a lot of tools to reduce the backlog, and so on.

Could you explain how you did that? I know you have more staff, but you also made a lot of structural changes... Could you tell me more about that?

Ms. Suzanne Legault: As I see it, every information commissioner is completely different. Each one develops his own approach. In my case, when I took up this position, I started looking at the files. I read every complaint sent to the Office; Assistant Commissioner Neill now does the same.

We are very well acquainted with the inventory and we review it together. We think of strategies that we could implement in relation to the total inventory. We currently have about 2,000 complaints. That is still a lot of cases to manage, as I freely admit, but we are identifying trends in relation to certain institutions, complainants, sections or provisions of the Act, or some key or controversial subjects, and are trying to focus more on that. We also assign cases to investigators more strategically. If we have a whole series of cases connected to a specific department, we will assign them to one or two investigators. They then work together and are more efficient, because they know the institution, the complainant and the subject.

Furthermore, we also make more use of the specific expertise of certain investigators. If some of them are from the RCMP or the Canada Revenue Agency, we will assign them files that relate to those organizations. That allows us to ensure more effective case management.

Over the course of the next year, Ms. Neill and I will be focusing on complex cases. In terms of the OIC's inventory, I have noted that, historically—in other words, over the last 26 years—the complex cases are the ones that took time and continue to do so. Those are the ones we are trying...

Mrs. Carole Freeman: What do you mean by “complex cases”? You say that you have read all the complaints—you already have more than 2,000—so can you tell me the percentage for each of the categories: administrative, delay-related, and so on?

Mme Suzanne Legault: Yes.

In terms of our total inventory, approximately 48% of complaints are administrative in nature. These are complaints that we try to resolve within 90 days. That is our first block of files. As for the rest, approximately 50% are more complex files; they involve exemptions or refusals, and are thus more substantive. They deal with national security, implementation of the Act, other countries, or foreign affairs, for example. They are far more complex, take more time and are of a substantive nature. Also, in that block of 2,000 files—because we do screen and prioritize them—approximately 10% are considered priority. So, those files are dealt with on a priority basis.

Mrs. Carole Freeman: What do you consider a priority complaint?

Ms. Suzanne Legault: There are two major criteria. The first is urgency, meaning that they concern freedom and security of the person or matters of public health for Canadians. The second applies in situations which have a major impact on Canadians. For example, the recent case involving allegations of political interference is deemed to be a priority because of its impact on Canadians and on government accountability.

That is pretty well the way the system works. This allows us to ensure tighter management of these files. Also, every time I read a complaint, I ask the Assistant Commissioner to follow up on certain files that I want to monitor.

Mrs. Carole Freeman: With respect to priority complaints—for example, the ones concerning interference by ministers—how long does it take you to render a decision?

Ms. Suzanne Legault: Ms. Freeman, every case is completely different. In some cases, as I mentioned, we have to conduct examinations under oath, whereas in others, we have to subpoena witnesses. When that happens, the parties are represented by counsel. Processing these files takes quite a long time. I cannot tell you how much time we devote to them, because it is different in every case.

• (1135)

[English]

The Chair: Merci.

Mr. Siksay, please.

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

Thank you for coming to the committee again, Madame Legault, and congratulations as well on the accomplishments of the office this past year. I agree with Madame Freeman that the reduction in the backlog and the timeliness of dealing with complaints is impressive, and I wish you all the best in continuing that trend. It's nice to see those bar graphs going in that direction.

I want to ask you about your systemic investigation. You announced that last July, and recently you changed the parameters of that or added something. Can you tell us a little bit about the original mandate and what you have added to that?

Ms. Suzanne Legault: First of all, the idea of having a three-year plan is to give advance notice to institutions of what we are going to look at. I actually want people to comply with the legislation even before we do an investigation. Just signalling to someone that you're going to look into their performance usually has a positive effect. That's the first idea.

This year we were focusing on timeliness in the three-year plan, but as part of timeliness there is a component that deals with the approval processes within an institution and we were going to look at that already. When there were allegations of political interference, I decided to add a component to that investigation, because I'm going to be looking at the same documents as part of this investigation and I can only have one systemic investigation of that scope per year, given the resources I have. It made the most sense to add that component, because I'm going to use the efficiency of looking at the same documents as part of this investigation.

I may then decide to close one part earlier than another. Depending upon how it unfolds, I can still do that, but essentially use the same team and look at the same information.

Mr. Bill Siksay: Is it your plan to report on the timeliness issue within this first year of the systemic review, or are we waiting for three years before we see a report on that?

Ms. Suzanne Legault: I don't think it will be completed in 2010-11. I would hope so, but the last time we did a systemic investigation of that scope, which was the Canadian Newspaper Association case, it took the office three years. So I am hoping to halve that time. That's my goal.

Mr. Bill Siksay: You mentioned that one of the pressures on your budget is around systemic investigations. Can you say a bit more about that? Will that affect the timeline, for instance, of doing this systemic investigation?

Ms. Suzanne Legault: I am planning to do both the systemic investigation and the report cards on new institutions in the next fiscal year. That will be a huge challenge for that team. Some of them are sitting here, and I know they're very nervous when they hear me speak about these goals.

Last year when we asked for additional funding we did not get funding for systemic investigations. Historically, in 2005-06, we got two resources for systemic investigations, and three additional investigators who could be assigned to any part of the organization. That's basically what I've used. I've used those five resources who were given historically to the OIC for systemic investigations and I've allocated them there. But could I use those five investigators in my regular investigations? Definitely. That's the problem.

Mr. Bill Siksay: I appreciate that you've made that allocation, because I think looking at the systemic situation with regard to access to information is crucial right now. The list of concerns continues to grow, and I know you've said there are at least a couple of priority investigations dealing with alleged political interference in the release of information. I believe one of them is dealing with the situation in the Minister of Public Works' office around the real estate portfolio document. Yesterday in the House I raised another one concerning advertising information in the office of the Minister of Human Resources Development.

