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Chair

Mr. Paul Szabo

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Standing Committee on Access to Information, Privacy and Ethics

Wednesday, May 13, 2009

• (1530)

[English]

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

This is meeting number 21 of the Standing Committee on Access to Information, Privacy and Ethics. Our order of the day is, pursuant to Standing Order 81(4), main estimates for the years 2009 and 2010, vote 40 under Justice, referred to the committee on Thursday, February 26, 2009.

Our witness today from the Office of the Information Commissioner of Canada is the commissioner himself, Mr. Robert Marleau; and we have the assistant commissioner of policy, communications and operations, Suzanne Legault, too.

Welcome to both of you. It's good to see you.

We understand, Mr. Marleau, that you have a presentation and additional information that you'd like to share with the committee. I know the committee will be anxious to discuss and ask questions on your presentation and of your proposed estimates.

Please proceed.

Mr. Robert Marleau (Information Commissioner, Office of the Information Commissioner of Canada): Thank you, Mr. Chairman. I have a brief opening statement.

[Translation]

Thank you, Mr. Chairman, for inviting me to appear before this committee once again. As you mentioned, with me is Suzanne Legault, Assistant Commissioner, Policy, Communications and Operations.

I am here today to discuss my Office's main estimates for 2009-1010. I know members of this committee are very interested in the legislative reform of the Access to Information Act, and rightly so. I will be back before this committee on May 27 to discuss this matter with you.

[English]

Over the last two years, I have made profound institutional changes to address inherent weaknesses that were limiting our ability to do our job. My actions sought to ensure diligent and effective stewardship of the office's operations, with the overarching goal to do everything within my mandate to ensure that individuals' rights under the Access to Information Act are safeguarded.

Our progress has been made in a number of areas, and there continues to be a capacity shortfall in key functions. The office

undertook a comprehensive review of our operations and funding levels in 2008 and 2009. You may remember I referred to it in earlier presentations as the A-base review. The purpose was to determine whether we had sufficient resources to be able to deliver on our mandate.

Mr. Chairman, the office currently has an annual budget of \$8.505 million and 82 full-time employees. In light of the conclusions of the A-base review, we submitted a request for additional funding to the advisory panel on the funding and oversight of officers of Parliament in March 2009 in a submission to the Treasury Board. This request is not reflected in the 2009-10 planned spending. Hopefully we will obtain this additional funding through the supplementary estimates process.

[Translation]

In order to cause greater compliance with access to information obligations, there are specific priority areas we feel we need to focus on in 2009-2010.

[English]

We want to continue to put significant efforts into service delivery to information requesters. In order to do so, I've developed a new business model with three specific objectives in mind.

First, I want to improve the effectiveness and the timeliness of the operations to eliminate the case inventory—translation backlog—and prevent it from coming back. We did this through the establishment of a new intake unit, which takes care of the administrative aspects of complaints so that investigators can focus on investigations.

Second, I want to adopt a strategic and proactive approach to addressing systemic issues in order to improve compliance with the act and to provide a better picture of the state of the access regime. This includes continuing to undertake our annual performance assessments, also known as report cards, identifying emerging problems and their root causes and investigating crosscutting issues.

Third, I want to use a spectrum of tools to support our investigative and systemic actions to maximize compliance in a context of limited resources, from collaboration to mediation, to the full range of tools, including the adversarial tools that are at our disposal.

•(1535)

[Translation]

In my last appearance before you, I talked a lot about the need to bring in legislative as well as administrative changes to modernize the Act. Obviously, this is a priority for my Office. As I said earlier, I am looking forward to discussing this matter on May 27.

[English]

There are operational priorities. These are our operational priorities, but we also have management priorities. We are building our organizational capacity to deliver services to Parliament by strengthening investigative support and administrative and corporate capabilities. We will achieve this by putting the emphasis on recruiting, training, and retaining our resources.

We're also implementing a multi-year and in-depth IM/IT renewal strategy in order to support our new business model, which will provide much-needed assistance to our investigators and deliver on our relatively new ATIP responsibilities.

Finally, we will continue to streamline and integrate our planning of reporting instruments, including management, business, and corporate planning and reporting, so that we can better align them together and ensure strong performance management and measurement.

As you can see, there is much to be accomplished this year by my team. I am very much energized by the progress we're making with our business model.

[Translation]

Thank you again for inviting me. The two of us would be pleased to answer any questions you may have.

[English]

The Chair: Thank you, Commissioner. We appreciate the brevity of the presentation.

We'll go right to questions from the members.

Madam Simson, please.

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

Thank you, Mr. Marleau, for appearing before the committee again today.

With respect to the estimates, you mentioned in your opening statement that you wanted to adopt a strategic and proactive approach to addressing systemic issues to improve your department. One overarching issue that I saw, which was alluded to in previous appearances and in fact throughout this by the various commissioners, is the issue of personnel, of human resources.

It seems to me that they all had basically the same commentary: based on the size of the office and the fact that advancement wasn't as likely in a small office as in a larger department, staffing issues were an ongoing concern. In fact, one commissioner's office underspent their human resources budget by almost a million dollars because of it.

Would you not see that as quite a systemic problem within your department as well?

Mr. Robert Marleau: For any small organization of 82 employees, by the time you distribute the various competency profiles of roles, obviously there is somewhat limited mobility in terms of rotation and promotion. That's a challenge, but it is one that we've addressed, particularly this year, and we haven't lapsed funds, or very much funding, in terms of salaries this year.

We tried to be quite aggressive, actually, at filling our positions. Where they weren't filled on a permanent basis, they were filled with contractors, because we're dealing with the backlog.

Mrs. Michelle Simson: Exactly, and the backlog is actually a function of perhaps being understaffed from time to time. I was only pointing at another commission. You know, a million dollars in human resources....

Your plan is for 82 full-time employees. How many of those positions are currently filled? Do you have any idea?

Mr. Robert Marleau: I have to say that we were just looking at figures for the investigator complement. There are 59 employees in the program function, that is, management and investigators devoted to investigations of systemic issues. The balance of 23 are in support, operational, finance, and human resources.

On the investigative side, we're almost fully staffed. If I recall the figure, we're talking about 37 investigators—

•(1540)

Mrs. Michelle Simson: Out of 59?

