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

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**EVIDENCE**

**Thursday, October 20, 2005**

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**Chair**

**Mr. David Chatters**

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

Thursday, October 20, 2005

•(1100)

[English]

**The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Good morning, ladies and gentlemen.

I call the meeting to order. This is the Standing Committee on Access to Information, Privacy and Ethics. We have two items today with respect to orders of the day. The first is pursuant to Standing Order 32(5), the report of the Privacy Commissioner of Canada for the fiscal year ended March 31, 2005, referred to the committee on Thursday, October 6, 2005. The second item is pursuant to Standing Order 32(5), the report of the Privacy Commissioner of Canada on the application of the Personal Information Protection and Electronic Documents Act for the year 2005, referred to the committee on Thursday, October 6, 2005.

We have three witnesses before us today from the Office of the Privacy Commissioner. We have the Privacy Commissioner, Ms. Stoddart. We have Ms. Black, Assistant Privacy Commissioner, and Mr. D'Aoust, Assistant Privacy Commissioner.

Good morning, Commissioner. I believe you have a presentation to make to us. That will be followed by questions and comments from members of the committee.

Please proceed. Thank you.

**Ms. Jennifer Stoddart (Privacy Commissioner, Office of the Privacy Commissioner of Canada):** Thank you very much, Mr. Chairman, and thank you very much, committee members, for inviting us back again to talk about not one but two annual reports this year.

I must say, as Privacy Commissioner of Canada, that having a committee follow our activities so closely and take a real interest in what we do is a really important asset for the issue of privacy. This is in line with what Canadians have been saying in recent polling we've done, which you may see on our website—that for 70% of Canadians, privacy is a really important issue—so thank you very much.

We would like your feedback, and doubtless we will have it, on the fact that for the first time we have produced two annual reports. I'll talk a little about the contents of these reports.

[Translation]

These reports cover the 2004-2005 fiscal year for the Privacy Act and the 2004 calendar year for PIPEDA. Both detail the efforts we have made to meet the growing demands on our office to act as the guardian of privacy for Canadians on behalf of Parliament.

The good news is that having two reports gives us an opportunity to report to Parliament on our activities at six-month intervals. I hope that we will present you with our next report on PIPEDA very soon, in the spring of 2006.

•(1105)

[English]

I'll talk about this year's—that is, the 2004—PIPEDA annual report. This report is a milestone, I think. It covers the first year of full implementation of PIPEDA, Canada's new private sector privacy law. As you know, it's been phased in since 2001 in stages.

The year 2004 saw PIPEDA reach full maturity. It extends across the country to all commercial activities, except in provinces that have their own substantially similar legislation. These provinces are for the moment British Columbia, Alberta, and Quebec. PIPEDA continues to apply at the same time to federal works and undertakings, to businesses across the country, and, as you would expect, to interprovincial and international transactions.

This is a snapshot of our first year, and I think there is some cause for celebration. Canadians now have a comprehensive set of privacy rights in the private sector across Canada. However, this is not to say these laws fully protect the privacy rights of Canadians in every sense; they don't, and that is one of the subjects we will discuss, but we do have a framework for protecting their privacy rights.

[Translation]

I think that leading up to 2004, there was a bit of skepticism and confusion—perhaps even some trepidation—about the degree of the impact of PIPEDA on businesses. I think that, especially for those who didn't gear up in advance of 2004, there was the perception that the sky was going to fall—and that the legislation would have a significantly negative impact on their business.

Well, the sky did not fall. In fact, what we are seeing is the adoption of improved privacy management practices. Businesses are recognizing that good privacy practices are ultimately good for the bottom line. Businesses need predictability and a harmonized set of rules, and the legal framework in PIPEDA establishes that predictability and consistency.

Our report provides some examples of complaint investigations, in an effort to demonstrate the application of the law. Please refer to pages 33 to 74 for examples of our complaint investigations. And I would be pleased to discuss any of these further with you.

[English]

PIPEDA certainly isn't perfect, but it is a modern approach to privacy protection. Unlike the Privacy Act, PIPEDA has a built-in review mechanism to ensure it's reviewed and brought up to date on a regular basis. We are very much looking forward to Parliament's review of PIPEDA in 2006.

I would like to talk briefly, Mr. Chairman, about the other annual report we have tabled with you, our report on the Privacy Act. It deals with our experiences in privacy protection in the federal public sector in a slightly different time period, the 2004-2005 fiscal year. These aren't the same reporting periods. This report, unfortunately, tells a story quite different from the report on PIPEDA. In addition to highlighting some of the issues my office faced in the past year, this report emphasizes the long-overdue need to modernize the Privacy Act, a first-generation privacy law that hasn't been substantially modified since 1983. Some critics are even of the opinion the Privacy Act may not fully respect the Canadian Charter of Rights and Freedoms.

This state of affairs exists because the privacy landscape is infinitely more complex than it was a generation ago: there is increased globalization, and extensive outsourcing of personal information processes and storage. Canada's Privacy Act has simply not kept up.

[Translation]

To provide you with a few examples: under the Privacy Act, only those present in Canada have the right to seek access to their personal information. This means airline passengers, as well as immigration applicants, foreign student applicants, and countless other foreigners with information in Canadian government files, have no legal right to examine or correct erroneous information, to know how the information is used or disclosed, or to complain to my office. It is our view that this right should be extended.

Although government use of data matching arguably poses the greatest threat to individuals' privacy, the Privacy Act is silent on the practice. It is our view that the act should contain provisions to regulate data matching.

Another example is that complainants may only seek the court review of, and remedies for, denial of access to their personal information. This means allegations of improper collection, use and disclosure may not be challenged before the court, and the subsequent benefit of the court's guidance is lost.

Furthermore, the Privacy Act is not providing remedies for damages. The benefit of the court's oversight of government

operations is lost. It is our view that this shortcoming should be addressed in a reformed act, Mr. Chairman.

● (1110)

[English]

To sum up, the weaknesses of the Privacy Act are even more striking when you compare it against PIPEDA, our more recent legislation. In fact, many of our concerns would be remedied if we could adopt measures in the Privacy Act similar to those we have in PIPEDA. I refer you to the principles enshrined in PIPEDA as an annex; they give a good solid framework for privacy management.

We think the federal Privacy Act is an outdated and often inadequate piece of legislation. It needs a major review and overhaul. I'm urging the government to focus its attention on this reform, so that we can bring the Privacy Act in line with the protections available today to individuals in Canada in the private sector—that is, bring it up to our own standards.

I'd like to conclude, Mr. Chairman, by highlighting a few key issues.

[Translation]

Increasingly, we are seeing ourselves become a form of “surveillance state”. There is more and more data gathering and “intelligence gathering” taking place across the board, all for legitimate public concerns—for example, public safety and anti-terrorism, public health, and to combat money laundering. We all want to be safer, but I think it is important that we raise our voices regularly to remind government not to sacrifice fundamental human rights such as privacy at any cost.

The issue of Canadians' personal information being shared across borders—what we call transborder data flow—is another key concern. This is an old issue that Canada has studied since the 1960s. Recent polls tell us that the level of concern with cross-border transfer of personal information is extremely high. In fact, close to 90 per cent of Canadians surveyed have expressed concerns about their personal information being transferred across borders.

[English]

There is little that federal privacy laws can do at the present time to protect Canadians' personal information once it is in the hands of foreign governments. We are, however, collaborating with the Treasury Board Secretariat, as well as with provincial and international colleagues, to urgently address this issue.

We're also deeply concerned about the government's lawful access proposals and about Internet surveillance, a related question. We appreciate having had the opportunity to take part in consultations with the Department of Justice on this issue and have made a submission to the Minister of Justice outlining our specific objections. This is on our website.

We have no problem in principle with modernizing the tools law enforcement must have for the successful investigation of crime, but, as we say, the devil lies in the details. Individuals do not expect that their telephone calls will be monitored, their conversations recorded electronically, or their computers searched by agents of the state. Without a clear understanding of the problems the proposed legislation is intended to correct, it is impossible to determine if the measures being proposed are necessary and proportionate. We have made similar statements regarding the Anti-terrorism Act, for which we've appeared in Parliament twice.

There are also a number of technology issues that have us increasingly worried. We go into these in detail in the annual report. While there are many benefits to these technologies—to radio frequency identification devices, known as RFIDs, to biometrics, and to geopositioning systems, as examples—we know they also pose significant risks to the handling of personal information. We are carefully studying these technologies and their potential impact on citizens, and we plan to issue guidance to the public and organizations on their use.

Over the past year my office has also devoted a considerable amount of time and energy to preparing a full-fledged business case for all its operations. This exercise involved a careful review and analysis of our activities. We have completed our reports; we submitted them last month to Treasury Board. We are now getting the benefit of their review. We are getting ready for the next step, which is to submit our business case to the new joint House and Senate special committee that will be formed to examine the budget proposals of the various agents of Parliament. Our objective remains the same: to stabilize our resource base so that we can effectively carry out our mandate.

I'll talk briefly about the issue of Mr. La Forest's inquiry.

•(1115)

[Translation]

The question about a potential merger between my office and the Information Commissioner's Office—and Justice La Forest's study into this matter—is also top of mind. We have met with Mr. La Forest and we have attempted to be helpful to him in his research. We undertook a consultative process—with staff and managers—to come up with questions and issues pertaining to a potential merger. These have been shared with Mr. La Forest.

We are also finalizing a series of observations related to these questions, and these will also be sent to Mr. La Forest in the next day or so. They will also be made public—and I would be pleased to send you a copy, Mr. Chairman, for the purposes of this committee's study.

In a nutshell, however, I think more important matters relate to the legislation and resources available to the offices to achieve their mandates.

In closing, I hope you have found our annual reports useful in offering a sense of the focus of our work during the reporting periods, as well as some critical privacy issues which we think require urgent and immediate attention.

[English]

As I have stated in my reports, we are generally pleased with the results of our interventions—with the cooperation of both business and government in trying to comply with fair information principles and legal requirements—but we think there is a steady erosion of privacy rights taking place and, with the dramatic increase of surveillance technologies and the desire of government to share more and more information in the name of public safety and security, it is very difficult to keep up the pace.

We'd like to encourage everyone—parliamentarians, government departments, business, and citizens—not just to care about privacy, but also to take an active role in protecting citizens' rights. Our combined efforts can help to protect Canadians' personal information. Certainly the Office of the Privacy Commissioner can't do this job alone. This is why I appreciate your interest, and Parliament's interest, in the question of protecting personal information.

I continue to look forward to working with you.

I would be very pleased to answer your questions, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** Thank you very much, Commissioner, for coming again this morning. I also thank you for giving us your initial presentation in writing; that's helpful.

As you know, we have a number of rounds of questions. The first round will be seven minutes per caucus.