There has been a long list of other things—for example, the different version of memos from Mr. Colvin, which were released by the Attorney General to the Military Police Complaints Commission, while the same memo released by DND under the terms of the Access to Information Act was redacted very differently.

There has been the whole question of Minister Fletcher's briefing books and the request from the *Winnipeg Free Press* and the whole attempt to expand the question of advice to cabinet and what that means.

There was a delay in the commissioner of firearms' report, which took a lot longer than usual to be released to Parliament in May. It had a significant effect on a debate on the long-gun registry.

There is a columnist who wrote about a conference call that was being held at the Department of National Defence, which it seemed was attempting to have verbal conversations and not document the decision-making process that was being undertaken.

The list continues to grow. That's certainly not an exhaustive one, by any stretch. So I applaud you for putting the resources toward that systemic investigation, and we'll look forward to that and the results of the priority investigations you've undertaken.

I wanted to ask you about one other thing. In your report you mentioned that for the first time you made a recommendation to the Attorney General about the possible commission of an offence under section 67.1 of the act related to, I believe, e-mails at the National Gallery of Canada. I wonder if you can just say more about that. Why was this the first time, or is it just a new power that you have? Can you say a bit more about that specific situation?

• (1140)

Ms. Suzanne Legault: That provision was put into the legislation in 1999. I believe it followed the Krever inquiry into the tainted blood scandal, and it was added to the act in order to ensure that e-mails were not deleted wilfully following an access to information request. Why it has never been used before, I don't know.

Oddly enough, this year, when we look at the entire inventory and the various cases, I actually have more than one case in which there are allegations of this type. We'll see where the investigations take us, but I have more than one. The National Gallery case was the first one, and it did take a long time to complete that investigation because it was the first time. There were a lot of new grounds that were uncovered as part of that investigation.

Mr. Bill Siksay: Can you say something about those new grounds or just generally? Is there a problem with the law as it's written? Does it need to be expanded? Has technology left us behind in terms of the provisions of the access act that make it more difficult for you

to pursue that kind of situation in which documents may have been destroyed?

Ms. Suzanne Legault: It was more in relation to the fact that this provision was put into the act in 1999. Since then we've had the Federal Accountability Act, which created the director of public prosecutions. However, the legislation speaks specifically about referral to the Attorney General of Canada, so that led to some research on our part and some discussions.

Also, since that provision came into effect, there's been significant case law for administrative types of investigations in which there are possible consequences for criminal offences, for instance in the Jarvis and Ling decisions, so we have had to take those into consideration as well. This was not something that our office had been used to dealing with. We had to deal with these new challenges as part of this investigation.

The Chair: Thank you.

Ms. Block, please.

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

Building on the questions and the comments from previous members, I too would like to commend you for the work you have done in addressing the staffing shortages and the backlog. I'm a fairly new member of Parliament, and I was very pleased to hear some of the results from a year ago that you've been able to accomplish. It would appear that being interim certainly hasn't hampered your vision or ability to carry out your mandate as commissioner.

I also appreciate the analogy you built for us around a strong foundation, and the honour you are giving former commissioner Marleau. I think that speaks very well of both you and him, and of the work you're doing.

My first question is around your budget. You said you have planned spending of \$12 million for 2010-2011. You also indicated that 70% of that would go towards salaries. Can you give us a breakdown in terms of what the other 30% might be used for, and what are the resources it is going towards?

• (1145)

Ms. Suzanne Legault: About 20% is for the fixed costs of running the organization, including everything we need to sustain the organization, such as the computer equipment, paper clips, basic training for our officers, basic travel, and our hospitality that we have historically year after year. I'm basically left with another 10%, which will be more discretionary spending.

Part of the 20% is to staff additional consultants to do the investigations. If you look at the resource graph, as I said, I have 20 extra people who are consultants or temporary help, and out of those, 16 are allocated to the investigative side of the organization. That costs a lot of money, so that's a big chunk of that overall 30%.

There is actually very little flexibility. We're a lean machine.

Mrs. Kelly Block: Did you identify any other needs you might have but aren't requesting funding for?

Ms. Suzanne Legault: What I've decided to do, Madame Block, is to review the business model as part of our internal audit this year, and do a detailed analysis, taking into account efficiencies we can garner and how the office is working. Then I will see whether we will need additional resources or not.

Also, we haven't had final word from the Treasury Board Secretariat in terms of the impact of the budget. We're expecting that at the end of April. We can't have a full understanding until we have final word from Treasury Board Secretariat.

I understand this is a time of constraint. I'm not ignoring that at all. I'm basically going to look at the entire organization and see whether we have efficiencies, and whether we can reallocate resources internally. Then I'll consider whether it's necessary to seek additional funding.

I am somewhat concerned at this stage about the impact of the budget for our organization.

Mrs. Kelly Block: Can you tell us how many institutions are covered by the Access to Information Act?

Ms. Suzanne Legault: I think it's 255, give or take a few.

Mrs. Kelly Block: Now, you did reference the Federal Accountability Act. There were a number of institutions added as a result of that act. How many were added at that time?

Ms. Suzanne Legault: I think it's 69 or 70.

Mrs. Kelly Block: Also, in some of the other questions you've answered, you talked about the length of time to do an investigation, and that it takes longer to do an investigation for the first time: whether it's a new organization or due to the nature of it, you're actually covering new ground.

Can you tell me, has that actually happened as a result of the 69 new institutions being covered by the Federal Accountability Act? Is one of the reasons for requests taking longer the fact that they're new, and new investigations take longer?

Ms. Suzanne Legault: The one that has had the most impact, I would say, is the addition of the CBC, because there's a new exclusion under the legislation and the CBC has taken the position that the commissioner does not have authority to review the information. So I have quite a large number of complaints.