Mr. Robert Marleau: Yes, out of 59. Twenty-seven are full-time. Ten are currently on contract. We're developing a strategy with Public Works Canada to have a standing offer for staffing from the Public Service.

Also, we've changed our competency profile. Prior to my arrival in the OIC, the recruiting was really knowledge-based. You had to know about the act, its application, and its jurisprudence. We have now changed this to broader competencies so that we can recruit from different communities who can come in and learn the act, such as auditors and investigators in other disciplines. We've broadened the competency field and we're getting some success in recruiting.

Mrs. Michelle Simson: You do allude to how you're going to have emphasis on recruiting, training, and retaining resources. I assume that's human resources.

You've mentioned the public sector. Perhaps I was naive while listening to the testimony of various commissioners. They have an ongoing problem with filling positions. They have a large number of vacancies, which just seemed rather bizarre to me given the economic environment in Canada and the fact that there are so many unemployed.

You say you're going to recruit from the public sector. Is that the only place? Would it not make sense, perhaps, to be looking for people outside that area who have a skill set and an educational background such that they could be trained? Maybe the turnover would be quite a bit less.

Mr. Robert Marleau: We don't limit our recruitment strategy just to the public sector. There are, for instance—

Mrs. Michelle Simson: How many times would you be looking at the public sector vis-à-vis the private sector?

Mr. Robert Marleau: In our case, these would be rather small numbers, if you like, because of the number of recruiting initiatives that are made. But I throw into “outside the public sector” such things as the RCMP, the military. We've had a few recruits who had just come from there. They don't qualify under the Public Service Commission Act, if you like—they're under their own act—but it's not quite the private sector.

Mrs. Michelle Simson: No, it wouldn't be the private sector.

Would it be safe to say that perhaps one of the reasons some of the smaller offices don't go to the private sector is that it's labour intensive to go through resumés and various applications from outside the public sector? Would that be a fair statement?

Mr. Robert Marleau: I can't speak for others. I can tell you that in my case it's not an issue. In fact, we're recruiting two from the private sector. We have two graduates who have qualified out of university, pending security clearances. So in terms of coming from the private sector, here are two young entrants who will be coming from outside.

Mrs. Michelle Simson: Thank you.

The Chair: Thank you kindly.

[*Translation*]

Mrs. Thi Lac.

Mrs. Ève-Mary Thaï Thi Lac (Saint-Hyacinthe—Bagot, BQ): Good day, Mr. Marleau, Ms. Legault. Thank you for agreeing to appear again before the committee.

You have presented us with a summary of your caseload from 2006-2007 to 2008-2009. I note that the number of complaints has increased compared to the previous year. In 2006-2007, your Office received approximately 1,450 complaints, while the number almost doubled the following year. The same is true of the number of complaints pending.

We also see that several complaints were discontinued in 2006-2007 and in 2008-2009. However, on the following page, we see that 290 complaints registered by a single person were discontinued. Perhaps that explains the difference between the two years. How can a single person register 290 complaints, and what was the nature of these complaints?

According to the table, no complaints were closed during 2008-2009. In 2006-2007, 579 complaints were closed, while in 2007-2008 237 complaints were closed. I'd like you to explain these figures to me.

• (1545)

Mr. Robert Marleau: Thank you for your question.

Mr. Chair, during my previous appearances, we informed the committee that further to the adoption of amendments to the act and to the broadening of the scope of section 69 respecting new institutions, the number of complaints registered with the Office rose sharply after April 1, 2007. That would explain the increase in the number of complaints carried over from the previous year.

I want to draw your attention to the total number of complaints closed. The progress that we have made is also noted. Each year, the number of complaints closed increased: from 1,268 in 2006-2007 to 1,770 in 2008-2009.

The second page contains a schematic diagram showing the number of complaints registered monthly. You will note that beginning in November 2008, the curve starts to level out somewhat. This shows that we are making considerable progress in controlling complaints at intake.

To answer your specific question about the number of complaints closed or the number of Commissioner-initiated complaints in 2008, in fact there were none. Two Commissioner-initiated complaints are currently being reviewed and the investigations are ongoing. The 237 complaints that were closed in 2007-2008 were registered by a single person. All of them were closed at the complainant's behest.

The 290 complaints discontinued by the complainant can be attributed in part to the new business plan developed by our Office. We meet with complainants who have initiated the highest number of complaints, those that make up our case inventory or backlog. We reviewed the complainant's file with him when the number of complaints exceeded 200 in total. This particular complainant was very cooperative and agreed to discontinue certain complaints for a variety of reasons, such as he already had the information or the information was no longer current. This way of dealing with complainants is more proactive and is aimed at reducing backlogs and controlling complaints at intake.

Mrs. Ève-Mary Thaï Thi Lac: I have another question about the last table on page 4 which deals with Cabinet confidence complaints. We see here that 150 complaints were registered, but that only 3% of them were resolved. Of the total number of complaints, 36% were not substantiated, while 61% were discontinued.

My eye was drawn to this table. Is this legislation too restrictive? Does it allow persons to access Cabinet confidence documents? With a resolution rate of only 3%, the numbers are clearly lower in this instance than they are for the other categories.

• (1550)

Mr. Robert Marleau: It comes down to semantics. You can add the figure of 3% of complaints settled to the figure of 36% that applies to unsubstantiated complaints. Overall, 36% of complaints involving the Privy Council Office which were investigated by our Office were unsubstantiated. So then, the actual number of complaints that have been settled is around 39%.

The asterisk is very important this year. The schematic diagram will be different next year. In the past, twice as many complaints about subsection 69(1) respecting Cabinet confidences were received by our Office. They were registered, during the consultation process, as complaints against the Privy Council Office and against the department in question. This year, as part of the process of rationalizing the new business model, we noted that these complaints were counted twice and that the numbers did not accurately reflect the number involving the Privy Council Office. We looked at all of the files and agreed with the Privy Council Office to set aside 61% of them.

Mrs. Ève-Mary Thāi Thi Lac: You're saying that the majority of complaints were referred to another...because they had been counted twice and others were investigating...

Mr. Robert Marleau: Thirty-nine per cent of the complaints investigated were handled by our Office this year, 3% were resolved and 3% were deemed not substantiated. The remaining complaints were discontinued. Quite possibly, they are included in the list of other investigations that appears on the following page.