We'll start with Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you, Mr. Chair.

Thank you, Ms. Stoddart, for appearing before this committee. I'd like to start my seven-minute round of questioning with regard to the latter part of your presentation, on the possibility of a merger between your office and the Information Commissioner's office. I understand, and you've stated so in your report, that you've met with Mr. La Forest. You've prepared some questions and you have some observations that will be going into a report that will be made public.

For the benefit of this committee, and for the record, I would like to ask if you could share with us some of your personal opinions. Do you think such a merger would be beneficial to Canadians, and is this something you would support?

•(1120)

**Ms. Jennifer Stoddart:** Thank you very much for the question. Clearly this is an important question.

As I stated, with the assistant privacy commissioner I met with Mr. La Forest. After looking at the various questions—and we did take time to look at all the implications of any proposed merger and the different models that exist for handling information rights—I've come to the conclusion that a merger would not be in the interests of the privacy rights of Canadians at the present time. We have many challenges before us. I have many administrative challenges. I've just laid out to you, I think, a major area that needs our attention, which is the reform of the Privacy Act.

So in looking at all the evidence, and getting the opinion of my staff and the many experts who are with us, I think these are the important things that the government and I should be addressing at the present time. In this context, I don't think a merger would be helpful. In fact, it would be a setback to me pursuing these objectives.

**Mr. Tom Lukiwski:** And you've shared those thoughts with Mr. La Forest?

**Ms. Jennifer Stoddart:** Yes, I have. I've shared many of these considerations with Mr. La Forest. I am about to send him a formal resumé of this, and I will make it public.

**Mr. Tom Lukiwski:** Thank you very much for your candour.

I'm going to give you a hypothetical. I don't want this to appear as an unfair question, but I mean, it's a possibility that Mr. La Forest may come back with a recommendation stating that he believes it would be in the best interest to merge the two offices. Then I suppose the determining factor on that would be the Prime Minister's decision on whether or not he wishes to implement the recommendations.

If that happened—and again, this is extremely hypothetical—would you consider applying for the new position of information commissioner of the merged offices?

**Ms. Jennifer Stoddart:** As you said, this is a hypothetical question. I have many, many challenges before me, and my attention is focused on doing the best I can for the Office of the Privacy Commissioner and applying not one but two laws at the present time. I really can't speculate on what the Prime Minister might do or what future design could come up, and what process may be involved with that.

**Mr. Tom Lukiwski:** I appreciate that, and I agree, frankly, that your focus currently should be on your present position, but it must have crossed your mind on several occasions that the potential is there, the possibility is there, that the merger will take place. The reason I ask this question is that if that eventuality occurs, have you given any thought to an exit strategy? In other words, if the merger does take place, how would you most efficiently close out your office?

**Ms. Jennifer Stoddart:** No, I haven't, Mr. Chairman. As I say, I am named in virtue of one law, and indirectly two laws, for a mandate of seven years. I am focused on my mandate. I have a very challenging mandate because of the events of June 2003. I have a

new law, PIPEDA, to apply. I am totally focused on that, and I have honestly not turned my mind to anything else.

**Mr. Tom Lukiwski:** Have you had any discussions with Commissioner Reid on this issue? He has stated publicly...although I guess he's changed his opinion over the course of the last year or two. Have you had any discussions with him as to his thoughts? Have the two of you consulted on how you would both see the most efficient way to collapse the two offices and form them into one, if the possibility did occur?

**Ms. Jennifer Stoddart:** Commissioner Reid and I have a good working relationship. We meet regularly. I hope to continue this working relationship. But no, we have not spoken of that. I don't think either of us is there. Commissioner Reid was kind enough to tell me in advance of his latest position. I told him I'm listening to my staff, listening to the expert opinion I get, and I will make my position known in due course, and so on. We have not gone beyond that.

**Mr. Tom Lukiwski:** Mr. Chair, how much time do I have left?

**The Acting Chair (Mr. David Tilson):** You have a minute and a half.

•(1125)

**Mr. Tom Lukiwski:** Just to put a cap on this, would it be fair to state, then, in your considered opinion, that you think the best interests of Canadians would be served by retaining the present model, with both an information commissioner's office and a privacy commissioner's office? Would that be fair to say?

**Ms. Jennifer Stoddart:** That's my opinion, yes.

**Mr. Tom Lukiwski:** Thank you, Mr. Chairman, that's all.

**The Acting Chair (Mr. David Tilson):** You have a minute left and no questions?

Monsieur Laframboise.

[*Translation*]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Thank you, Mr. Chairman.

I do have an opinion about the merger of the two offices, and I mentioned that yesterday. Access to information and privacy considerations are becoming increasingly different. As you say, you are moving toward technology more and more. In the case of access to information, we are talking about information contained in government documents. The more technology evolves, the more privacy and access to information considerations are becoming different.

Have I misunderstood?

**Ms. Jennifer Stoddart:** No, I think you understand very well. A number of experts have emphasized that increasingly the challenges facing the intelligence world have to do with technology, globalization and internationalization caused by extraordinary events that go far beyond the authority of a single entity. Access to information, for its part, is still very focused on government-related information.

**Mr. Mario Laframboise:** Consequently, you will not be surprised that I said that hiring Mr. La Forest was a waste. That is my political position. I think it would have been better to give you the money.

That leads me to some other questions. Last year, you had some staffing and staff training problems, because you were behind in processing complaints.

Has that problem been solved?

**Ms. Jennifer Stoddart:** Are you talking about our human resources?

**Mr. Mario Laframboise:** Yes.

**Ms. Jennifer Stoddart:** No, that issue is far from being settled. In the proposal we put before Treasury Board, which will soon be on their agenda, we asked for a significant increase in our resources, among other things to handle complaints, and particularly to deal with the delays that we unfortunately find occurring.

**Mr. Mario Laframboise:** If I understand correctly, you have received 723 complaints under the Personal Information Protection and Electronic Documents Act, of which 379 have been processed. So there is still a lag. You have received 1,577 complaints on personal information, and you say you handle 1,185 a year. So you are always falling behind, and you will never be able to catch up until you have the budget you need.

**Ms. Jennifer Stoddart:** Yes, we are losing ground. We had a fairly comprehensive study of our complaint processing system done to determine whether we could be more efficient without requesting additional resources. The study took some time. We concluded that, even if we tried to change our practices, we will still need a net increase in resources for our investigations.

**Mr. Mario Laframboise:** Can you put a number on it? Can you tell us exactly how much more you need?

**Ms. Jennifer Stoddart:** I can give you figures off the top of my head. We need four person-years for two years to handle the backlog, and four more person-years to handle complaints. So we need eight people immediately, four of whom would stay.

**Mr. Mario Laframboise:** Perfect. In your report on the Personal Information Protection and Electronic Documents Act, you talk about a new source of potential intrusion—use of radio frequency identification devices.

Some organizations are reputed to incorporate chips into the products they sell, so that our movements could be monitored. You say that this could be dangerous. For example, RFID devices could be incorporated into car tires. This may be justified with rental cars, but not in other cases...

You are so concerned about this that you want to monitor and audit these companies to ensure they do not use personal information for other purposes. I would like you to explain what is going on, and what your concerns are.

• (1130)

**Ms. Jennifer Stoddart:** You have summarized our concerns very well. RFID technology is slowly but surely being increasingly used in Canada, particularly in major corporations, since it is rather difficult to implement and very sophisticated. However, we are going to be seeing increasingly widespread use in ordinary, everyday items and objects.

The objects in themselves are not harmful. RFID technology is certainly helpful in managing inventory and protecting objects

against theft and improper use. However, how will information on the people who buy those objects, the use they make of them and other personal information be handled? As a result of RFID, corporations might end up owning vast data banks. At present, we are communicating with companies who use or are likely to use RFID technology to remind them of the principles applying to the protection of personal information. As I said, we are considering establishing some sort of utilization framework and organizing a public education campaign.

**Mr. Mario Laframboise:** For example, my employer could give me a pencil that would make it possible to monitor my movements by satellite anywhere in the world, right? Without my knowledge, my employer would know where I had been and what I had done, just by giving me a pencil, or some other equipment item.

You say that we have to be careful, and I would agree. So you would like the budget you need to audit how companies use the information obtained through RFID technology. Is that right?

**Ms. Jennifer Stoddart:** Yes. In the budget estimates we put before Treasury Board, we ask that one budget be submitted to the parliamentary committee for officers of Parliament, and another budget be submitted to enable us to hire experts who could help us monitor the development of these new technologies. They are extremely complex; these are industries that are created and change, sometimes within a short span of a few months. Things move very quickly. For a public service agency, these technologies are very difficult to monitor, and we need constant reports from specialists and plentiful information.

**Mr. Mario Laframboise:** Do you have any employees assigned solely to audits at this time? In your two reports, I saw that you wanted to establish an audit section.

Do you already have one?

**Ms. Jennifer Stoddart:** Yes, we have a fairly small audit section, which currently has about eight employees and is part of our project — a project we presented in this document — to strengthen our ability to audit technologies, such as radio frequency emitters.

**Mr. Mario Laframboise:** And to issue reports...

[English]

**The Acting Chair (Mr. David Tilson):** Thank you, Monsieur Laframboise. Unfortunately, you'll have to carry on later.

Mr. Powers.

**Mr. Russ Powers (Ancaster—Dundas—Flamborough—Westdale, Lib.):** Thank you, Mr. Chair.

Ms. Stoddart, welcome back.

My first question relates to the two reports you've tabled. I think you attempted to perhaps introduce the rationale for the tabling of two separate reports. In the past, they likely would have been blended. Perhaps you could help us again with the rationale as to why you're doing them like this. You referred to time intervals and things such as that.

**Ms. Jennifer Stoddart:** Yes, it is unusual.

This report, the green report, is the report on our Privacy Act. This is the only report that the Office of the Privacy Commissioner made until the year 2000. This is on the federal public sector Privacy Act, the one we suggest is direly in need of reform and would like to bring to your attention as an object of work for Parliament.

**Mr. Russ Powers:** And that report is for what period?

**Ms. Jennifer Stoddart:** Under the law, we report on the fiscal year, like other government departments.

The blue report is on PIPEDA, the Personal Information Protection and Electronic Documents Act, which was adopted in 2000 and came into force in stages in 2004. For the first full year of its implementation in 2004, we have done a separate report. PIPEDA tells us to report as soon as possible after the end of the calendar year. Because this is a start-up year, because of the events in the Office of the Privacy Commissioner and so on, we have brought these out together this year. We hope to bring out the sequel to this for 2005 much earlier in 2006. We hope to be back before you in the spring of 2006 just to report on PIPEDA for the calendar year, as the law requires.