When the Federal Accountability Act came into effect and the CBC became covered that year, 2007-08, I think we received some 536 complaints against the CBC. That was the explanation for the big surge that year. Out of those, I believe 121 raised the issue of this exclusion and this ability of mine to review the documents. Those are subject to litigation at this point, so they are on hold, literally, because I cannot access the documents until we get a court ruling on it.

Mrs. Kelly Block: How many ATI requests were processed last year? You may have mentioned it in your opening remarks.

• (1150)

Ms. Suzanne Legault: ATI requests last year numbered around 34,000 across the system.

Mrs. Kelly Block: Okay, and how many were processed? Is that the number of requests that were processed, 34,000?

Ms. Suzanne Legault: In terms of requests, I'd have to refer to Treasury Board statistics, because I deal with complaints and those are requests.

Mrs. Kelly Block: No problem.

Ms. Suzanne Legault: I think I have them here, actually, and can tell you. There's an interesting little wrinkle here.

In terms of total requests across the system last year, there were 34,000. Out of those, about 20,000 were directed to Citizenship and Immigration Canada, which is quite important, because Citizenship and Immigration Canada actually gets a huge chunk of those requests. That leaves about 14,000 to be spread around the institution; and out of those, last year I got 2,000 complaints. That gives you an idea of the range.

Mrs. Kelly Block: Can you quickly tell me how many people or groups these requests are coming from? Can you boil that down as to whether there are certain groups of people who are asking, or certain organizations?

Ms. Suzanne Legault: I'm not sure I have those statistics. They're published by the Treasury Board Secretariat. I don't see all the requests. I deal with the complaints.

I don't have the statistics with me, but they are published by the Treasury Board Secretariat in terms of how the groups are divided up.

Mrs. Kelly Block: Okay, thank you very much.

The Chair: Thank you.

Mr. Easter, please.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Thank you, folks, for coming and for the progress you've made.

My colleague Ms. Foote mentioned the interim appointment, and I am somewhat worried about that. What is the normal appointment period for an information commissioner? Is it three years, or five years?

Ms. Suzanne Legault: It's a seven-year mandate.

Hon. Wayne Easter: A seven-year mandate.

The reason I worry is that we do know that other parliamentary officers and heads of agencies who have challenged the government have been forced out. I'll just lay it on the table: I'm concerned that, as an interim commissioner, should you be very challenging to the Government of Canada, you might be treated in the same fashion. I think we might as well put it on the table, because that is the record of the government.

In terms of getting to the appointment of a permanent commissioner, what is the process? Is it normally advertised for a number of months and interviews done? You're claiming that June 30 is the date. You certainly could be appointed on another interim basis, which would worry me even more. What is the normal procedure? Do you know?

I don't want to put you on the spot, but I think we might as well say what many of us are thinking.

Ms. Suzanne Legault: The procedure is certainly not within my control. There is a process under the legislation. If there is a nomination, it has to be approved by both the House and the Senate.

There was an advertised process last summer. I applied—it's on the public record—and I'm sure other people have applied.

Really, I've been asked this question many times. I conduct myself in a very objective manner. The way I'm conducting myself as interim commissioner is the way I would conduct myself as permanent commissioner. I made that decision even before I accepted this interim period. It was very clear and I was very clear with my staff as well. That's the way we have conducted ourselves, and that's the way we have moved forward.

I must say also that, if it is somebody else, I would be very pleased to leave an office that is in fantastic shape.

Hon. Wayne Easter: Thank you for that. I think that needed to be said.

You mentioned the freeze across government. I don't have any great concerns about the freeze, other than the fact that one department hasn't been frozen, and that is the Privy Council Office and PMO. Their budget is increasing. Yet we see agencies such as yours that do a tremendous public good and are not communications or propaganda machines, etc., but providing information and dealing with complaints from the public, who are trying to really find out what's going on within government, and yet you're frozen as compared with the Privy Council Office. I think that's a concern as well.

Do you think this salary freeze, which you did mention in your remarks, is going to have any impact on your ability to do your job? Second, given that we currently have a government that is highly secretive and a Prime Minister who avoids the media with a passion unless it's set up, do you find there are more requests under access to information from the media to get information?

It's as if one is working against the other: you have a more secretive government and therefore you are going to have more

requests under access to information. I don't know whether these requests are all leading to complaints or not. Are there any?

• (1155)

Ms. Suzanne Legault: What I can say on the first part of your question, in terms of the budget freeze, is that I am worried—there's no question about it—simply because we were so tight this year. Again, it is also reflective of the way I manage the office. I have maximized the use of the budget that I had.

Next fiscal year, what I really want to do is a detailed analysis of how the business model is working. We have quite a lot of lessons learned this year and there are readjustments that we need to make. I want to do that first and to reallocate internally to the extent I can—so we can continue on the path we are now on—and then I'll see whether I do have a budget shortfall. So I will see to that. As I said, if we were to get a major litigation case, I think it might create some problems, but there are possibilities for getting funding for these kinds of issues.

On the second question, what I've noticed in the last three years is an increase in the number of complaints. In 2007-08 there was a big spike, most of it related to the CBC coming under the purview of the legislation. Since then the numbers have been coming down. Last year there were 2,000 complaints and this year we're at about 1,650 complaints. Whether there's been a shift in the groups that are making the requests, I haven't noticed any—certainly in our complaints roster. I would say that evened out more this year. Last year we had a business whose complaints represented quite a high percentage of the total, and this year our roster of complainants is evening out. I've become one of our main complainants this year, because I've initiated complaints. Our own roster of the various groups is evening out this year.

Has there been any significant shift? None that I have noticed, sir.

The Chair: Thank you.

Mr. Rickford, please.