[English]

The Chair: Thank you. I'm sure you'll have more chances in the next round.

Mr. Siksay, please.

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

Thank you for coming back, Commissioner and Madam Legault.

Commissioner, in your opening remarks today, you talked about the process you go through for obtaining funding for your work. I know I'm going to get it one of these days, but I'm going to keep asking the question until I can remember. Can you just generally go over how that budgeting process works for the Office of the Information Commissioner?

Mr. Robert Marleau: Every summer we get the call letter from Treasury Board Secretariat, just like any other institution, asking us for our reference points and our increases. We go through the normal relationship that any federal agency or department has with the Treasury Board, back and forth; they have a challenge that they play and play extremely well. We come to an agreement on the level of funding, a justification, particularly if it has increased, but there's also a justification to continue the same level of funding.

Then we give our submission to what is called a parliamentary panel for the oversight of parliamentary officers, or parliamentary agents. The Treasury Board submits their evaluation as well. We appear there. The panel questions the submission on both sides, from the perspectives of the parliamentary officer and the Treasury Board, and then makes a recommendation to the Treasury Board for approval or partial approval.

Then the Treasury Board itself kicks in. It will review that recommendation and adopt it or not, or partially. Then, of course, it shows up in the estimates tabled in the House, and your responsibility as parliamentarians to grant or refuse supply kicks in.

Mr. Bill Siksay: Commissioner, in your remarks, you say the additional funding you requested wasn't included in the estimates this year. Does that mean you lost the argument, or does that mean you're still hoping to see it at another point, that it missed the cycle?

Or did you lose the argument?

Mr. Robert Marleau: No, I didn't lose the argument. We went through the process with the panel in March for supplementary estimates (A), which I understand are to be tabled very shortly, maybe as early as tomorrow. We have a submission therein, but since it hasn't been tabled before the House, I'm not at liberty to discuss it in detail. I didn't lose the argument entirely.

Mr. Bill Siksay: Okay. That's good to know.

When I was poking around the website today, I poked into the proactive disclosure parts of the website and was looking at some of the contract spending for 2008-09. I noticed that most of it seems to be for temporary workers or for legal or communications advice. I'm just wondering, not having a reference point personally for this kind of stuff, if it is the normal process to have this much spending in terms of temporary staff support in the office and outside legal advice.

• (1555)

Mr. Robert Marleau: On the outside legal advice, it's normal. We have a \$200,000 fund, which was normalized before I arrived as commissioner and which is essentially our fund for seeking outside legal advice. When we have to appear before the Supreme Court, the Federal Court of Appeal, or the Federal Court, we get outside counsel assistance. That's mostly where it goes.

The temporary help is high this year. That's because we were in this transition period, where we lost a considerable number of investigators post the April 2007 proclamation of the new amendments to the statute. We had been given money for the backlog. We hired several contractors in the ATIP community in order to assist with the backlog. As I said earlier, we're weaning off that now. We're at a complement of 37. We have 10 left who are on contract. We're staffing those as best we can.

Mr. Bill Siksay: So on the contracts over \$10,000 for staffing, were those 10 contract positions, essentially?

Mr. Robert Marleau: Yes, but also some temporary help at the secretarial and administrative levels.

Mr. Bill Siksay: In your statement today, you said you were hoping to use a spectrum of tools to support your investigative and systemic actions around compliance. You said they range from collaboration and mediation to a full range of adversarial tools. Can you just give me a sense, when you're looking at that, of what's the most expensive route to go, what's the cheapest way to go, and where you get best value for dollar in terms of those various tools that are at your disposal?

Mr. Robert Marleau: We get best value for dollar, both in terms of results and for the Canadian taxpayer, when we go the mediation route. Any of the adversarial tools entail our going to the Federal Court of Appeal right up to the Supreme Court of Canada. We were in the Federal Court of Appeal on April 27 on the Prime Minister's agenda case, which dates back to 1998. You have to go there on major principles of law; otherwise it's very expensive.

So our approach has been, since I've come to the office, to take the three-C approach: cooperation, collaboration, and consultation. And I think you're starting to see the results, if you look at the number of complaints that have been closed. And I'd certainly like to point to the results, which are part of that approach. The last graph I provided to you, which is in blue and yellow, shows the results on the backlog just from last November, when we dedicated a team to the backlog—that is, cases prior to April 1, 2008. We've been meeting with both complainants and agencies to see how many of these we can resolve quickly. And in that amount of time, 30% of the backlog has been dealt with.

I know I've been criticized out there for not being tough, the watchdog that bites on a regular basis. But you know, subpoenas don't necessarily get you results; they get you attention.

Mr. Bill Siksay: Thank you, Chair.

The Chair: Thank you.

Ms. Block, go ahead please.

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

And welcome, Mr. Marleau and Ms. Legault.

As you well know, we've been reviewing the 12 recommendations you made to our committee regarding the act you are governed by. I can't look at the estimates you have presented and look at your planned spending without keeping in mind the recommendations and perhaps the impact those recommendations might have on your budget.

I am delighted to have you here today because, before I go there on the estimates and the recommendations, I do have a couple of questions I would like to ask you with regard to the recommendations. Since your last appearance before this committee, we have heard from a number of witnesses who both support and oppose the recommendations you have made to reform the Access to Information Act.

The Minister of Justice was here before the committee last week, and he expressed concerns that recommendation 4 and recommendation 11 appear to be in conflict. He actually said,

My concern about the Information Commissioner's recommendations 4 and 11 can be boiled down to one of ease of access to justice. Under the current ombudsman model, an access requester can complain to the commissioner about a refusal of access. The commissioner is obligated to investigate, and upon the completion of the investigation, the commissioner will make a finding and a non-binding recommendation. If the requester is unhappy with the result, he or she can then go to the Federal Court.

Does the minister not have a point, that the current system would satisfy a requester who has a complaint?

• (1600)

Mr. Robert Marleau: Quite frankly, I read the minister's evidence, and I must say with respect to the minister—and I don't mean any disrespect—that I don't know how he associates the two recommendations, 4 and 11. I see them as being quite different.

Recommendation 4, in my mind, was to grant the commissioner discretion to investigate, to deal with a series of issues—which I identified for the committee as being from the frequent user to the frivolous and the vexatious—to establish a system of triage that would deal with larger public interests, and do it in a very transparent way. It seems to me that if you've delegated to an officer of the House the authority to determine and make recommendations on the rights of Canadians under the act, it's a small step to give them that discretion.