• (1135)

**Mr. Russ Powers:** I note in your comments that you've asked for some response from us in reaction to it. From that rationale of the reporting periods—and probably there's a very good rationale as to why reports should be tabled from the standpoint of it likely coming in October for the period ending the previous fiscal year, and shortly thereafter the calendar year, because of the requirements of statutes—unless you hear something major and contrary from us or someone else, is it likely to be your intention to continue to table these individual reports?

**Ms. Jennifer Stoddart:** Absolutely, in the appropriate time-frames.

And if I could just come back to the issue of the five-year review, Mr. Chairman, unlike this law, which is of another generation, PIPEDA calls for a five-year review. This review is coming up in 2006. I would think the members of this committee, with their acquired experience and their interest in privacy matters, would be very interested in following that parliamentary review of this law. I have no information as to when or by what committee it's being reviewed at the present time.

**Mr. Russ Powers:** From my recollection, I believe the statute dictates that about January of next year is when the review should commence on that.

**The Acting Chair (Mr. David Tilson):** My recollection, Mr. Powers, is that the committee has penciled that in, assuming something funny doesn't happen in the interim.

**Mr. Russ Powers:** Christmas will still be December 25.

Can I move on? I'll build on the honourable member Mr. Laframboise's question.

You came to us earlier this year with regard to approvals on the main estimates for the department. I'm going to use the terminology "frustrated". You certainly didn't display that, but very clearly there were challenges and identifiable backlogs within your own department. Could you perhaps build on that? You started to for

Mr. Laframboise on things such as that. Could you expand upon that?

**Ms. Jennifer Stoddart:** Certainly.

In responding to Mr. Laframboise and the previous honourable member, I referred to the challenges that my office has met and is overcoming gradually since the events of June 2003: staffing issues, budget issues, structural issues, administrative issues, and so on. One of the challenges that has come up before this committee, and which you know of, is that we have no permanent funding for PIPEDA at the present time. We have permanent funding for the Privacy Act, we have funding under two acts, but the funding for PIPEDA has just been carried over because it was initially voted for three years and then different events intervened.

So I'd say about six months of the year have been taken up this year with a very intensive housekeeping effort in order to go through our processes, look at the privacy landscape, look at how we think we should be structured and equipped to meet the privacy challenges for Canadians, and then to see what resource levels we would have ideally starting in April 2006 to meet these challenges. We have just tabled what's called our business case review with the Treasury Board Secretariat, which is looking at it, and I believe it will come before the special committee of the House and the Senate in the coming weeks. We're looking at, honourable member, asking for something in the realm of a 50% increase in our resources over the next few years.

**Mr. Russ Powers:** So notwithstanding the development of a strategic plan for your department, how have you done in getting on top of the identified backlogs that you brought to our attention earlier?

**Ms. Jennifer Stoddart:** The backlogs in the complaint world are still a challenge. I don't think anybody has a quick fix. There are only so many complaints you can deal with when you have a certain level of resources. We've tried to give people a maximum amount of information through our website, through tools on our website, and so on, so that they can hopefully solve their problems themselves. But serving the public quickly and efficiently does remain an area of preoccupation for us, and we're asking for a major amount of resources in that area.

• (1140)

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Powers.

Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** Thank you, Mr. Chair.

Thank you, Ms. Stoddart. It's nice to see you again. I'm just a new member on this committee, so I'm looking forward to seeing more of you. But I'd like to start with some questions.

Ms. Stoddart, you were hired in 2003, I believe. As such, I guess your official position is that of an officer of Parliament, but your appointment is by Governor in Council, is that correct? Are you a full-time Governor-in-Council appointee?

**Ms. Jennifer Stoddart:** I am, yes.

**Mr. Pat Martin:** I'm interested, then, in whether or not you would be aware of or familiar with the terms of employment of a Governor-in-Council appointee. Would you have looked at the document that outlined your salary, benefits, parking, the list of all of those things that are terms and conditions of your employment?

**Ms. Jennifer Stoddart:** Mr. Chairman, I am a Governor-in-Council appointee, but doubtless the honourable members will remember that I was ratified after hearings by both the House of Commons and the Senate. That is in the act. So those are special conditions attached to my employment.

I was given a little booklet when I assumed office. It outlines the terms and conditions of Governor-in-Council appointments. I read that very carefully. I've underlined it, because as you may remember, I transferred from the provincial civil service, so some of the conditions may have been new to me. I've checked it several times. I hope to govern myself by its stipulations. I hope I've mastered them.

**Mr. Pat Martin:** Certainly, and I don't intend to raise anything to the contrary.

**Ms. Jennifer Stoddart:** No, but there's a little green book that you live by, and that's how it works.

**Mr. Pat Martin:** And I would think other Governor-in-Council appointees would do the same, would review the terms and conditions.

Because we have so little time, if I can get to the point of my question or the preface, under "Severance Pay" under the terms and conditions of employment, it says, "Appointees are entitled to one week's pay for each completed year of service up to a total of 28 weeks, payable on termination of employment and regardless of the reason for departure". Have you ever read that particular paragraph?

**The Acting Chair (Mr. David Tilson):** I'm sorry, Mr. Martin. I won't take away from your time, but I don't know whether members of the committee are having trouble with the sound. I'm concerned. I'm told BlackBerry's have an effect. If members of the committee or others in the room are playing with their BlackBerry's, perhaps they could desist until after the meeting is over.

Mr. Martin, I'm sorry. Your time will continue.

**Mr. Pat Martin:** Let me make it clear, Ms. Stoddart, that this line of questioning isn't in any way to be critical of you. You're the first Governor-in-Council appointee I've run into since I came across the terms and conditions surrounding the employment conditions of Governor-in-Council appointees.

Is it your understanding that if you quit your job in the middle of your seven-year term you would be eligible to receive, according to this, one week's pay for each completed year of service?

**Ms. Jennifer Stoddart:** Well, that's my understanding if that's what's written in the booklet, Mr. Martin. I would think that would be what would govern the situation, yes—and another Governor-in-Council appointee is nodding here, a former general counsel.

**Ms. Heather Black (Assistant Privacy Commissioner, Office of the Privacy Commissioner of Canada):** It rings a bell, yes.

**Mr. Pat Martin:** Maybe on a personal level—and if I trample on your right to privacy, you'll be the one to remind me, I'm sure—would you feel compelled to ask for severance pay if you quit your job in the middle of the seven-year appointment?

**The Acting Chair (Mr. David Tilson):** You know, Mr. Martin—

**Mr. Pat Martin:** But I prefaced it by saying she doesn't have to answer this, although she may be interested in answering.

**The Acting Chair (Mr. David Tilson):** I don't know where you're going with this, but I want to talk about the Privacy Commissioner. I hope you're not going somewhere else on this.

**Mr. Pat Martin:** No, not at all.

**The Acting Chair (Mr. David Tilson):** Of course not. Just keep it in mind. I'd like to keep the conversation relevant.

**Mr. Pat Martin:** Relevancy. I understand, Chair.

That's fine. I think you've given me the information I want.

I do have some specific questions about the Privacy Act. I was very interested in both of your reports, PIPEDA and the Privacy Act. I can tell you one thing. I know you've come from a provincial jurisdiction. In Manitoba we had a serious concern when they privatized the Manitoba health records, the Manitoba health data service. They sold it to a private company, which then promptly sold it to a company out of Denver, which then sold it to a company out of Houston. So now my personal health records are held in Houston. This was ten years ago, so I don't know how many times it may have flipped again. We've completely lost track of that.

One of my questions was going to be along those lines, but you've clearly pointed out that there's very little we can do to protect the privacy of Canadians once that information crosses international borders. I'm very concerned about that.

The other example, if I could, just before I give you a chance to answer, is the Lockheed Martin census. The federal government was going to contract out the collection of our census data to Lockheed Martin, which is not only a foreign corporation, but is involved in the military, where the USA PATRIOT Act might be of particular application or use, given the nature of the contracts that Lockheed Martin is engaged in. When you call for amendments to the Privacy Act, has your office given thought to how we might expand that protection, specifically in that example?

•(1145)

**Ms. Jennifer Stoddart:** Yes, and as I said in my opening remarks, one of the constant challenges in front of our office this year has been the issue of transborder data flow, both in the public and private sectors. This is why we say, and as you repeated, we need a major overhaul of the Privacy Act to deal with the standards the government should use in the treatment of its outsourcing of personal information.

Minimally—and we haven't gone into all the details, because we think we're raising this challenge and that the government should look at this itself—the government could do what is already in PIPEDA, our private sector privacy act, whereby if you outsource the personal information, you have to bind your contractor to the standards that are extant in Canada. You'd almost have to make binding corporate rules, binding contractual obligations. That's in PIPEDA and would be one technique.

**Mr. Pat Martin:** I see—and CIBC was circulated as an example of one particular problem you've been having when they approached their clients, asking them to essentially sign away their right to privacy. I don't know if you've seen this. We were circulated this document about the CIBC.

Just before the commissioner answers, Mr. Chair, could I ask how much time I have left?

**The Acting Chair (Mr. David Tilson):** You have no more time. Time's up.

Mr. Zed.

**Mr. Paul Zed (Saint John, Lib.):** Thank you, Mr. Chairman.

Commissioner Stoddart, I have a copy of a press release that was circulated January 27, 2005. Could you explain, for the benefit of this committee, this \$371,590 that your office awarded for research? While you're doing that, if you wouldn't mind, I reference for the committee page 81 of the privacy report. You have some detailed expenditures. Where would those funds have come from?

**Ms. Jennifer Stoddart:** Yes, they would have come, in fact, from the money allocated to us.

Our funding is set up such that we can spend up to \$500,000 in contributions. That was something I took cognizance of when I became Privacy Commissioner. It had originally been set up that way when the funding was originally granted by Treasury Board in the year 2000. So it comes out of the \$6.2 million that we are granted under PIPEDA.

We put it into application for the first time last year. This is our announcement of it. The money was given under a competition in order to further research on privacy issues, privacy technology, and legal administrative issues. The amounts and the organizations that received the grants have been put on our website. Then, as they handed in their reports, the links to the websites where the reports were published were also put on our website.

•(1150)

**Mr. Paul Zed:** I've been listening to you now for some period of time talk about the backlog of complaints, the challenges of estimates, and the difficulty you're having keeping up with the work of your office. It's a follow-up question, actually, to Mr. Lukiwski's

inquiry about the merger of these two offices—of the Information Commissioner, who makes the same complaint, that there's never enough money....

As you may know, there's a cabinet committee that is reviewing, line by line, government expenditures to look for efficiencies that might occur. At one level you may be describing this process that's under way as a setback for privacy, from your point of view, but don't you see any benefit to Canadians by merging these two offices and by looking for some efficiencies, and in fact by providing better service to Canadians, as opposed to a setback for privacy or for information?