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

As irresistible as it is to develop a line of questioning in response to my colleague who just spoke, Easter is coming soon and I think I'll just let him have his day.

My questions today will be in keeping with the line that my colleague Mrs. Block was developing. I'll start out by asking the following questions. Is it, in your mind, not conclusive that the access to information system is slowing down? Further to that, do the delays not simply reflect the growing complexity and scope of the requests that come to your office?

Ms. Suzanne Legault: Part of the information on this issue is going to be in the report cards, because they are focused on timeliness. Part of the problem is the lack of real data to do significant analysis of delays, extensions, and consultations, and I've been taking a significant look at this. The report cards are going to cover something that we don't have in the Treasury Board statistics, and that's the average completion time of these 24 departments at the core of the Access to Information Act at the federal level. So we will get a pretty good sense of what the average completion time is, and then we need to distill down the reasons for those. As far as I can tell, one of the key reasons for that and key problems in access to information—which I have been looking at recently—is consultations with other institutions, in particular, in relation to national security, foreign affairs, and law enforcement. There is one Treasury Board statistic on this that is incredibly compelling.

• (1200)

Mr. Greg Rickford: I'm sorry, Mrs. Legault, are you saying consultation as between departments?

Ms. Suzanne Legault: Yes, and I would say that is probably one of the major causes of delays, which is undiagnosed, because we don't know how long they take. We don't know the reasons why, necessarily, and the departments that receive consultations have no accountability under the legislation, nor through complaints.

Let me give you the statistics and I'll finish with that. The length of time for consultations that are over 30 days has increased by 40% in the last eight years. That's the core of the problem in access to information at the federal level, as far as I can tell.

Mr. Greg Rickford: Thank you for that.

The consultation piece is important, and then we move to another category that I'd like to find a little bit more information on. We certainly have claims out there from some of our friends across the floor that more information is censored when documents are released. It is not true that there's no statistical data to support this conclusion around censorship?

Ms. Suzanne Legault: If you look at the statistical data from Treasury Board Secretariat on access to information, what we do find is that there is a decrease in the number of requests where all the information is disclosed.

Mr. Greg Rickford: Okay.

Ms. Suzanne Legault: There has been a decrease. I would say if you look at from 2002 to now there's been a decrease of 12%, and if you look at the last two years, compared to 2006-07, there's been a decrease of about 5% in terms of documents where everything is disclosed.

Mr. Greg Rickford: My point here is that Parliament has recognized that the public right to access to information needs to be balanced against the legitimate needs to protect sensitive information—I think we can all reasonably agree on that—versus the effect of a transparent functioning government. Accordingly, the act recognizes

the right of government institutions to deny access to information in areas such as, for example, national defence, some commercial confidentiality, implications for solicitor-client privilege, and some personal privacy matters. So I just want to develop that a little bit more.

My questions, then, would be as follows. Is it true that some departments or agencies have more segregated information than others and may hold sensitive information? I'm thinking again of National Defence, Public Works, Industry Canada. Can you explain how that might affect these requests, and certainly refer back to consultation in terms of how that may contribute in that context as well? I don't have any more questions, so feel free to....

Ms. Suzanne Legault: Thank you.

Each institution has a different set of information holdings, and you're quite correct in stating that some of them have some exemptions and others don't. National security is a good one. But it will be interesting when you see the results of the report cards to see that institutions that have actually national security holdings in their information perform very differently notwithstanding that. And yes, institutions do have to weigh how they disclose information. National security is a discretionary exemption, it's not a mandatory one. So one has to show the prejudice in disclosing the information when one wants to apply that exemption. But in terms of the overall performance, also what we see is that year over year, institutions that have the same information holdings actually perform well certain years and perform less well another year.

Mr. Greg Rickford: Is that a function of some of the issues that arise?

I'm sorry, I'm trying to sneak extra time.

The Chair: Finish your sentence.

Ms. Suzanne Legault: I'm just saying that it's not because the information they hold differs, because they have the same mandate, it's because of the way their access to information shop is actually managed. We'll see that in the report cards, because we did a follow-up on certain institutions and there's one in particular where you'll see there's such a significant improvement from last year—for the same type of information—and it's totally attributable to leadership and management of their access to information function.

Can we make improvements with departments even if they have difficult information holdings? Yes, we can, definitely.

• (1205)

Mr. Greg Rickford: Thank you kindly, Mr. Chair, for that extra time.

The Chair: Madame Thi Lac, *s'il vous plaît*.

[Translation]

Mrs. Ève-Mary Thāi Thi Lac (Saint-Hyacinthe—Bagot, BQ): Thank you, Ms. Legault and Ms. Neill. I would like to thank you and commend you for the exceptional job you have done in the last year.

If I understood you correctly, you have doubled your staff complement over the last year, but now you don't need as much staff. Did I get that right?

Ms. Suzanne Legault: No, that is not what I meant. What I said was that we have 106 full-time employees paid out of our salary budget. Also, a further 7 positions were staffed, so that I now have 113 permanent employees, including 7 whose salaries are paid out of my operating budget. I also have 20 staff members who are consultants or temporary employees, in order to make up the gap.

Mrs. Ève-Mary Thāi Thi Lac: Do you still need those 20 additional staff members, even though the backlog has almost been completely wiped out?

Mme Suzanne Legault: At the start of the next fiscal year—in two days—I will still have an inventory of about 2,100 cases to process. So, yes, I intend to keep that pace and keep those employees for the time being. We will see how things evolve.

The idea of the business model was to end up with an inventory of about 500 cases at the end of each year, which could then be carried over to the next year. It is clear that we will always have cases that are pending, and that is perfectly normal; however, an inventory of about 500 would be far more manageable. That is what we are aiming for.

Mrs. Ève-Mary Thāi Thi Lac: I know it's impossible to identify the exact number of cases, because of the complexity and specific characteristics of each, but in your opinion, how many cases are you able to process annually, not counting the backlog?