In terms of direct access to the courts, that's what we heard from many in our consultations. And in that particular case, I would go along the lines of what you heard from the Canadian Bar Association, which said this recommendation would allow those who have the cash to go to court—a company, a lobbyist, or whoever—and they just want to get at it. And it would still preserve the access for the average Canadian, who must come to me for a complaint, and on his or her behalf I will take it to the court.

So I see it as win-win all round and not a compromise of one or the other.

The Chair: If I may, Mr. Marleau is actually coming back in two weeks to deal with the quick fix project, so unless it has burning relevance to the estimates, maybe we should try to keep these projects separate.

Mrs. Kelly Block: Sure. I guess the reason I'm looking at the recommendations and also looking at the estimates is that I can't help but wonder what impact your recommendations will have on the estimates you've presented, and certainly in your planned spending between 2009, 2010, 2011, and 2012. Have you figured into your planned spending the implementation of some of the recommendations you have made to this committee?

Mr. Robert Marleau: No, I've not costed them out. But on number 11, I think it would be a net savings, because the more who go to court directly and don't come to my office, the less time I'll spend on those particular cases. In terms of discretion to investigate, if I can deal with that—I'm sorry, Mr. Chairman, I'm bootlegging back into the area—in terms of impact on our spending, if I have some discretion in not investigating certain cases or at least postponing them for valid reasons, then I think there could be savings to the system.

The 12 recommendations were not presented to you on the basis of cost. They were presented to you as what we feel is fundamental, at minimum necessary, to cure some of the ills of the system.

Mrs. Kelly Block: My final question would be with regard to recommendation 5: “That the Access to Information Act provide a public education and research mandate to the Information Commissioner”. What do you estimate the cost of such a program would be, and what would be the financial return for that investment?

Mr. Robert Marleau: Well, it's always fairly hard to cost out your return on education, but I can tell you that with \$100,000, which would be fairly modest, we could achieve an awful lot over what we're doing now. I don't use that figure as something that I would submit, but we do not formally have in the act an education mandate. I think we have an advocacy mandate. I think that has been clear and it has been stated by the Supreme Court of Canada. I suppose you can stretch advocacy into education. The Privacy Commissioner has an education mandate, and the La Forest commission, in relationship to my office, recommended that this be normalized.

There is a certain amount of responsibility on the part of Treasury Board to educate the Canadian public, but I think that having the oversight parliamentary officer direct some of the communications on rights would be probably better received than government education programs.

• (1605)

The Chair: Mr. Wrzesnewskij, please.

Mr. Borys Wrzesnewskij (Etobicoke Centre, Lib.): Thank you, Chair.

Commissioner, in this summary of caseloads that was handed out, the third category is commissioner-initiated complaints. Could you explain that to us a little more clearly?

Mr. Robert Marleau: Under the statute, the commissioner doesn't have to wait for a complaint to come in. If I read about something or I see something that cuts across several institutions, I can initiate a complaint and then deal with it. It can be specific or it can be generic in terms of the system.

Mr. Borys Wrzesnewskij: Okay. So in 2006-07 there were 393 commissioner-initiated complaints. It's quite a high number. In the two following years there has only been one. Why would there be such a drastic falling off of commissioner-initiated complaints? Is it because of the caseload and attempt to clear the backlog that, as the commissioner, you've decided that you're not going to initiate any on your own? Or is it that all of a sudden everything's running so smoothly that you don't figure you've noticed anything that should initiate a complaint?

Mr. Robert Marleau: The 2006-07 figure, 393—I'm just going from memory here—occurred before I became commissioner. My recollection is that virtually all of those were against one institution but were filed as separate complaints.

Mr. Borys Wrzesnewskij: Which institution?

Mr. Robert Marleau: If I were to hazard a guess, I think it was the RCMP.

Mr. Borys Wrzesnewskij: Surprise, surprise.

Mr. Robert Marleau: They were all resolved either to our satisfaction or to the complainant's satisfaction. That period, 2007-08, coincides with my arrival. I have to tell you, and I think I've told the committee before, that I deliberately did not initiate complaints that year because I was facing this monstrous backlog and did not want to reallocate resources to it.

Mr. Borys Wrzesnewskij: That gives rise to the next question. In the past, commissioners seem to have been quite active in initiating complaints. They've been proactive. Since your arrival, we've only had one that you've initiated.

We understand the hill that you face with the backlog, but because of the limitations of resources and because of the backlog, do you feel that you're not fulfilling the part of your mandate that involves your initiating complaints? If you feel you're not able to fulfill part of your mandate because you don't have the resources, have you just decided that this is an area that you can control, because you can't control outside complaints and you can certainly control the ones you make yourself? If you've decided you're not going to go to this area because you don't have the resources, what are the consequences in terms of good governance?

Mr. Robert Marleau: First, if I may correct the record, Mr. Chairman, it was not the RCMP. It was CBSA, the Canada Border Services Agency. I've just been corrected by my staff.

In response to your question, sir, 2007-08 was a year of transition. We were really looking at what we were going to do about this backlog. In 2008-09 we initiated one complaint, which is ongoing, and we've initiated a new one this year. In that sense, it's not that I hesitate to initiate systemic complaints.

What we did this year, however, is devote some of those resources that would have gone to systemic complaints as such, or self-initiated systemic complaints, to enhancing the report card process. You may remember the special report I tabled on 10 institutions; a lot of the resources that we were putting into self-initiated complaints went into this exercise, and I feel that the enhanced report builds a dynamic of compliance that is as strong and as powerful as self-initiated complaints.

I'm not saying that we're not going to do them and that the new reports will replace them, but I feel that self-initiated complaints have to be quite specific. They shouldn't be systemic as such. We'll see where it takes us.

• (1610)

Mr. Borys Wrzesnewskij: I'll move on to a different table that you provided, table 2, on complaints.

The Canadian Broadcasting Corporation has 221. It has garnered a lot of complaints. It's one of the new institutions that are covered, perhaps stretching some of your resources. Canada Post is another crown corporation listed off there. Of the Canada Post complaints, 32 have been dealt with, so it's a majority, over 60%. Yet the Canadian Broadcasting Corporation doesn't even make it onto table 3, meaning, I presume, that it's less than 10%. We don't have the exact figure, but fewer than 10% appear to have been resolved.