**Ms. Jennifer Stoddart:** One of the paradoxes seems to be—and I get this from members of my staff, some of whom have had experiences of living through mergers, and so on—that in fact mergers in the federal government, at least, seem to cost money, not save money. So would there be any efficiencies? Any efficiencies would be extremely long term, from what we can surmise superficially. I think this takes a real study. All I'm interested in at this point is this. It's not a quick fix to my investigator problems or to Commissioner Reid's investigator problems to put the two of us together, I guess.

**Mr. Paul Zed:** Okay, that's fair.

**The Acting Chair (Mr. David Tilson):** We're down to three minutes, Mr. Zed. I'm sorry. You got a one-minute bonus, I might add.

Mr. Harris.

**Mr. Paul Zed:** Thank you.

**Mr. Richard Harris (Cariboo—Prince George, CPC):** It's my understanding that the awarding of contracts over \$25,000 must be put out to bid. Is that correct?

**Ms. Jennifer Stoddart:** That's my understanding, with the exception of legal contracts.

**Mr. Richard Harris:** Right.

I have your financial proactive disclosures, and we thank you for that.

On March 1 of this year, there were four contracts, separate listings here, to Canon Canada all in the same day, all with the same reference number, each for about \$15,000—a total of \$66,000 all to the same company. All these contracts are, of course, under \$25,000, but in total they add up to \$66,000. One would automatically assume that this contract was split into four sections to stay under the \$25,000, and then sole-sourced, because they met the sole-source criteria.

Can you shed some light on that, please?

**Ms. Jennifer Stoddart:** Honestly, honourable member, I can't shed light on that. I don't recognize the particular contract. All I can say is that I've asked that we follow every applicable regulation down to the last detail, so I would be very surprised—

**Mr. Richard Harris:** I see Ms. Black acknowledging it.

**Ms. Jennifer Stoddart:** Okay, thank you.

My director of finance and administration informs me that these contracts were let in accordance with the standing offer procedure of Public Works, which is not subject to the limit. So we were following the applicable regulations in that case.

**Mr. Richard Harris:** I see. Okay. Would it be possible for me to contact your office and get some further information on that?

**Ms. Jennifer Stoddart:** Certainly. We'd be happy to give you any information you'd like.

**Mr. Richard Harris:** All right, thank you.

The 18th annual testimonial dinner—I see that you and Ms. Black attended. Each filed separate expenses for that. Where was that dinner held?

**Ms. Jennifer Stoddart:** I believe this is the Public Policy Forum annual dinner in Toronto.

• (1155)

**Mr. Richard Harris:** Is that it?

**Ms. Jennifer Stoddart:** Yes, it is.

**Mr. Richard Harris:** Okay, thank you.

Also, you made a three-day trip to Mexico, and the total amount for that was \$5,200. Was that your personal expenses, or does that include any staff members?

**Ms. Jennifer Stoddart:** I don't have it in front of me. I think it's only my expenses, but it may include, unless they're reported separately, the amount I paid for the British Columbia commissioner, David Loukidelis, who accompanied me, at my invitation, because privacy is a shared jurisdiction. It's noted on the website that they're both our expenses, but I can't speak from memory as to whether that's my amount or the combined amount.

**The Acting Chair (Mr. David Tilson):** Sorry, Mr. Harris.

**Mr. Richard Harris:** Okay. Could I contact your office again on that?

**Ms. Jennifer Stoddart:** Certainly.

**Mr. Richard Harris:** Thank you.

**The Acting Chair (Mr. David Tilson):** Monsieur Desrochers.

[*Translation*]

**Mr. Odina Desrochers (Lotbinière—Chutes-de-la-Chaudière, BQ):** Good morning, Ms. Stoddart.

**Ms. Jennifer Stoddart:** Good morning.

**Mr. Odina Desrochers:** I read your presentation very carefully. On page 16, you state: "But there is a steady erosion of rights taking place, and with the dramatic increase of surveillance technologies [...]". You expressed a great deal of concern about the USA PATRIOT Act and the Anti-Terrorism Legislation established in Canada in an attempt to protect our borders.

If I asked you to compare what we have now and what we had before, could you tell us what citizens have lost when these two pieces of legislation — one in Canada and one in the U.S. — were enacted?

**Ms. Jennifer Stoddart:** What the citizen has lost is the transparency with respect to how his personal information is

handled. We, the citizens of Canada, never know when personal information can be subject to application of the USA PATRIOT Act, nor what information can be subject to it. Data bases are interconnected and some personal information is handled in the United States for business reasons. Given the concerns regarding international relations, there is reason to believe that our personal information could be looked at without our knowledge.

We could not rightly claim that situations of this kind did not exist in the past, because every country has national security legislation. However, since 2001, the probability has increased.

So we've lost that transparency. We have also lost the role our judges traditionally played in the balance between citizens and security forces in the arbitration of such cases. In our statements criticizing the anti-terrorism legislation, we regularly point out that the traditional judicial power in our system has been reined in. It is the judiciary that considers whether a person has been unjustly incarcerated or treated, or whether personal information has been used for improper purposes. With the lack of transparency in the current Canadian justice system, we are far less likely to uncover mistakes.

**Mr. Odina Desrochers:** What recourses are there?

**Ms. Jennifer Stoddart:** In the current system, very little. When we appeared to speak on the Anti-Terrorism Act, we suggested that the application of the legislation be very closely monitored, given the rights that have been taken away from judges.

There was some progress when Public Safety and Emergency Preparedness Canada announced that a parliamentary committee would act as a committee to monitor application of the Anti-Terrorism Act, to mediate the effect of excluding judges.

**Mr. Odina Desrochers:** Do you have access to...

[*English*]

**The Acting Chair (Mr. David Tilson):** Have you concluded?

**Mr. Odina Desrochers:** Yes.

**The Acting Chair (Mr. David Tilson):** Okay, Mr. Lukiwski.

**Mr. Tom Lukiwski:** I'd like to get back to asking your opinion on a few things regarding the potential merger—I shouldn't say the proposed merger because we don't know if that's what the proposal will be. The process under way in which to make a recommendation to the Prime Minister is being handled by an eminent person, as you know, Monsieur La Forest. I'd like to get your opinion if you think that would be the best way to examine this potential merger, or would it be better served for Canadians if a parliamentary committee such as this one were to have undertaken that examination?

• (1200)

**Ms. Jennifer Stoddart:** Mr. Chairman, I haven't given detailed thought to the process. I would say several complementary processes could be useful. Mr. La Forest is an eminent jurist, well known for his scholarly abilities. He's undertaken similar studies in the past, I think, on the Canadian Human Rights Commission and so on, so he's familiar with this, but certainly one would expect that a parliamentary committee would also look at this. These are not simple questions, so I would think many opinions and many examinations could be very useful.

**Mr. Tom Lukiwski:** Along those same lines, I want to shift a little bit to the appointment process itself. You were appointed, as was Mr. Reid; officers of Parliament are engaged by appointment. I'd like to get your opinion of whether you think that is the best way in which to staff those positions or whether you think Parliament itself, through committee or through debate in Parliament, would be a better way in which to finally determine the staffing positions for offices in Parliament, including positions such as yours.

**Ms. Jennifer Stoddart:** Again, Mr. Chairman, I haven't given detailed thought to this.

**The Acting Chair (Mr. David Tilson):** Nothing is easy here.

**Ms. Jennifer Stoddart:** Thank you.

I think these are questions you should debate, that should be debated. Certainly there is concern about nomination processes generally. I'd remind the honourable member that the persons nominated, I and other agents of Parliament, are subject to a ratification process, which is extraordinary.

Should the process be changed? I'd say, why not look at it? Why not? In a democracy things evolve. Perhaps there's a better process, a more participatory process.

**Mr. Tom Lukiwski:** Please correct me if I'm wrong, but my understanding is that the ratification process you're talking about—and you referred to it as hearings, I think, earlier in your testimony—is really after the fact. Did not those hearings, as you call them, occur after your appointment was made?

**Ms. Jennifer Stoddart:** No. If you read the act, you'll see my nomination is subject to confirmation by both Houses of Parliament. A name is proposed, I gather, then there are hearings, and then after the hearings both Houses vote on this. This is an extraordinary process already.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you.

I just want to go back to the money issue again. What's driving most of this proposal for a possible merger of the privacy and information offices is of course a desire for a cost-saving measure; it's only that. It's the thought that there might be some cost savings. Have you been asked to do a numbers crunch as to cost savings?

**Ms. Jennifer Stoddart:** No, I haven't.

**Mr. Derek Lee:** See, I don't understand that, Mr. Chairman: if that's why we're approaching this issue, why we don't have a number crunch already done so we can at least see the benefit of proceeding? The government of course has a subcommittee in cabinet whose job it is annually to find \$2 billion or \$3 billion in savings. That meant getting out the knife and cutting.

In this case the legislation that set up information and privacy functions actually had the two possibly together, so it's a good bet for possible savings. But you haven't been asked to generate a number, to do a number crunch.

Hopefully, that's being done over at the Information Commissioner's office. Somebody has to be doing it; otherwise, we're just

talking public policy here, and on the public policy side you might as well keep the two offices separate.

I'll stop there. Do you have any comment on that?

**Ms. Jennifer Stoddart:** No. I would just perhaps repeat what I said. In looking at the experience our staff could bring and looking at things without crunching numbers, I'd say merger is not a short-term way of saving money. It takes money.

**Mr. Derek Lee:** That's been a public sector experience repeated quite often, but looking at the medium or longer run, I'd say the expectation we might be able to save money is in my view the driving force here, and I'm disappointed. It doesn't have to be your office that does it, but somewhere somebody could be doing a putative, tentative number crunch to see if we're headed in the right direction, and if we're not, we should call off the dogs.

Anyway, thank you, Mr. Chairman.

• (1205)

**The Acting Chair (Mr. David Tilson):** Mr. Epp.

**Mr. Ken Epp (Edmonton—Sherwood Park, CPC):** Thank you very much.

Thank you, Madam Stoddart, for being here.

I have a general question. There is a lot of data that's being collected on pretty well all of our citizens. It includes everything from social insurance numbers to addresses, birth dates, and all of these things, but it seems to be really quite difficult for individual citizens to determine what that information is. I'm thinking right now specifically of credit records. Some of us go from time to time to the bank to apply for a loan, and the bank has the right to access that credit record. Individual citizens do too but for the payment of a fee, unless there are some other rules there that are applicable. Do you think it should be easier for individual citizens to access their own records, whether they're health records, credit records, etc.?

**Ms. Jennifer Stoddart:** It should be very easy for citizens to do that, but I wonder, Mr. Chairman, if I could ask Assistant Privacy Commissioner Heather Black, who has extensive experience in issues of access to credit records, to give some more details to the honourable member.