Ms. Suzanne Legault: This year, we processed 2,000. In the handout, you have some historical information. If you look at that document, it shows, for the last 10 years, how many complaints were received and how many were completed on an annual basis. You can see that this year, the number of cases completed was higher than ever. There was only one year, in the entire history of the Office of the Information Commissioner—I believe it was in 1989-90—that some 3,000 cases were completed, but 2,600 of them dealt with delays at a single institution. This year, they are practically all

individual cases. So, 2,000 is already a lot. Do we think we can do better next year? Yes!

Mrs. Ève-Mary Thāi Thi Lac: You talked about the website you have developed. Do you think it has enabled complainants to provide more complete information? Would you say the new cases you are receiving these days contain more comprehensive information? Do you reject fewer cases now, compared to previous years, when complainants made less use of the website as a tool?

Mme Suzanne Legault: There are two points to be made there. In terms of the process for receiving complaints, last summer our lead time was 22 days, just to ascertain whether the complaint fell within our jurisdiction. In some cases, people had not provided the name of the institution or the subject of their complaint. So, last fall, we added a complaint form to our website which states what information we require to determine whether the complaint is valid. It is too early yet to assess the results, but we see that people are starting to use it, which means that when we receive a complaint, all the information is there.

The second thing we did, last summer, was to issue practice guidelines. We clearly identified for institutions how certain aspects should be handled, including the time they take to provide us with the necessary documentation. Last summer, we determined that it took 90 days for us to receive the documentation, even though we are trying to complete cases within an equivalent timeframe, at least for administrative complaints. So, if we have to wait 90 days to receive the documentation...

As a result, I have very clearly identified on the website that if we do not receive the documents within 10 days, we will go higher up in the reporting structure of that institution, and if we still do not receive it, we will issue subpoenas. Since then, I have been receiving the information in 10 days!

• (1210)

Mrs. Ève-Mary Thāi Thi Lac: Thank you for that information. I have one last question. My colleague was talking about priority cases earlier. How many people are assigned to priority cases, and do you need additional resources to process them?

Ms. Suzanne Legault: The unit that processes more complex cases is composed of about 12 investigators. We have three separate areas: complaints coming in and administrative complaints, the previous inventory, as well as other files—including more complex files that are assigned to experienced investigators. That is the team that deals with priority complaints.

At the present time, I have an inventory of 2,000 cases, 450 of which have not been assigned, which worries me. In the course of the next fiscal year, we will be doing a quick review of these files to try and resolve them and see what they are all about.

Do we require additional resources? Well, as I said earlier, we will definitely have to analyze our business model. For now, we are still making adjustments and improvements. Many of our investigators are new; they are gaining experience and becoming more effective. Also, we are now providing very targeted training. For example, next year I would like to highlight certain parts of the legislation. So, in order to be more effective, we will be focussing on that in our investigator training program.

So, for the time being, Ms. Thi Lac, I have been unable to assess all the efficiencies; that is the first step. Afterwards, I can come back and tell you if we have budget issues.

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

[*English*]

The Chair: Thank you.

We'll go to Mrs. Davidson, please.

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

Thank you very much for being with us again today. Certainly it's great to hear about your success and accomplishments.

I looked at the graphs you provided, and thank you for that. Certainly it is always easier, for me, at any rate, to relate to the picture that is portrayed through a graph. When I look at the status graph of the inventory at month end, which started in November 2008 and concludes in March—this month, right now—the difference in the open and closed cases is amazing. Certainly that is good news.

When I look at the March 2010 graph, it is showing 1,206 closed cases and 388 open cases. They include 21 that are on hold. Are they among the 388 open ones?

Ms. Suzanne Legault: They are within the 388. Those 21 are in the old inventory, but they are on hold because of litigation.

Mrs. Patricia Davidson: Have most of them been there for quite some, or is this recent?

Ms. Suzanne Legault: The ones that are on hold are the CBC cases, mostly, so those are from last year. They are fairly recent.

Mrs. Patricia Davidson: All right. Then I look at this round graph. Could you just explain that a little bit, please?

Ms. Suzanne Legault: That is the one entitled “Types of Complaints”. Actually, I answered this earlier. It's the split in the types of cases we have. Administrative complaints deal with deemed-refusal cases. When a requester is not provided with information within the time limits of the act, that is deemed a refusal. Whether there are extensions that are being improperly applied or fees that are improperly applied, those are administrative types of complaints. I must say that on these, we've been working very hard with institutions. We've met with nine departments that have a high level of complaints. I want to eliminate those administrative complaints. As far as I'm concerned, they are a waste of time in the system. We should not have them, and institutions should not have to deal with them. They should be a lot lower than 48%, because we should really not have them. I am trying now to work with institutions so that we reduce that significantly. They are an inefficiency in the system.

The refusal complaints, the 50%, are the crux of access to information. Those are the exemptions. That is what Mr. Rickford was talking about earlier in terms of the exemptions that need to be applied on national security, on foreign affairs, and on personal information. This is the balance we need to strike in matters of access to information. These are the complex cases. And these are where I say to a department that if the bulk of the issues between the information commissioner and the department are located in refusal

complaints, that is the appropriate place for them to be, because they are in a grey area. There is a lot of discretion, so this is appropriate.

As for administrative complaints, I think everybody is wasting their time on them, and we should work very hard to lower that number.

• (1215)

Mrs. Patricia Davidson: Thank you.

You talked about your staffing levels and the challenges you've had over past years with being understaffed. Now you're overstaffed because of using some of your operational dollars toward staffing.

Do you see this as a temporary action to deal with the backlog? Do you think this will be adequately handled through your regular staffing budget without using operational dollars? I know you've made remarkable progress with the backlog, but do you see that levelling off and decreasing the need to use operational dollars that way?