What is the problem? What's going on? Internally, is CBC not able to handle these complaints? Why are these complaints not being resolved by your office? The numbers seem to indicate that there's a serious problem here.

Mr. Robert Marleau: The CBC is a special case. They came under the statute in September 2007, and within a month they were faced with over 500 requests from a single requester. Within 60 days my office received from the same requester some 400 complaints related to those 500 requests. We met with CBC and gave them until April 1, 2009, as a commitment to resolve those. I felt that was reasonable. The complainant has taken the issue to the Federal Court. It is currently before the Federal Court, and the next hearing is on June 3. Of the remaining 221 complaints, we're down to 23, which will be the object of discussion in the Federal Court on June 3.

CBC was in a special position. They were inundated with requests. Some were simple, some complex. They've done a considerable amount of work, but they did not meet the March 31, 2009, deadline that I had set for them, the commitment that they'd made, so I have now initiated 23 investigations on those particular cases. Those investigations are ongoing at this time.

The Chair: Mr. Dechert, please.

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

It's good to see you again, Mr. Marleau and Ms. Legault.

Forgive me, Mr. Marleau, for my lack of understanding of the figures here. It's my first time through this process. In your report, you mention that the budget for 2009-10 is \$8.5 million. I was given the main estimates line item summary from the Ministry of Justice, which shows the main estimates at \$7.54 million. Am I missing something?

Mr. Robert Marleau: No, it's \$7.54 million, which is what you have. Then you have to add on—which they don't put on the same line—\$965,000 for the contribution for the employee benefit plan, which totals \$8.505 million.

Mr. Bob Dechert: Fair enough.

Mr. Robert Marleau: The difference is the statutory contribution for employee benefits.

Mr. Bob Dechert: Very good. I understand that.

So what you're looking for essentially, then, is an increase of \$807,000 from the previous year. If I read your other figures here correctly, you did have an additional 873 complaints between 2007-08 and 2008-09. I'm looking at complaints received: 2,293 in 2008-09 versus 1,420 in 2007-08.

I assume that's because, in this period, the Accountability Act kicked in and there was a significant increase in caseload both for access to information requests and, therefore, for your complaints. So what you're looking for is approximately \$1,000 per additional complaint you receive. Does that make sense? Is that roughly what it costs you to resolve these complaints?

Mr. Robert Marleau: I'm trying to be diplomatic in the choice of my words. It's a little too easy to make that—

Mr. Bob Dechert: That's a rough thumbnail. I understand.

• (1615)

Mr. Robert Marleau: Related there, too, is that the Treasury Board requested us to comply with the internal audit policy, and we've had to set up our own ATIP shop. Related to this also is some IT money in terms of—

Mr. Bob Dechert: Okay. So some additional administrative costs are included. But part of that cost is the extra resources you need to deal with these additional complaints that were generated by the Accountability Act, increasing the workload of the access to information system. Does that follow?

Mr. Robert Marleau: Not quite, and maybe I'll let Suzanne answer that one.

Ms. Suzanne Legault (Assistant Commissioner, Policy, Communications and Operations, Office of the Information Commis-

sioner of Canada): What we did last year was this. We basically did a very quick submission to Treasury Board Secretariat to address the additional responsibilities of the FedAA, including, as the commissioner said, the internal audit and the ATIP function. We used previous analyses in terms of how many investigators per complaint, and we did a very quick exercise with Treasury Board. In fact, in that submission there were only five additional investigator positions.

What we agreed with the Treasury Board to do was to come back this year and do a comprehensive exercise, a full A-base review, to then assess the requirements of all the functions of the office based on the workload that we are now facing on an ongoing basis. Last year, it was actually a very quick exercise to address the imperatives of the FedAA.

Mr. Robert Marleau: You'll have to read, Mr. Chairman, the upcoming supplementary estimates (A) with this to get the true picture.

Mr. Bob Dechert: Okay. May I ask you a question, then? What would you say is your average cost of resolving a complaint on a case-by-case basis?

Mr. Robert Marleau: I don't have an average cost. You could do the easy thing and just take the number of investigations and... because the investigations are quite complex.

Mr. Bob Dechert: I understand. Some can be more complex than others.

Mr. Robert Marleau: Some of the administrative ones are easily resolved. Some of them are not. Section 69s are not. It's very hard to come up with a specific figure.

Mr. Bob Dechert: Would you say it's in the hundreds of dollars? I think you mentioned previously that the cost of complying with an access to information request was roughly \$1,425 per case to whatever department the information is being requested from. Some of those cases result in complaints.

Let me ask you another question. A minute ago you mentioned that the CBC was the subject of 500 requests from one individual. If I take your number of \$1,425 per case as a rough estimate, that one individual, through his or her requests, cost the taxpayers approximately three-quarters of a million dollars. That resulted in approximately 400 complaints to your office.

So in addition to the cost of three-quarters of a million dollars to the CBC to process those access requests, there are another 400 complaints at probably several hundred dollars per complaint to your office. And now that's before the Federal Court. I'm just trying to get an understanding of what the cost of that whole system is.

Mr. Robert Marleau: Well, the cost of the whole system, as I reported to you from the Treasury Board's figures, is about \$43 to \$44 million.

Mr. Bob Dechert: Okay, I understand that I'm running out of time, so can I just ask you a quick question?

In your recommendations, you have suggested that the system be opened up to anyone worldwide. We know that a number of additional complaints were generated by the additional workload to the Access to Information Act. What do you think the cost would be of opening up the process to people throughout the world, the six billion people who live outside of Canada?

Mr. Robert Marleau: Sir, I've heard that question and commented on it before. The system is currently open worldwide. They only have to use data brokers in order to get at it. So I'd say the cost would be marginal. I think FIPA said in their testimony it would be marginal.

It's \$43 million. If you add my office, that's another \$8 million on top. That's about \$52 or \$53 million. Divided by 33 million Canadians, that's \$1.56—or a double-double at Timmy's—per Canadian.

Mr. Bob Dechert: You don't think it would increase substantially?

Mr. Robert Marleau: No, not at all.