**Ms. Heather Black:** Thank you.

The question of access to credit reports is where you started, as I understand it. The bank, with your consent, if they're going to extend you credit, has the right to access your credit report. Credit reporting is governed under provincial legislation with fair credit reporting acts of various sorts and is overseen in most provinces by a registrar. The controls on who may access credit reports are fairly stringent. You have to be a member recognized by Equifax or TransUnion or whatever in order to access those records. I have access to my own credit report and anyone else I give consent to can access the credit report, but that's essentially it.

Does that answer the question?

**Mr. Ken Epp:** It does, but if a request is received by the agency that is housing this data, how do they determine you're the one asking for it? How do they determine you're the owner? I'm thinking of a case where an individual had his report or his status queried by someone who was not authorized to do so because the agency did not exercise due care and attention to see whether or not this was an individual who was entitled to have it.

**Ms. Heather Black:** It does happen. I'm certain that if you as an individual ask to have access to your credit report from one of the credit reporting agencies, they do check to make sure you're the person in question and are entitled to the records, but it wouldn't surprise me to hear that occasionally there are slip-ups in this sort of thing. Equifax and TransUnion are both fairly, as I said, stringent in their requirements for who may access credit records. It's a very important piece of personal information about most of us, something that in the hands of the wrong person could do serious damage in terms of identity theft, so they are very, very careful.

**The Acting Chair (Mr. David Tilson):** Thank you, Ms. Black.

Monsieur Laframboise.

[*Translation*]

**Mr. Mario Laframboise:** Thank you, Mr. Chairman.

In your report on the Privacy Act, on page 24, you state that you would like to extend its application. You say:

[...] the federal government has created many entities that do not appear subject to either the Privacy Act or PIPEDA; [...] Such entities take the form of boards, tribunals, commissions, foundations, institutions, and corporations. [...] So far, we count over 30 entities not clearly subject to privacy legislation.

Could you give me some examples of entities not subject to privacy legislation?

• (1210)

**Ms. Jennifer Stoddart:** Among these entities, we find the Civil Aviation Tribunal, the Competition Tribunal, my office—the Office of the Privacy Commissioner of Canada—the Office of the Information Commissioner of Canada, the personnel of the Supreme Court of Canada and the Transportation Appeal Tribunal of Canada. These are some of the most striking examples.

Among these entities, several are clearly federal; others are subject to both provincial and federal legislation.

We wonder what kind of standards for personal information protection are followed by these organizations.

**Mr. Mario Laframboise:** Thus, you are recommending that these organizations should be entirely subject to the legislation. Is this really what you mean?

**Ms. Jennifer Stoddart:** We're suggesting that the issue should be studied very seriously and that perhaps we should change our approach: everyone, without exception, should be subject to this legislation rather than adding or forgetting some entities. I think that it is unacceptable at this time that key organizations are not subject to this legislation.

**Mr. Mario Laframboise:** Especially the Civil Aviation Tribunal and the Transportation Appeal Tribunal of Canada, which deal directly with the exchange of information and yet are not subject to your scrutiny.

Do you hope that these changes will be included when the act is updated in 2006?

**Ms. Jennifer Stoddart:** Right now, we are studying these new entities; there is the issue of foundations. We should, if necessary, set up specific regulations for them. Tribunals are subject to specific regulations with regard to public hearings, following our traditions of public law and open tribunals.

Apart from these cases, I think that we should start from the basis that all organizations are subject to this legislation and that, in exceptional cases, some part of their activities can be exempted for specific reasons.

**Mr. Mario Laframboise:** Do you have any examples of foundations in mind?

**Ms. Jennifer Stoddart:** I have a list here: among others, there is the Canada Foundation for Innovation, and the Canada Millennium Scholarship Foundation.

[*English*]

**The Acting Chair (Mr. David Tilson):** Thank you, Mr. Laframboise.

Mr. Martin.

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

I'd like you to reconsider your intervention about the relevance of my first line of questioning.

**The Acting Chair (Mr. David Tilson):** I was just afraid of where you were going. You can go along a little bit, but you're getting close to going outside of what we're talking about today. That's all I'm saying.

**Mr. Pat Martin:** I understand. I'm not going to push the relevance issue, but I was a member of the committee that ratified the appointment of Ms. Stoddart unanimously and with enthusiasm.

**The Acting Chair (Mr. David Tilson):** If you stick to that.... With what's going on around this place, I'm a little concerned that you're going somewhere else.

**Mr. Pat Martin:** If you can allow me a little bit of latitude, I'm sure you'll interrupt me if I exceed it.

I would like to ask you a question that I would have asked you at the ratification meeting. If you quit your job in the middle of your seven-year term, would you expect to receive severance beyond what's outlined in the terms and conditions of your employment put out by the PCO for Governor-in-Council appointees?

**Ms. Jennifer Stoddart:** Nothing has led me to believe that I would have any entitlement or any reason to expect that I would have anything other than what is set out in what I call the little green book.

**Mr. Pat Martin:** Thank you, Ms. Stoddart.

I won't push it any further than that.

**The Acting Chair (Mr. David Tilson):** If you had mentioned chewing gum I would have been really upset.

**Mr. Pat Martin:** Yes, I stopped at the chewing gum.

I do have a very specific question about your outline. Under criticisms or shortcomings of the current Privacy Act, one of the things you recommended to the committee that we might want to look at is the fact that immigration applicants and countless other foreigners with information have no legal right to examine or correct erroneous information, etc. I have some concern about that.

You outlined that you have a terrible backlog and an inability to keep up with work now. Would that not invite a landslide of work, a volume of work from people who are foreign nationals and not Canadian citizens? I'm wondering why someone who is not a Canadian citizen would have the right to tie up your office to that degree, and why you feel that would be necessary.

• (1215)

**Ms. Jennifer Stoddart:** Exactly, honourable member. It's a right that we think is there. But of course if Europeans travelling through Canada used it in the thousands, we would be totally stymied. It's just an interesting example. But in that case there's been an administrative arrangement.

We have to separate the two things. I think it's a matter of some concern that Canada, in 2005, does not extend protection of personal information rights to anyone whose information is held by the Canadian government. This is very unusual. In Europe you have a right to access information if your information is held by the countries of the European Union.

**Mr. Pat Martin:** Within the European Union.

**Ms. Jennifer Stoddart:** That's right. It was a matter of some concern in the wake of 2001 in the API/PNR debate, and so on, that given the fact that its law is of another generation, Canada does not recognize that humans have rights, whether or not they're Canadian citizens; that privacy is a fundamental right, and as a country that respects rights and has a Charter of Rights and Freedoms, we should be extending these rights, as a principle, to humans whose personal information we hold.

In order to palliate this, the Canada Border Services Agency has come to a particular administrative arrangement with the European Commission in order to treat it administratively and give administrative redress, in the absence of formal legal redress.

So we are meeting our international obligations through those kinds of things, but of course if all those people came to our office we would be overwhelmed. Again, it is reason to look at whether we are resourcing privacy rights the way we should in 2005.

**The Acting Chair (Mr. David Tilson):** Thank you, Commissioner.

Mr. Martin, thank you.

That concludes the second round. We'll take a brief break and continue with the third round of questioning.

• (1217)

(Pause)

• (1231)

**The Acting Chair (Mr. David Tilson):** I'd like to reconvene the meeting. We're now into the third round of questions.

Commissioner, Mr. Zed has some questions.

**Mr. Paul Zed:** Thank you, Mr. Chairman.

Commissioner, I want to go back to this merger. I'm obviously fixed on it in the sense that the review of Justice La Forest is under way, and, like my colleague Mr. Lee, I am interested in the fact that the only reason you would do this is for cost savings. Having said that, there are obviously some very important public policy issues—on the one hand of privacy, and on the other hand of information. You must have a view as to why there's a conflict with those. It's pretty apparent. In fact, the argument might be that they're doing different things.

Do you feel that it's a little bit of a contradiction in your mandate to even consider merging these offices?

**Ms. Jennifer Stoddart:** Yes, it certainly is. It's not in my mandate at all. The Privacy Act is written as a kind of stand-alone law. It references the other law, but it was clearly not written, I would say, as a law to function in a merged operation.

**Mr. Paul Zed:** Earlier you used the word “setback”. You said it would be a setback. Would you share for the committee some principles of things that you view would be a setback?

**Ms. Jennifer Stoddart:** Yes, it would be a setback, certainly in terms of the functioning of the office, and secondly, indirectly, a setback for Canadians in terms of the services we can give them.

If we just cast our eyes back over what's been happening at the Office of the Privacy Commissioner since June 2003, there's been a lot of upheaval and many examinations by various commissions and authorities in the federal government of the functioning of the office. This has been very challenging and very difficult for our staff. The processes have gone on over several months and years, and we are bringing them to a close as I speak now. But I think, and I often say to my staff, to the assistant commissioners, it's really serious, and I think tragic, that the Office of the Privacy Commissioner lost so much time with these administrative problems at such a critical juncture of Canadians' privacy rights.

I'm just looking forward now to getting out of this phase. Our staff is looking forward to this, to some security of functioning, to some serenity, stability, and so on. We would really like to focus on what we are there to do and not on more administrative issues.

• (1235)

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Desrochers.

[*Translation*]

**Mr. Odina Desrochers:** I would like to come back to the list of entities. Is the Canadian Unity Council on this list? You spoke of foundations that are not subject to the act.

**Ms. Jennifer Stoddart:** I do not see the Canadian Unity Council on the list that we have here, but this may not be a final list. It gives more of a general idea. I cannot give you a definite answer to that question.

**Mr. Odina Desrochers:** Do you have a final list, or just a preliminary one?

**Ms. Jennifer Stoddart:** I believe we drew up this list. I do not think that there is a final list.

**Mr. Odina Desrochers:** Could you draw one up?

**Ms. Jennifer Stoddart:** I hesitate to say yes, because I do not think that we are the proper organization for that: we are a small organization specialized in personal information protection. Some central government authority must have a list of all the entities.

**Mr. Odina Desrochers:** Like Treasury Board, for instance?

**Ms. Jennifer Stoddart:** Perhaps, or the Department of Justice. Either of them would be better prepared than we are to give you a final list.

**Mr. Odina Desrochers:** Thank you very much.

A little earlier, at the break, you were asked questions with regard to any concerns you may have about the new terrorism bill and the new American bill. You were pleased to see that a new House of Commons committee would be created.

To your knowledge, has this committee met? Were you given any reports? Are you satisfied with the situation?

**Ms. Jennifer Stoddart:** I don't think that we received any information on that subject.

**Mr. Raymond D'Aoust (Assistant Privacy Commissioner, Office of the Privacy Commissioner of Canada):** I have not received any information on that subject.