Ms. Suzanne Legault: I must say two things. First, I've always had a tendency to overstaff a little bit. If you've been following the demographics in the Public Service of Canada, particularly with the young people, there's a lot of movement. The employees at the Office of the Information Commissioner are public service employees, so I expect there will be movement. In fact, it's a good thing for public service employees to move around the federal public service. So I do have a tendency, as a manager, to overstaff a little bit to compensate for that because I expect movement. I think it's normal.

Second, until we have completely reined in these 2,000 cases back to about 500, I expect to make significant use of consultants to deal with the complaints.

Mrs. Patricia Davidson: So when you say 500 a year, you're comparing the 2,000 to the 500.

Ms. Suzanne Legault: Yes. The business model we developed contemplates having a normal carryover from year to year in our inventory of about 500. It's a very significant thing, because if you look at the history of access to information and read the annual report of Inger Hansen, who was the first information commissioner, she dealt with 50 cases, she carried forward 50 cases. That's where it started.

So we're trying to reverse that trend. In 2006-07, with the FedAA we were carrying over about 1,500 cases a year. Our inventory was about 1,500, except we got a spike to 2,500 and that's when we got into trouble. We're trying to reverse that so we only carry over a minimal inventory.

The Chair: Thank you.

Mr. Siksay is next, please, followed by Mr. Easter.

Mr. Bill Siksay: Thank you, Chair.

Ms. Legault, I want to come back to two of your responses to Mr. Rickford. You said that one of the trends you noticed was a decrease in the number of requests where all the information was disclosed. I wonder if you could say a bit more about that and let us know if you've done any analysis of what seems to be going on there.

Ms. Suzanne Legault: These are Treasury Board statistics. The trend is most interesting if you look at it from far away. In 2002-03 we disclosed everything in the documents almost 30% of the time. Now we're at 18%. In 2006-07 we were at 23%. Now we're at 18%.

What's disclosed in part is increasing. That's the trend. What does it mean? It's difficult to say. I don't see all of the requests. This is an analysis that would be interesting to the administration body, the Treasury Board Secretariat. When you look at these statistics they're interesting. The ones that are compelling are about consultations and extensions.

• (1220)

Mr. Bill Siksay: But before you go there, on the issue around the decline in the number of requests that are fully disclosed, would that be part of your systematic analysis project? You mentioned it's a project for Treasury Board.

Ms. Suzanne Legault: We won't be looking at that in the systemic investigation. We're going to look at consultations.

Mr. Bill Siksay: Okay.

Ms. Suzanne Legault: We really have no information on consultations. When Parliament is looking at possible administrative reform to improve the performance on access to information, I am convinced that consultation is where we have to concentrate. I don't have all of the data yet. That's why we're doing the systemic investigation. We need to understand it a lot better.

Mr. Bill Siksay: Is it a problem with legislation or is it a problem with administrative policy at this point?

Ms. Suzanne Legault: You can always do both. You can always amend legislation. There are no timelines in the legislation to put any kind of discipline on consultations. There are no timelines on extensions, as you know. Administratively, no statistics are being collected that are instructive on consultations, and therefore no accountability can be had. When we have complaints, I get the complaint against the institution that makes the request for a consultation, but the consulting institution is not the subject of the complaint. If the institution that's consulting does not get the result of the consultation on time, they are the ones in deemed refusal. They are the ones that have the bad record. The way the system is set up administratively for consultations, there's no real data and there's no accountability and there's nothing in the legislation. I suspect it's a major cause of delays.

Mr. Bill Siksay: Thank you on that score.

Ms. Legault, your budget process is a little different from others, because as an officer of Parliament I guess you first work through the advisory panel on the funding and oversight of officers of Parliament, and then that request goes on to Treasury Board. Can you just refresh our memory about how that process works?

I guess my ultimate question is, is there a difference in amount in what the panel recommended and the ultimate request from Treasury Board?

Ms. Suzanne Legault: The process that's been developed with the panel on the oversight and funding of officers of Parliament is that we first make our case to the Treasury Board Secretariat, and quite a stringent analytical process goes on there to make sure our request for funding is adequate. We attempt to come to an agreement in terms of what's presented before the panel, then we come to the panel and we present our request for funding, and the panel makes a recommendation to Treasury Board whether or not to agree with the request.

The last time we went, the panel recommended our full funding request, but Treasury Board did not grant all our Treasury Board requests. About \$600,000 was cut, and it was mostly for salaries for systemic investigation.

Mr. Bill Siksay: Thank you.

Thank you, Chair.

The Chair: Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

Earlier, Ms. Legault, you mentioned you had initiated some complaints yourself. I don't know if you can answer this, but why would you be initiating complaints yourself?

Ms. Suzanne Legault: The National Gallery of Canada case was a case I initiated when I was acting for the commissioner two years ago. That would be a case where we could decide to initiate a complaint because court documents had been disclosed publicly in the media that e-mails may have been deleted after an access to information request was made, so at the time I decided to initiate a complaint. We see the result of that complaint as of last week.

Sometimes we ask institutions to give us commitment dates when they are in deemed refusal to provide information. Sometimes they give us a commitment date, and if it's a lengthy commitment date, we close the file. But if they don't provide the information at that time, we may initiate a complaint under those circumstances, or any other time we come across something we think is problematic under the act. The reasons why you may initiate a complaint are very broad.

I must put a caveat. I do this judiciously, because I have 2,100 cases on my roster, so I can't go around initiating complaints willy-nilly either.

• (1225)

Hon. Wayne Easter: Yes, another 2,100 on top of another 2,100 wouldn't be a good thing, I suppose.

In your presentation, you said as part of your three-year plan you're undertaking a systematic investigation into delays and time exemptions. You're expanding that due to recent events to examine whether interference in the processing of access requests is the cause of delay or unduly restricts disclosure under the act. We too have some concerns in this area, whether there is a systematic attempt to block the release of information or obstruct it. How long do you expect your process is going to take to be completed?