The Chair: It is an interesting perspective, though, because theoretically there could be an infinite number of complaints filed and you could do it to every department, and all of a sudden the system would break down and the government would be on crutches. But the reality is that you have to start with what our laws are and why they're there and what resources we have to put in place to make the system work. We've heard this so many times that people can use proxies and data brokers, etc., to get around it. It might be an interesting proposition to figure out how to deal with this. It might be some sort of a screening process, but that's for another day.

Madame Thi Lac.

• (1620)

[Translation]

Mrs. Ève-Mary Thāi Thi Lac: I will ask you to keep your answers short, because I have four questions to ask you in the space of five minutes.

My colleague opposite spoke of the cost of each investigation. Is the cost not directly tied to the response rate you get, and to the good will of the departments? Is the cost not a function of the difficulty you might have getting the information you request? The longer it takes you—and I'm referring to the average time it takes to process requests—the more resources you will need to assign to the job of getting these answers.

Mr. Robert Marleau: Mrs. Thi Lac, cost is primarily affected by the complexity of each case. Recently, we closed a file that had been open for four years. It involved the revision of 15,000 pages, all subject to section 15 of the national defence and public safety legislation. It's extremely difficult to assess cost when we're dealing with this type of file. That is why, in terms of the cost of an investigation, I hesitate to quote you a figure.

If a department is uncooperative and takes a long time providing us with the documents, or if I am forced to get a subpoena to get the documents, the cost increases. Given the complexity of the cases, it is difficult for me to give you an exact figure.

Mrs. Ève-Mary Thāi Thi Lac: I wasn't expecting you to give me one. I was just wondering if the cost could be greater because your investigations are made more complex owing to the lack of cooperation on the part of the different departments. That was the gist of my question.

That brings me to my next question. I see that in the case of Canada Post, 32 complaints were registered, 28 of which were deemed to be substantiated. However, of the 26 complaints registered by Industry Canada, only four were deemed to be substantiated.

Could it be that all of the persons who initiated these complaints were inept at making a complaint? Or is it simply that it is easier to obtain the cooperation of Canada Post?

Mr. Robert Marleau: It's not easy to give you answers about the causes and effects. Some complainants are not as informed as others. We also have cases where complainants complain just because they can, in spite of the information they receive. Still others never seek our help because they accept the system at face value.

That is why in such instances, I emphasize my 12 recommendations which would improve the system's efficiency. Cost is not the issue.

Mrs. Ève-Mary Thāi Thi Lac: Yet, we often hear that society is a reflection of its members. I was just surprised to see that some departments get results while others do not.

Are you saying that it's always the same people who register complaints with Industry Canada and that these people are incapable of filing a substantiated complaint? Do only inept people file complaints with Justice Canada? And does Canada Post always receive substantiated requests from people?

Mr. Robert Marleau: If I could add another element to the mix, Justice Canada receives five stars in our report because of the leadership it displays. It faces the same challenges as every other department, but it has allocated the resources and has the commitment of senior management to serving clients well. Some institutions such as the Privy Council, the RCMP, National Defence and Foreign Affairs will always register the highest number of complaints because they deal with the hottest issues.

However, Justice Canada also deals with some hot issues and it has satisfied the requirements of the act. That says a lot about the department's leadership.

Mrs. Ève-Mary Thāi Thi Lac: I'm not looking at the total number of complaints, but rather at the total number of substantiated complaints. That's quite a different matter. Looking at the top of the list, we see that National Defence received 218 complaints, more than 50% of which were substantiated. However, when 28 complaints are filed and a mere four of these are substantiated... That's what I'm talking about, that is of 26 complaints received, nearly 70% are not substantiated. That's what I'm driving at. I have concerns, not about the overall number of complaints, but rather about the number of substantiated ones.

I have one last question. Earlier, you spoke of contractual workers. Everyone knows that prospective employees are subject to extensive background checks and that training an employee can be very costly.

Wouldn't it be more cost-effective to hire permanent employees? Why not devise strategies to attract workers who could be hired on permanently? Contract workers are subject to the same background checks as someone who is hired on a permanent basis.

• (1625)

Mr. Robert Marleau: I totally agree with you. We need a strategy to recruit permanent employees and to build experience. Above all, what we need are employee retention strategies. As a result of the new legislation, public servants with experience in the areas of access to information and privacy were attracted to the 69 new agencies that were created. Therefore, we have experienced a shortage of employees.

My Office also hired five investigators on contract in 2005-2006 to handle the case backlog. The strategy was to hire contract workers since eventually, these resources would be lost.

[English]

The Chair: *Merci.*

We'll go to Mr. Dreeshen, please.

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

Welcome once again, Mr. Marleau and Ms. Legault, and thank you for coming here this afternoon.

I was going to continue from where Madame Thi Lac was speaking. But could you explain for me, on table 3, where they talk about complaints overall, what "with merit" means?

Mr. Robert Marleau: "With merit" means that as a consequence of our intervention or investigation, there was more information released or more timely information provided to the complainant. In other words, we found something in the context of the complaint that was valid.

Mr. Earl Dreeshen: Therefore, for example, if we were to take Industry Canada, you found that in four of the 26 cases the complaint was valid. Okay. That is what I was curious about, because I thought that perhaps we were speaking of that from the other direction before.

What I'd like to do is go back to table 2, where we look at, for example, the RCMP, which had 24 with merit out of 62 complaints. For Industry Canada it was four out of 26. For the Correctional Service of Canada we had seven out of 27. When we are looking at the number of new complaints, would it be fair to extrapolate that this is what you would expect in an upcoming year?

Mr. Robert Marleau: My short experience in comparing these year over year is that it's a little bit like a spaghetti sauce. You know it's spaghetti sauce, but it's never quite made the same way twice in a row. It's all the same ingredients, but where it ends up is going to be quite different next year.

Mr. Earl Dreeshen: You talked about the report cards and how all of these things were developed. Was any of this—the "with merit" and the complaints overall—ever presented as part of what any particular department has done? Do you see this in the report card?

Mr. Robert Marleau: Oh yes, indeed. If you look at—

Mr. Earl Dreeshen: I just don't have it with me now; I was just asking the question.

Mr. Robert Marleau: For the ten institutions that were selected for the report cards last year... We started from the basis of the particular data we had, so we picked ten that were in those categories and did the report card based on it.