**Mr. Odina Desrochers:** Is this a committee solely responsible for producing a report, or is this a committee which might meet and to which you might be invited to ensure that your concerns are being addressed?

**Ms. Jennifer Stoddart:** I believe it is a committee of parliamentarians: senators and members of Parliament. I will ask Mr. Raymond D'Aoust, the assistant commissioner, to answer your question, because he has looked into the matter.

**Mr. Raymond D'Aoust:** Are you referring to the committee which will examine our budget proposals?

**Mr. Odina Desrochers:** No, I am referring to the committee which monitors legislation which curtails citizens' protection.

**Mr. Raymond D'Aoust:** I have no information on that issue.

**Ms. Jennifer Stoddart:** We read that the committee would be chaired by Senator Colin Kenny, who reported on the need for a monitoring committee. Last summer, Minister McLellan announced the creation of such a committee. That's all I know.

**Mr. Odina Desrochers:** Did the monitoring committee mention the RCMP?

[*English*]

**The Acting Chair (Mr. David Tilson):** Are you talking about the anti-terrorism committee?

[*Translation*]

**Mr. Odina Desrochers:** Yes.

[*English*]

**The Acting Chair (Mr. David Tilson):** Do you know anything about that? If you don't, I guess we'll move on.

**Ms. Jennifer Stoddart:** The honourable member is coming back to something I'd mentioned, which is that we understand that Minister McLellan announced the creation of a committee of parliamentarians—as compared with a parliamentary committee—that would be an oversight committee on national security matters. This was one of the things we had suggested in our submissions on the anti-terrorist review.

I think the honourable member was asking about that, and about whether we had any more information. We don't, and we certainly are not part of that; it's parliamentarians.

● (1240)

**The Acting Chair (Mr. David Tilson):** I'm sorry, Monsieur Desrochers, I wasn't sure what committee you were talking about. I can give you another couple of seconds.

[*Translation*]

**Mr. Odina Desrochers:** Is the committee you are referring to in charge of conducting a follow-up, or does this committee have the power to address the weaknesses you pointed out in your report?

**Ms. Jennifer Stoddart:** It's a committee which does follow-up on legislation, which monitors and discusses the use of extraordinary powers when issues of national security are at stake. I believe that's all.

[*English*]

**The Acting Chair (Mr. David Tilson):** Your time is up now.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you, Mr. Chair.

Ms. Stoddart, I'll go back and pick up on a comment you made just a few moments ago, I think on questions from Mr. Zed, about administrative matters. You were hoping to put the challenges or the problems with some administrative matters behind you so that your office could get down to the work that, as you so aptly point out, you were intended to do.

With respect to some administrative issues, about two years ago, I believe, the Public Service Commission went into the Office of the Privacy Commissioner to do an audit on staffing. They subsequently made eight recommendations. In May, I believe, you appeared before the committee and said that you hoped to have all the recommendations completed and applied within a few months. Could you give us the status of those recommendations? Have they been completed?

**Ms. Jennifer Stoddart:** Yes, we're virtually through this exercise. In fact, I was discussing this yesterday with Madam Barrados, the president of the Public Service Commission. They are following our work, and we have almost finished what they require of us.

I think the one area in which they diagnosed some further need for work is in terms of control of our staffing, follow-up control mechanisms of our staffing activities. She has intimated to me that they are pleased with our progress, they are ready to review it, and they foresee that we should return to a normal state fairly soon.

**Mr. Tom Lukiwski:** I'm admittedly a little lost on this, and again I'm looking for some clarification. If eight recommendations had been given to your office close to two years ago, it would appear to me that those would be the first things I would engage in trying to comply with aggressively and quickly and expeditiously. Could you give an update as to why it's taken so long?

**Ms. Jennifer Stoddart:** That's the question we ask ourselves too. I'd just say, honourable member, that the processes of creating policies are long. These are human resource policies, so we're often changing policies, changing practices, defining them, putting them into place, working them through, and creating committees that weren't there—for example, a committee to meet with our unions. We have three unions, and so on, and health and safety committees, and so on. None of this was there, so this is a long process.

Because we also have had our delegation exercise of certain powers suspended, at each step we consult with the Public Service Commission. The Public Service Commission itself is going through a phase of renewal, I understand. So this is just something that takes a certain time to work through. It's not because it hasn't received our full attention; it's a sequential operation, I would say, that folds out over months.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Powers.

**Mr. Russ Powers:** Ms. Stoddart, I'm just going to talk about PIPEDA exclusively in that. You've been nurturing relationships with the other provincial and territorial jurisdictions with regard to common elements of it. I know you've been pursuing some relationships and understandings with regard to PIPEDA on that. Could you apprise us of what's been ongoing on that particularly? There's no purpose in reinventing the wheel when there is proof of practices elsewhere of things that we can adopt or buy into, or that we all buy into, whatever the case is.

Could you help us with that?

**Ms. Jennifer Stoddart:** In terms of interjurisdictional cooperation?

**Mr. Russ Powers:** Yes, that's correct.

**Ms. Jennifer Stoddart:** This has been one of the key targets of activities in our office. I'm very concerned as federal Privacy Commissioner that we fall into some kind of privacy war in terms of interjurisdictional squabbles, which would be extremely detrimental at an age of electronic transfer of information. So it's very important that we have harmonious, practical working relationships with all the administrative authorities across the country.

So we have concluded formal agreements with, for example, the B.C. and the Alberta privacy and information commissioners. We have a very active working relationship with them. We have undertaken investigations jointly with them. I don't know if Assistant Commissioner Heather Black could give you more details on those investigations.

There's one problem. We do one part; the Alberta commissioner has done another part. We have done joint training with the provinces because the issues that we face are the same.

There is one other initiative in Ontario that has just had some new health privacy legislation. We have a working relationship with them. We have a letter of understanding so that the citizens won't feel that they're being thrown from one jurisdiction to another, or that they fall between the cracks.

I'll just mention, to conclude, Mr. Chair, that we also undertook a study. We asked a lawyer for a legal opinion, a study of Quebec's private sector privacy law, which had already been in place for some five years before PIPEDA was announced, because it's important that all the authorities that are interpreting the same privacy laws interpret them in a complementary or similar fashion, or we'll have an unworkable smorgasbord. And the Quebec law was not known much outside of Quebec, so we just launched that in August.

I don't know if you want any details of how we investigate our complaints.

• (1245)

**Mr. Russ Powers:** I've already used up my time.

**The Acting Chair (Mr. David Tilson):** You've got about 30 seconds, if you can finish it.

**Mr. Russ Powers:** Perhaps Ms. Black would like to comment on that further.

**Ms. Heather Black:** We've had only one joint investigation, and that was with the Alberta information and privacy commissioner. We reported on it in the annual report. It was one of those situations where a lot of personal information went missing in a lot of different directions. Some was under their jurisdiction and some was under ours, so we combined forces to do an investigation.

The only other thing I would like to mention is that last winter we had a very successful investigators' conference in Regina and we had investigators from the western provinces, primarily, there. It was very well received and we got to exchange a lot of good information.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Harris.

**Mr. Richard Harris:** Thank you.

I'd like to follow up on Mr. Epp's question to Ms. Black, if I may. Let's say that just prior to an election a member of a political party went on a fishing expedition through a friend who was a member of one of the credit reporting agencies, and basically sought the credit records of every candidate in another political party in an attempt to find something that they could maybe use during the campaign to embarrass a particular candidate. According to what you said recently—and I know it to be true—if you're a member of Equifax or the other one, you have every right to make ongoing credit inquiries. But this would of course be an abuse of that membership.

Is there anything in place to prevent this type of abuse or, if it happens, is there any redress that the affected candidates whose credit records were searched could take?

**Ms. Heather Black:** It sounds like a far-fetched scenario.

• (1250)

**Mr. Richard Harris:** Well—

**Ms. Heather Black:** I think it may not be. We have had situations where members of either Equifax or TransUnion went on a fishing trip, though a little more limited than what you said. But as soon as Equifax and TransUnion were apprised of that fact through a complaint, normally either to them or to us, they take action against the member; they may suspend them, or they may simply refuse to do business with them, because there are only a certain limited number of reasons for which a member may ask for credit reports, such as a landlord checking a tenant. There's not an open season on credit reports just because you're a member.

So there are sanctions. Complaints to the provincial regulator would be good, and complaints to us, and then we deal with Equifax. [Translation]

**Mr. Mario Laframboise:** On page 74 of your report on the Privacy Act, under the section entitled "Audit and Review", you propose a review of the Canadian Firearms Registry. In 2001, you audited this program, and you made recommendations in your 2003-2004 report. The department told you that it had made improvements. You say: "These include better written agreements with contractors to protect personal information [...]" I therefore presume that the department deals with contractors. Given the amount of money spent on this program, it's surely a large organization.

When do you intend to audit the administrators of the Canadian Firearms Program to determine whether the law was applied? Do you have enough staff at your disposal? You told us that your audit service has limited resources and not much personnel. That worries me. The Canadian Firearms Registry contains a lot of personal information. Judging by the way it operated, I'm afraid these people may be passing out the information wholesale. When and how will this audit take place, and do you have enough people to do the job?

**Mr. Raymond D'Aoust:** If I may, I will try to answer your question.

We are constantly in contact with the agency. The audit itself goes back to 2001. You probably know that this entity underwent several organizational changes. However, we have stayed in fairly constant contact with the organization through our team of auditors. Thankfully the people who conducted the 2001 audit are still with us. So we have been able to stay on top of the situation.

Discussions are ongoing. We insist a lot on the fact that access to information should be tightened, and limited to the information the officers need to do their job. Our interventions address those issues.

**Mr. Mario Laframboise:** In your report, you are much more radical: you say: "[...] it is time to refresh our knowledge of the program in order to plan a new audit."

**Mr. Raymond D'Aoust:** Yes.

**Mr. Mario Laframboise:** When do you intend to carry out this new audit?

**Mr. Raymond D'Aoust:** We are in the process of shoring up our resources to conduct the new audit. The director general of auditing is in the process of establishing a three-year audit plan, and that entity will be included.

I don't have the exact date, but it will certainly be included in our three-year plan. In the meantime, we are nevertheless keeping an eye on them. If you wish, we can come back when the plan has been

drawn up and provide you with more specific information on the matter.

**Mr. Mario Laframboise:** You do monitoring. You said that one of your officials does the monitoring. When you monitor, do you produce reports?

**Mr. Raymond D'Aoust:** Yes.

**Mr. Mario Laframboise:** I am concerned about the registry. You know what happened with the way the Canadian Firearms Registry was managed, so please understand that I'm worried.