Ms. Suzanne Legault: The honest answer is that I don't know at this point.

The team that's going to do this investigation is now just completing the report cards process. Part of the information we have gathered in the report cards process is relevant to the investigative plan for the systemic investigation. Also, we have three specific cases of allegations of interference at this point, and these will also be instructive. As I said, the last time we conducted an investigation of this type, it took three years. I'm hoping to halve that, so 18 months is my goal.

Hon. Wayne Easter: I think our concern is with that type of timeframe. As was in the media last week, I believe, or maybe even Monday, there's an allegation that the director of communications for the office of the Minister of Human Resources and Skills Development may have been involved in obstruction or delay. Our concern is with the length of time of your investigation. If it's going to take 18 months, we want to ensure that this doesn't become a pattern, because information from a minister's office, whether it's critical of government or not, is critical to our ability to do our jobs as MPs.

I lay that on the table as a concern we have over the length of time it might take you to get that far. We may have to take other approaches, Mr. Chair.

You mentioned that section 67.1 of the act came in following the Krever inquiry. Has there been only one case under section 67.1 of the Access to Information Act?

Ms. Suzanne Legault: This is the first one.

Hon. Wayne Easter: This is the first one.

Ms. Suzanne Legault: It's the first one. It's the first time that we have referred a matter in relation to an offence under that provision. Now, will there be an investigation? Will there be a prosecution? That's outside my control at this point, but our office has never referred a case before.

The Chair: Go ahead, Ms. Davidson.

Mrs. Patricia Davidson: Thank you, Mr. Chair. I have a couple of very quick questions.

In your three-year plan, you talk about a parallel undertaking to do the report card assessment of the institutions that became subject to the act since 2007, and I think you said earlier that there were 70 or 71 institutions. Are you planning on being able to do all of those within that timeframe?

Ms. Suzanne Legault: We're not going to do the 69 institutions, because most of them have very few requests. We're probably going to manage it around ten institutions.

That's going to include our office, by the way. We're basically going to subject our office to the same report card process. Some agents of Parliament are going to be included, as well as institutions such as the CBC, Canada Post, and VIA Rail. The largest crown corporations are probably going to be included.

• (1230)

Mrs. Patricia Davidson: Thank you.

I think you said there were around 34,000 requests, and 2,000 of those became complaints. Do you know if that is a reasonable ratio when you look at other countries that are doing access to information?

Ms. Suzanne Legault: That is a very good question—

Mrs. Patricia Davidson: Do you have any idea what their ratios are?

Ms. Suzanne Legault: That is a good question. I really don't know. I really don't know whether that's a ratio you see in other jurisdictions. That's a very good question.

What we do know is that it has been fairly consistent year over year. About 5% to 6% of requests result in complaints. There was a spike, as I said, in 2007-08 and 2008-09, but that's mostly related to the complaints against the CBC. If you discount those, it's fairly even over the years in Canada. There hasn't been a particular spike under any particular government, as far as I can tell, year over year.

Mrs. Patricia Davidson: Thank you. That's all I have.

The Chair: Thank you.

I want to quickly echo the comments the members made. I think the feeling is that we're comfortable that you have taken every possible step to ensure the continuity of progress within the commission, and that's very much appreciated and should be noted.

Let me be a little pepper on you, though, regarding new hires. How many of those came from other government departments?

Ms. Suzanne Legault: In the new hires? Most of them came from other government departments. Even the consultants are former government employees who worked in access to information.

The Chair: Okay. That's unfortunate, because all we've really done is shuffled the problem off to other departments. This is a pattern that has been going on for far too long. We need to open up a little bit more. I don't know how to deal with it, but I really wish that commissions and departments were talking to each other, because it is just passing on a problem to somebody else and it's just working its way through the system.

I am very glad that you talked about not just what the numbers are but the commitment to look at the root causes of some of the problems, and the consultations have come up in a number of other areas. I am a former chair of the scrutiny of regulations committee and still serve on that committee, and I do know that a simple response to a letter that you send could take anywhere from 30 days to 30 months. It's astounding how some of the information just does not move between departments very easily, so that every time there is a transfer or a consultation, you open yourself up to having artificially large numbers.

I wanted to ask, in your experience are you seeing transfers to any specific department as being a pattern of some sort? Is there incidence of a bottleneck?

Ms. Suzanne Legault: I think you will clearly see that from the report cards in a couple of weeks.

The Chair: Okay. Well, let's leave it for the report cards, then.

Ms. Suzanne Legault: I will add, though, that there are mandatory consultations under policy by Treasury Board Secretariat for specific sections of the Access to Information Act. So when we look at those mandatory consultations on their policy and the departments that have these information holdings, it's clear where the bottlenecks are. Some of these consulted institutions actually do very well and respond very quickly, and some, as you will see, do very badly.

The Chair: I have one last request that maybe we can deal with at some other time, but with regard to your investigations I think it would be useful to find out from you whether or not you have any points for consideration or recommendations on how the rules guiding you in terms of the conduct and discussion outside of your umbrella about matters related to investigations might want to be considered for improvement or to provide a greater latitude for you. It would appear that a commissioner or an officer of Parliament will become aware of some information that is not directly relevant to their mandate but they have no jurisdiction to have any discussions outside of their own umbrella. That seems to me to be a potential opportunity for improvement to the system of investigations.

• (1235)

Ms. Suzanne Legault: Definitely. When Commissioner Marleau appeared before the former incarnation of this committee, he spoke

about the education mandate and research mandate. For sure, if you look across Canada and other jurisdictions, information commissioners and certainly the privacy commissioner do have education and information mandates, and it does make a difference in terms of the work we can do: do some research in terms of the performance and in terms of what's going on in other jurisdictions to inform the debate here in Canada. We do a little bit of that, but we do it on the corner of the desk at this point.