Mr. Earl Dreeshen: In the case of the CBC, with its flood of requests, how was this reflected upon the report card, if you can recall?

Mr. Robert Marleau: The CBC was not part of the report card group. We're looking in the near future—I won't say next year, but the near future—at a report card on the new institutions that were added to the statute.

Mr. Earl Dreeshen: Thank you.

Going back to your address, you talked about the new intake unit. Could you talk somewhat about the efficiencies that you feel are there with the new intake unit—what it does and what you expect from it?

• (1630)

Mr. Robert Marleau: The new intake unit essentially, to describe it, receives the complaint, does an early evaluation of it, gathers the information, makes a first stab at trying to resolve it, either because there's misunderstanding or by talking to the department, to move it along. If it can't be resolved in a timely fashion, then it transfers it over to the complaints resolution and compliance unit, and a formal investigation takes place.

The idea is to allow the investigators to investigate and alleviate them from any of the administrative burden of preparing the file, getting the documents, and liaising with the departments. So by the time the investigator gets it, he or she is off and running for the investigation.

It's a pilot project. It has its hiccups from a management point of view and in terms of doing it better, but it has, I think, dealt with some 600 files—I won't call them investigations, because some of them may have never been investigations—that didn't get transferred over to the investigation unit. I read that as a pretty strong efficiency result, even though it's not perfect.

Mr. Earl Dreeshen: If a person were ever to try to get their head around the possibility of charging data brokers and so on, would there be a time, while you're doing your pilot project, that you could take a look at it, just to see whether it would fit in at that time?

Mr. Robert Marleau: I only deal with complaints, which is about 7% of what the whole system sees by way of access requests, so statistically I'm not sure I'm in a position to make that judgment.

Mr. Earl Dreeshen: I was curious whether, if a person ever thought we might want to look at it, this might be an opportunity at least to dig up some information. At least then, if we talk about this another time, we might be ahead of the curve on it.

Mr. Robert Marleau: Under current statute, the requester and the complainant are confidential, so it would only be high-level. All I can say is what I said to the committee before. When it comes to frequent complainers or frequent users, the problem for my office appears large—it's 50% of the business—but with discretion on investigation, I could solve it overnight.

Mr. Earl Dreeshen: You mean, rather than another recommendation.

All right, thanks.

The Chair: Thank you.

Mr. Siksay, please.

Mr. Bill Siksay: Thank you, Chair.

Commissioner, I want to come back to table 1, to the commissioner-initiated complaints column there. You said the 393 complaints that were initiated by the previous commissioner pertained mainly to CBSA. Was it mainly or entirely CBSA?

Mr. Robert Marleau: It was entirely CBSA.

Mr. Bill Siksay: Can you characterize the systemic issue that the commissioner was concerned about with those complaints? I think you said that you saw it as a systemic issue and that this was the concern. Can you characterize it for us? What was the commissioner after there, or concerned about?

Mr. Robert Marleau: I would have to refresh my memory on it, since I wasn't involved directly. I have had it for two years now. I really wouldn't want to risk an answer by way of characterizing it.

What I remember is that they were all similar complaints from the same individual, and therefore it falls within the kind of discretion I have under the statute to say I'm going to put these all together and treat them as a commissioner complaint and move forward that way, rather than fan out 393 across the organization.

Mr. Bill Siksay: You say that you think it's probably better to deal with it in a systemic way through the report card system. Can you explain to me the sort of reasoning that goes into that decision? If these are systemic complaints and were dealt with by the commissioner in that particular way, how does the report card issue deal with those?

Mr. Robert Marleau: What the report card does, I believe, is bring discipline to the system. You know, Justice got five stars last year. Do you think they want four stars next year? They will want to try to maintain that.

We looked at extensions and the use of extensions and the context. We found some serious systemic issues, and we made 10 recommendations to the Treasury Board. Rather than just rank performance by department, what we did was extract, from what we saw in the individual departments, the systemic issues that were kind of repeated across the system, and we dealt with them with a recommendation.

In that sense, the whole system's on notice right now that we're interested in extensions and we're going to be looking at them. So already we're hearing from the departments, in terms of that dynamic of trying to create better compliance, that they're paying attention to extensions. I think that's more efficient than my starting a specific within-a-department, self-initiated complaint.

We hear a lot of stuff right now about difficulties at DFAIT. I'd rather deal with it as a systemic issue, because there's a strong possibility that if something is going awry in one department, the same thing is going on in the others.

● (1635)

Mr. Bill Siksay: Was CBSA one of the departments you referred and did a report card on this year?

Mr. Robert Marleau: Yes.

Mr. Bill Siksay: You made recommendations for them about how to.... I can't remember their grade. I'm sorry, I didn't bring the report card with me. I think it was one of the ones there was a big concern about, though.

Mr. Robert Marleau: That's right. They had improved over the previous year, but they were still falling short of the grade. Now, they have had a tremendous increase in the number of pages to review as well.

The other thing the report cards bring is context. It's one thing if you have the war in Afghanistan and National Defence is getting a certain number of requests that they normally might not get. CBSA was in the same situation.

Mr. Bill Siksay: For CBSA, you made some specific recommendations to them. Now, do you do ongoing monitoring of their compliance and their response to those recommendations?

Mr. Robert Marleau: Yes, you will find in the report CBSA's response to our recommendations and an action plan for correction. That's another dimension of the report card that wasn't there before and that we're now publishing and making available to Parliament.

Mr. Bill Siksay: So you are following up on their implementation of their action plan.

Mr. Robert Marleau: Yes, and we'll be following up on, actually, the whole report.

Mr. Bill Siksay: How do you follow up on their action plan?

Mr. Robert Marleau: Suzanne is responsible for the whole report card process.

Ms. Suzanne Legault: This is our first exercise, so we haven't started to do the follow-up. But the intent is really to always do a three-year cycle with the report cards. So we do the report card, then we will do.... The next exercise this year will include a follow-up on the action plans of the institutions that were covered, and if they self-correct, we would not carry them on for the following year. But if they don't, we would follow up the following year.

The idea also is to provide advance notice to other institutions, such as the new institutions or the crown corporations that were added. Once we decide to do a report card on these institutions, we will give them advance notice. The idea is not to have a "get you" attitude. It is to give them an opportunity to self-discipline in advance, even, of our report cards.