**Mr. Raymond D'Aoust:** Yes.

**Mr. Mario Laframboise:** You told us that there had been several changes, several amendments to the program. I agree, and it cost a fortune.

This is the problem: was personal information protected? You can't give me any guarantees of that as long as the audit has not been conducted.

**Mr. Raymond D'Aoust:** Indeed.

**Mr. Mario Laframboise:** That's it?

**Mr. Raymond D'Aoust:** Yes.

[English]

**The Acting Chair (Mr. David Tilson):** The chair has a question. It's probably a question that was touched on by Mr. Zed.

You have stated, and I think it's on your web page, that a law firm was hired with respect to some of the Quebec experience. Then of course there's this press release that you've talked about, or that Mr. Zed referred to, which you have given us and that uses the word "outsourcing" to do work, which is a good labour term.

My question is twofold. Do you not have qualified people on your staff who can do these things? Second, have you reached the point—and I'm looking particularly at the research that was done with respect to the Quebec issue—where it would be more cost-efficient to have people on your own staff, whether they be legal counsel or more experienced people, to deal with these issues? Ignoring the legal person who was retained, I gather this totalled \$371,000 plus, which is a lot of money to have spent.

So my questions are twofold: is it more appropriate to have an in-house counsel, and why can't your staff handle these issues?

● (1255)

**Ms. Jennifer Stoddart:** Thank you, Mr. Chairman.

The question of why we gave \$371,000 to a series of organizations, some universities, and some private sector, across Canada has to do with fostering research on privacy-related issues across Canada, not whether or not we could have done them in-house per se. This was a program that had been set up when the budget for PIPEDA was created and the money was allocated in 2000. The idea is to stimulate and promote research across Canada into different issues that go into helping us as a society protect personal information.

**The Acting Chair (Mr. David Tilson):** Why can't your staff do that?

**Ms. Jennifer Stoddart:** Perhaps we could in the long term, although I honestly doubt it. We certainly couldn't have at that time. This money had been earmarked specially for this particular function. In the long term, I don't think we'll ever be able to duplicate, and I would think it would be not wise if we took over, the functions of universities across Canada, such as administrative schools—I'm just looking at the list of them—and advocacy groups, the Canadian Marketing Association, and so on. This way of functioning allows us to help different milieux make the most of or maximize their experience, whether it be scholarly, private sector, and so on. No government office will ever be able to hire the number of experts who worked on this.

So this is a way of linking up public money at a fairly low cost, I think, with ways it can be used in various milieux across Canada.

**The Acting Chair (Mr. David Tilson):** I just look at the topics that were raised, Commissioner, on this press release, and to me they fit right in with the work you're doing on a continuous basis. I guess I just look at the cost-efficiency of it. If you say this is a one-shot issue, and that appears to be your answer, that's okay, although I must confess—and I'm not challenging it at all—when I look at these topics, they look to be of the very thing you're being asked to do.

**Ms. Jennifer Stoddart:** Well, with great respect, Mr. Chairperson, I don't think we could do them and ever have the expertise for the same amount of money that was spent across Canada. We had many university professors and many experts in almost every province who contributed for rather modest sums. Honestly, we could probably never, first of all, hire these people as staff. It's the kind of really highly specialized knowledge I think you want to draw on from time to time.

**The Acting Chair (Mr. David Tilson):** And the issue of legal counsel?

**Ms. Jennifer Stoddart:** No, we would not have had the particular issue that was explored in the study on Quebec legislation. Nobody in the office could have done that. It took one particular expert. There are not many people generally who could have done that, so I'm very confident that was the right choice. It couldn't have been done otherwise.

**The Acting Chair (Mr. David Tilson):** Mr. Powers.

**Mr. Russ Powers:** I have one single question. We've had previous presentations from other officers on the reports. The first one was with regard to the budget, and there are always the challenges with the budget. Are you experiencing a challenge in hiring qualified investigators? Because this is certainly something they indicated, that there are only so many of them around. Granted, we were talking about access to information and things like that, which is perhaps an element of the job, but is the staffing pool pretty slim?

• (1300)

**Ms. Jennifer Stoddart:** I don't think it's huge. I think our issues in terms of hiring have more been the time the process takes by the time you go through the tests and run the competitions. We want to go to a large area of competition for fairness, so Canadians can apply from all over. I'd say the pool is not huge; yes, it's not huge. There is

a lot of call on qualified people and it's a slow process, so all of that challenges us.

**Mr. Russ Powers:** Thank you, Mr. Chair.

**The Acting Chair (Mr. David Tilson):** Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you, Mr. Chairman.

Ms. Stoddart, I'll go back to a couple of other administrative issues, some of which I think have been dealt with before or at least discussed before in your previous appearances before this committee. One is an undertaking I believe you had given this committee that every time an investigation was completed, you would supply a copy of that to the clerk of this committee for distribution to members of the committee. I don't think that has been complied with. I'm just wondering, if not, would you give a further undertaking to comply with that today?

**Ms. Jennifer Stoddart:** Mr. Chairman, I'd need further clarification on that commitment. Our investigations are private, anyway.

With respect, honourable member, I really don't remember making that commitment. Perhaps what led you to believe that is that I did make a commitment at the same time last year to share with you the results of our investigation into the CIBC Visa affair, and that was a topic of some debate when I was last here.

That has been sent to you, I believe, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** The chair's only recollection is that a former member, Mr. Hiebert, I think, asked for some information, and I don't know whether we've received that or not. But I don't know. I can't assist Mr. Lukiwski because I don't have that material with me.

**Ms. Jennifer Stoddart:** Could we check the record, Mr. Chair, and see what the honourable member is referring to, and certainly the CIBC Visa case finding?

**The Acting Chair (Mr. David Tilson):** Our recollection is that Mr. Hiebert asked for some information.

**Ms. Jennifer Stoddart:** And he hasn't gotten it?

**The Acting Chair (Mr. David Tilson):** Well, it would have come to the clerk, and the clerk hasn't received it.

**Ms. Jennifer Stoddart:** Let us follow up on that.

**The Acting Chair (Mr. David Tilson):** To be fair to everybody, I must say we're thrown by this question, but we'll check it.

**Mr. Tom Lukiwski:** You didn't take that away from my time, though, did you, Mr. Chair?

**The Acting Chair (Mr. David Tilson):** No, Mr. Lukiwski, you have all kinds of time left.

**Ms. Jennifer Stoddart:** Will the clerk then communicate with us as to what it was? We followed up specifically on the engagement we made after our last year's annual report, which concerned this particular investigation and is on our website as well. If you could tell us what other expectations members might have, we can follow up on them.

**Mr. Tom Lukiwski:** Thank you, Ms. Stoddart.

Let me move on to something else, then. You mentioned in your annual report that you would like to see some modernization of the Privacy Act. Could we get an undertaking from you to provide information on some of the changes you would like to see? I'm not talking about the actual legislative wording. I'm talking about, in layman's language, some of the changes you would like to see made to modernize the act. I think that would be of great benefit to committee members, for them to get a better understanding of what you would like to see done going forward within your office.

**Ms. Jennifer Stoddart:** Yes.

**Mr. Tom Lukiwski:** When do you think we might be able to receive that?

**Ms. Jennifer Stoddart:** Perhaps by the end of November.

**Mr. Tom Lukiwski:** Thank you.

You'll deliver that to the clerk, I assume.

• (1305)

**Ms. Jennifer Stoddart:** Yes, we will.

**Mr. Tom Lukiwski:** Again, on the administrative side, can you give this committee an explanation of why your annual reports were so delayed? I understand you've got a research department within your office that I assumed would have been able to write those documents. It just appears that they've been late, for reasons I can't fathom, and I wonder if you could give an explanation to this committee.

**Ms. Jennifer Stoddart:** The explanations are administrative. We have not one but two annual reports to do. This is a considerable challenge, given the backdrop of all the administrative issues we're carrying that other departments or agencies that have had a more serene history, shall we say, are not carrying. I think that by the time we got these reports into a final form Parliament was not sitting, so we then, in accordance with the rules, waited till it reconvened in September in order to table them.

**Mr. Tom Lukiwski:** You quite correctly had planned to separate PIPEDA, and I would think that report perhaps could have been done separately and filed as early as the spring.

**Ms. Jennifer Stoddart:** Well, that was our intention, but for administrative reasons we simply did not do it. We recognize that this is a failing, and as I said in my speech, we hope to be able to give you the next PIPEDA report in the spring, on time as it should be.

**Mr. Tom Lukiwski:** The last question regards staffing, and this may relate to some of the problems you are facing. I think in May you mentioned you were still somewhat short of a complete staff within your office. Could you give us an update of the status of your staffing complement right now? Are you still short of where you want to be?

**Ms. Jennifer Stoddart:** We have staffed quite a few permanent positions but we still have several positions that are occupied temporarily, so we continue to run competitions. Over and above filling the available positions, we're now at the point where we realize that in fact it's more than just filling the positions: it's the new resources we would like to have. I come back to the investigator issue that is a subject of interest for many of the committee members; we need eight new investigators. We have a competition and we

have some candidates we're going to approach, but we don't have all the positions we could offer them. This is a problem.

**The Acting Chair (Mr. David Tilson):** You had bonus time.

Monsieur Laframboise.

[*Translation*]

**Mr. Mario Laframboise:** Ms. Stoddart, on pages 71 to 73 of your report, you refer to the Canada Border Services Agency and you say that you warned them that you would be conducting an audit. I will also take the trouble to read a passage, so that the people who are listening to us understand what type of information is kept by the agency:

The information might include financial, family history, health, and travel information; personal identifiers such as the social insurance number, immigration and passport numbers; and biometrics—digital photographs, fingerprints and iris scans.

You hold these people under close surveillance, at least that's what I understood. You warned them in July 2004 that you would conduct an audit. You tell us in your report that the audit was to begin in May 2005, and the report completed in January 2006.

Have you begun your review, and are things proceeding as you expected? Can you give us any indication about the situation now, or will we have to wait until your report comes out next January?

**Ms. Jennifer Stoddart:** Until now, things are more or less unfolding as expected. It is too soon for us to give you the results of the report. We have an advisory committee which is conducting audit exercises and which is comprised of experts in the areas of security, privacy protection and national security. The committee meets so it can brief us on the early conclusions of the audit. Everything is going well. We will surely find out what things are working well and make some suggestions on where improvements can be made.

**Mr. Mario Laframboise:** You are of the opinion that the Canada Border Services Agency is the main organization through which flows personal transborder information is exchanged. Is that correct?

**Ms. Jennifer Stoddart:** In fact, this audit confirms what I observed when I became the Privacy Commissioner, namely that Canadians are very anxious about personal information being disclosed at the border, particularly at the border with the United States, since we exchange much more information with that country than with any other. That's why we began our audit in that area.