The Chair: Okay.

Madam Freeman and Mr. Siksay wanted quick follow-ups. Let's handle them in order.

Madam Freeman.

[*Translation*]

Mrs. Carole Freeman: Ms. Legault, in the last paragraph of the message you sent us, you say this:

Both abroad and at the municipal level in Canada, initiatives aimed at opening up the management of information have meant that a growing number of data sets are put on line where the public can access them. The Office of the Information Commissioner will make an ongoing effort to promote the necessary paradigm shift to ensure greater transparency within the public sector, in the hope that this change will give rise to similar initiatives at the national level.

Further on, on page 21, you talk about the initiatives you have taken. The second one involves implementing best practices to ensure there is proactive disclosure.

I know that this Committee will be looking at proactive disclosure elsewhere—at the municipal level, where Quebec sets a good example, or in countries such as the United Kingdom, Australia, New Zealand, Finland and the United States, where Mr. Obama really launched that whole process as soon as he took office. It is clear that all of 2009 was a year of openness and transparency. It's a global trend. Everywhere information is being disclosed.

Of course, that requires political will, but I see that you are a woman of very considerable substance and that you have an absolutely fantastic team. Since you included that in your initiatives, I am wondering how you will go about ensuring that certain departments or agencies put their information up on their site. I don't know whether we are going against the trend here. This is something that brings us into the political realm, but I, for one, would like to know what you can do, within your area of jurisdiction, to improve that openness.

Ms. Suzanne Legault: You are right. There is a real movement afoot and exceptional momentum at the international level when it comes to transparency. Just before Christmas, Australia issued a report which has tremendous relevance for Canada, given that the Australians apply the same rules that we do with respect to intellectual property relating to government information. It is different for the Americans. The Australians are proposing administrative, rather than legislative, solutions to get over that hurdle. I'd say it is a very timely example.

I recently made a presentation at the Canada School of the Public Service aimed at promoting transparency. That applies to all public servants. We set up a working group last September with a view to promoting this initiative during Right To Know Week. As I mentioned in my opening comments, we are going to set an example.

As regards our website, we are getting ready. One of the things that is of particular interest and concern to us is the disclosure of access to information requests, which all departments could put on their website. This is something that people are asking for. Strictly in terms of access, it would be very helpful. We want to become a leader in that regard, and we will do that by setting an example.

Furthermore, we are currently developing our information management policy with a view to proactive public disclosure. When we have final documents in our organization, we can send them to our access to information shop for the documents to be prepared, including the required exemptions—for example, in order to protect personal information. Proactive disclosure then becomes possible. We are encouraging departments to do that. We are currently working with the Librarian and Archivist of Canada and are also in discussions with officials at the Treasury Board Secretariat.

Of course, if legislative changes relating to proactive disclosure were to be proposed—such as the ones in the Quebec legislation, in Great Britain or in other countries—we would support them. I hope that answers your question.

• (1240)

Mrs. Carole Freeman: Yes, but you—
[English]

The Chair: *Je suis désolé.* We're going to complete with Mr. Siksay, and then we're going to have the vote.

Mr. Bill Siksay: Thank you, Chair.

Your enthusiasm for proactive disclosure comes through in your response to Madam Freeman. I look forward when you come back to talking about that specific issue. I think it is very important.

I want to come back to something you told Ms. Davidson. You said you were planning on the Office of the Information Commissioner being subject to report cards in the future. How are you planning on organizing that? Are you going to be evaluating yourselves? What's the process you've planned for that?

Ms. Suzanne Legault: We're going to use a process that is similar to the Auditor General's office. They have a separate audit of their organization. It would be an arm's-length process. It's not going to be perfect. We're going to have to pay for it, so it's not completely arm's

length, but we would be using a similar process. It's an independent verification of our access to information performance.

Mr. Bill Siksay: In the case of the Office of the Information Commissioner, I believe Justice Cory is the person who investigates complaints. Has he had any work lately in that regard?

Ms. Suzanne Legault: We had Mr. Justice Cory the first year. The second year we had Mr. Justice Mackay. Unfortunately, Mr. Justice Mackay stopped at the end of December. We're in the process of recruiting another ad hoc commissioner. This year we have had no complaints, but we had some the first two years. So we've had our own growing pains.

Mr. Bill Siksay: Thank you, Chair.

The Chair: Colleagues, with regard to the vote on the main estimates, I think you know the procedure. We can increase, decrease, or negative, etc.

The total the committee is asked to consider, which is the total vote amount, less interim supply, is \$8,062,546.50.

JUSTICE

Offices of the Information and Privacy Commissioners of Canada

Vote 40—Office of the Information Commissioner of Canada—
Program expenditures.....\$10,750,000

The Chair: Shall vote 40 under JUSTICE, less the amount voted in interim supply, carry?

(Vote 40 agreed to)

The Chair: Shall I report the main estimates to the House?

Some hon. members: Agreed.

The Chair: Thank you.

I thank you and all of your support staff for a very thorough and competent presentation to the committee. We are certainly looking forward to seeing you again on the fifteenth with regard to the report cards. I know you're going to make your tabling in the House on the thirteenth. I'm sure we'll be able to carry on this conversation at that time.

Colleagues, on Thursday, our meeting is on the proactive disclosure. You have circulated to your offices, in both official languages, the background paper and some educational information for our discussion.

Also, notice has been given to the clerk of a motion by Mr. Easter on the subject of delay in access to information requests. That has been submitted and it will be available to consider at our meeting on April 1.

• (1245)

Mrs. Patricia Davidson: Is it being circulated?

The Chair: It's translated. Today you will have it, and that will constitute sufficient notice to deal with it at the committee meeting on Thursday.

There being no further business, we're adjourned.

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