• (1310)

[*English*]

**The Acting Chair (Mr. David Tilson):** Mr. Epp.

**Mr. Ken Epp:** I'd like to ask a few questions with respect to your staff. Do you have lawyers on your staff?

**Ms. Jennifer Stoddart:** Yes, we do.

**Mr. Ken Epp:** How many?

**Ms. Jennifer Stoddart:** I believe we have seven who are working as lawyers.

**Mr. Ken Epp:** Do you have an external advisory committee?

**Ms. Jennifer Stoddart:** Yes, we do.

**Mr. Ken Epp:** How many are on that?

**Ms. Jennifer Stoddart:** There are five people.

**Mr. Ken Epp:** Do you know their names, or will you provide them to us?

**Ms. Jennifer Stoddart:** Yes, I do. They're on our website.

**Mr. Ken Epp:** They're on the website? We can get them there. We don't need to take the time here.

In your statement, you mentioned the concerns you have with respect to the government and other agencies monitoring the content of e-mails. What can be done about that, and what are your concerns about that?

**Ms. Jennifer Stoddart:** Our concerns are with a piece of proposed legislation that has not been tabled before Parliament and which we have not seen. We've only seen résumés of it. It is called lawful access legislation. In this, one of the proposed techniques to be used and to be made legal would be the monitoring of e-mails for various reasons.

What can we do about it? I've spoken about it. We have quite a lengthy question piece on our website about it. I wrote to the Minister of Justice with my concerns. I think you, as parliamentarians, when this bill is finally tabled, can raise some of the questions we have expounded about this, as many others have, and ask for some explanations.

**Mr. Ken Epp:** Are the questions you have raised on your website? Are they available elsewhere, or can you send them to me?

**Ms. Jennifer Stoddart:** Yes, they're on our website. Under May 2005, there is quite a long piece that raises the issues of lawful access and problems with the suggested legislation.

If I could just come back to your previous question, I have two cards here from my staff, one of whom says we have five lawyers and the other, six lawyers. I wouldn't want you to think I'm not giving you the best information. We have some people who are lawyers but don't work as lawyers, so there may be a little change there.

**Mr. Ken Epp:** I'd like to ask about the no-fly lists. I'm one of the few parliamentarians, I think, who likes mathematics and physics, and I like electronic toys and so on. I have a GPS, so I happen to know, from not long ago on one of my flights back out west, that we flew over the United States. It occurred to me that this means that because we were in their territory, the airline must have downloaded their file to the American security people, with the names of everybody who was on board, and some identification. I couldn't care less; I have nothing to hide. In fact, I'm glad if the Americans invite me over their country, especially if we can save some fuel and gain some time, which I think is the reason for doing that.

What are your concerns about those no-fly lists? Why should anyone care if the security agencies either in Canada or the United States are aware of who is on an airplane?

**Ms. Jennifer Stoddart:** I think the question is, this may have great practical implications for Canadians' mobility rights. One of the pretty basic freedoms is the freedom to move around as you wish, and from what we've seen of the administration of no-fly lists, it doesn't really seem to be an exact science. We think there's a possibility that if these are not correctly done, and if relevant criteria are not used in drawing them up, then ordinary people.... Even you, honourable member, if we look at the experiences to the south, may

find yourself erroneously on a no-fly list as you go to fly back to your riding.

I don't know if you saw the list of 24 questions we sent to the Department of Transport to see that the reasons for putting somebody on a no-fly list be as narrowly defined as possible. We've seen some very major misuses, I'd say, of the no-fly list in other examples and other circumstances.

•(1315)

**Mr. Ken Epp:** Thank you.

Thank you, Mr. Chair, for the bonus time.

**The Acting Chair (Mr. David Tilson):** Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you, Mr. Chair.

Ms. Stoddart, can you just give us an update on what backlogs you may be experiencing in your office? Maybe you can reference your replies in terms of issues and timeframes for completion. Do you have a backlog of cases currently?

**Ms. Jennifer Stoddart:** Yes, we have backlogs, both in the Privacy Act.... I think we have roughly 600 cases backlogged. When people write in, we have to reply to them that we can't treat their case right away. We have 150-some cases that are over the deadline set in the law, PIPEDA.

I would like to point out that, on average, we can treat cases fairly quickly—about six months, for the Privacy Act, to eight months. We have tabled those average times with you. But we do have a backlog. We have a backlog in PIAs, privacy impact assessments, about 20 PIAs. We encourage government departments to send us PIAs as a proactive way of avoiding privacy pitfalls. At the same time, we've never really been funded for them by Treasury Board, so we don't have the staff to do these in a very expeditious way.

**Mr. Tom Lukiwski:** It's a staffing issue more than anything else that's causing the backlog?

**Ms. Jennifer Stoddart:** Yes, it's a resource issue. If I could remind you, we don't have permanent funding. The Privacy Act funding has not been looked at since, I think, 1997 or 1998. The PIPEDA funding was set up in 2000, when the law was created, and it was just carried over. It was for three years and was carried over automatically because of the unusual situation at the Office of the Privacy Commissioner.

So a lot of our energy has been put into our new business case, and we really hope we'll get a favourable reception for a 50% increase over a period of months.

**Mr. Tom Lukiwski:** Assuming that happens—and let's hope you're right—what is your best guess in terms of the timeframe for catching up on this backlog? Will you ever be there?

**Ms. Jennifer Stoddart:** Oh, yes. Our first priority will be to attack the backlogs, yes. We're asking for just short-term funding in order to do that.

**Mr. Tom Lukiwski:** What's your best guess in terms of timeframe?

**Ms. Jennifer Stoddart:** If we got additional resources, it wouldn't be until April, so I would say it would probably take us a year and a half to absorb the backlog from then.

**Mr. Tom Lukiwski:** Thank you.

**The Acting Chair (Mr. David Tilson):** Monsieur Laframboise.

[*Translation*]

**Mr. Mario Laframboise:** Let us talk about the files that are dealt with by tribunals and that have to do with the Personal Information Protection and Electronic Documents Act. There is a case involving TELUS employees. They had come to you to contest the fact that biometrical data is used to identify them. This mentioned on page 90 of your report. They had asked the deputy commissioner to intervene and she refused. So they turned to the Federal Court of Canada.

I was reading your comments which state that obliging an employee to provide biometric data is not necessarily illegal. You stated that a hearing was scheduled for September 20, 2005.

Was there a hearing? Do you know if there was a decision? Did the Federal Court uphold your decision, or did it reverse it?

**Ms. Jennifer Stoddart:** I think that there was a hearing but we have not received the Federal Court decision yet.

We were heard, were we not? Our general counsel is here. Would you like her to give you more information about this matter?

[*English*]

**The Acting Chair (Mr. David Tilson):** If others are going to speak, Commissioner, we'll have to have them come to the table and identify themselves.

• (1320)

**Ms. Jennifer Stoddart:** Excuse me, Mr. Chairman, I was just checking with general counsel, Ms. Kosseim, and in fact we don't have a decision from the Federal Court. The affair was completed on September 20 and there has been no decision.

**The Acting Chair (Mr. David Tilson):** That appears to be it.

I want to thank you, Commissioner, and Ms. Black and Monsieur D'Aoust, for coming before us and having a fairly extensive grilling. We thank you very much for your presentation.

Members of the committee, I have a brief comment to make about future business. We had scheduled for Thursday, October 27, the appearance of the Minister of Justice, who was going to speak on the Information Commissioner's legislative proposal to reform the Access to Information Act and the possible merger of the offices of the Information and Privacy Commissioners. A letter was received by the clerk's office yesterday from the Minister of Justice, which I've asked be distributed to all of you, and I trust you all have that. Therefore, the minister will not be appearing on Thursday, October 27, for the reasons set forth in the letter. We are trying to get the registrar of lobbyists to come in his stead, and that has yet to be confirmed.

Mr. Epp.

**Mr. Ken Epp:** I would just like to request that perhaps you should release the witnesses. We're finished with them, I think.

**The Acting Chair (Mr. David Tilson):** Excellent point. I thought I did that by implication.

Thank you for appearing before us.

Thank you, Mr. Epp.

**Mr. Ken Epp:** I have a couple of other items.

I have given a notice of motion to the clerk in writing. I think you have received it. It just has to do with times when we have witnesses.

**The Acting Chair (Mr. David Tilson):** Just so I know what you're talking about, perhaps you could tell us what you're giving notice of.

**Mr. Ken Epp:** We can come to that if you want to deal with the matter of the minister first. But I have two notices of motion, that one and another.

**The Acting Chair (Mr. David Tilson):** I saw a notice of motion that someone was going to propose. Notice hasn't been given of that. If someone is going to make a notice of motion, they should do that now.

**Mr. Ken Epp:** Okay, I will do that right now, then.

First of all, with respect to the minister, I would like to give notice that the Standing Committee on Access to Information, Privacy and Ethics report the following to the House of Commons.... I'll provide this to you in writing in a moment.

The justice minister has refused to appear before the committee, when requested, to provide an update on his promised legislation on access to information and to respond in a timely fashion on the proposed merger of the Information and Privacy Commissioners' offices. Therefore, the committee requests that the House of Commons order the justice minister appear before the committee forthwith.

That's my notice of motion, and we'll deal with that at the next meeting.

**The Acting Chair (Mr. David Tilson):** Do you have a point of order? No.

Mr. Laframboise.

[*Translation*]

**Mr. Mario Laframboise:** We will be dealing with it in 48 hours, will we not?

[*English*]

**The Acting Chair (Mr. David Tilson):** This is a notice of motion, sir, and presumably that will be dealt with some time next week.

**Mr. Ken Epp:** I have another one, if I may.

**The Acting Chair (Mr. David Tilson):** Mr. Epp.

**Mr. Ken Epp:** I don't have the exact wording here because I gave it to you in writing. I just want to get it on the record here.

I have found it somewhat frustrating to deal with these questions, because to have an exchange, you state a question, the witness gives you an answer, the witness runs out of time, and you don't have the opportunity for a follow-up. Even in question period in the House we have an opportunity for a supplementary based on the response of the minister or whoever it is answering the question. I think in the committee things could be much more rational if we had an opportunity to actually have at least a two-time exchange in the second round.

So I would like to give notice of the following motion. I propose to move that to give a more reasonable opportunity for exchange with witnesses, time allocated for questions be changed to ten minutes in the first round for each party and five minutes in subsequent rounds.

We can discuss that and think about it. The committee may turn it down, but that's what I would like to see and that's my notice of motion.

**The Acting Chair (Mr. David Tilson):** That appears to conclude the business.

Just to conclude, the committee has no problem with the registrar of lobbyists attending before the meeting on October 27?

Okay, thank you.

The meeting is adjourned.

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