The other thing the report cards do is provide this information in terms of the systemic formal investigation we want to follow up with. For instance, what we have found here is that the incidence of very lengthy extensions that are taken by institutions are extremely problematic in terms of access rights. So we're planning to follow up with a formal systemic investigation on extensions, which will go further on one of the issues specifically addressed in the report card. That's how they now flow together as opposed to being ad hoc and separate. They're more strategic.

Mr. Bill Siksaj: All right.

Thank you, Chair.

The Chair: We'll go to Mr. Wrzesnewskyj, please.

Mr. Borys Wrzesnewskyj: There are various charts of complaints. Were any of these complaints from whistle-blowers within ATIP sections, or are these strictly complaints from people who have made access requests?

Mr. Robert Marleau: No, these are all complaints that come from access requesters. There may be a whistle-blower in there, but I wouldn't know. I don't know what you mean by whistle-blower.

Mr. Borys Wrzesnewskyj: When you were previously before the committee, I referenced some of the work public accounts had done with the ATIP section within the RCMP. Evidence came forward during that committee hearing of files being misfiled. There were allegations made at the committee table that it was done under instructions from above. There were allegations of files being replaced.

Do you receive any of those types of complaints from ATIP sections, or have you during your term?

Mr. Robert Marleau: I've not received them from ATIP sections. I can confirm that I have two current investigations ongoing that relate to those kinds of issues. I'm not at liberty to discuss them, obviously, but I have two that relate to the same kind of issue.

Mr. Borys Wrzesnewskyj: I would assume this type of investigation would most likely take a very different approach and might have a different cost component than the regular type of complaint. Or would the same sort of approach be used?

• (1640)

Mr. Robert Marleau: It's difficult to qualify it by cost component. If we're dealing with an allegation of destruction of documents or deliberate concealment of documents, subsection 67 (1) of the statute makes it a criminal offence.

So yes, we take a different approach and a different attitude to it. This is not mediation and trying to cooperate and trying to resolve the issue; the investigation is much more rigorous in that process.

Mr. Borys Wrzesnewskyj: I understand that you can't get into the details of these particular complaints. Which departments, though, are under this type of investigation?

Mr. Robert Marleau: Mr. Chairman, I would prefer not to identify the departments, because it may also identify some of the individuals associated with those complaints.

The Chair: It's whistle-blower stuff. We remember that.

Are you finished?

Mr. Borys Wrzesnewskyj: I was actually going to pass this on for a quick question by Madam Simson.

The Chair: Oh, so you are finished, but you are passing it on to Ms. Simson.

Mrs. Michelle Simson: How much time do I have left?

The Chair: Two minutes.

Mrs. Michelle Simson: Okay.

Your charts are very, very helpful, by the way. Thank you very much.

I was looking at the refusal complaints. Obviously a good deal of the financial resources are tied up in investigations. You currently have a triage system, I assume. It's maybe not the ideal one that you want to have, but you have a triage system. Would refusal complaints get more of a priority, say, than administrative complaints?

Mr. Robert Marleau: I wouldn't call it a priority. It would get a better weighting, as in "heavy".

Mrs. Michelle Simson: Okay. Fair enough.

I was just taken by the fact that they probably would get weighted, but in my mind, the turnaround times for the number of closed complaints that took more than two years to resolve is a category that has risen quite dramatically. For same-agency and outright refusal complaints, I guess I'm trying to figure out how long it takes on average for your office to determine that they're not substantiated.

Mr. Robert Marleau: Well, only at the tail—

Mrs. Michelle Simson: That could be an unfair question.

Mr. Robert Marleau: It's only at the tail end of the investigation, and that could take two years. But once you get into that category, particularly the lengthy ones, you're either looking at very large volumes of pages or the more sensitive parts of the statutes, such as national security, and those kinds of things. So they get more complex to investigate and they take longer.

Mrs. Michelle Simson: I was just looking at the correlation, only because you'd stated that initiating a Federal Court action, obviously, wouldn't be your first line of attack. Mediation would be.

How expensive the investigation was and how long it would take would have a direct impact on your budget. In some cases, would it not make sense just to proceed to Federal Court, particularly in, say, an outright refusal case?

Mr. Robert Marleau: Not necessarily, because if I took an extra year to negotiate and got a resolution, it would probably take me four years in court if I went the year before.

Mrs. Michelle Simson: Okay, thank you.

Mr. Robert Marleau: The court is a very important component; don't get me wrong. I'm not saying I shouldn't and would not go to court. It's a very important component.

Mrs. Michelle Simson: No, but say an agency were served with the fact and knew that you were going to go to court. That can sometimes be a strong motivator to say, "Okay, the negotiations are over", and it would bring about some compliance.

Mr. Robert Marleau: That signal comes when I send the letter under section 37, with specific recommendations. If they don't respond to that, then I don't have much choice but to take the next step.

Mrs. Michelle Simson: Thank you.

Mr. Robert Marleau: You're welcome.

The Chair: Mr. Dechert, please.

Mr. Bob Dechert: Thanks, Mr. Chair.

Mr. Marleau, I'd like to go back to the CBC complaints you mentioned earlier. I'm just trying to understand this from the statistics you've given us. In 2008-09, you had 221 new complaints in respect to the Canadian Broadcasting Corporation. Is the one individual you mentioned earlier responsible for all 221 requests or complaints to your office—or the majority of them?

Mr. Robert Marleau: I can't say that the one individual is responsible for all of them, but it's the bulk of them. There are others there.

Mr. Bob Dechert: Okay, it's the bulk of them. Obviously they were split over two years, so that's why it tends to show up here.

If my math is correct, about 11% of your caseload for that year came from those CBC requests, a majority of which, at least, were from one individual.

I know you don't like us to divide it quite this way, because there are other elements in what you do, but in terms of your budget for that year, it means the one individual is responsible for approximately 11% of your budget, which is 20% over two years. It's over a million dollars, in any event, if you look at it that way.

• (1645)

Mr. Robert Marleau: That's one way of looking at it, sir, but let me add this and further complicate it for you. I lumped those into one investigation. I told the CBC to meet the March 31, 2009, deadline—

Mr. Bob Dechert: That was because they were all related to the same incident.

Mr. Robert Marleau: That's right. Now I have 23.

Mr. Bob Dechert: What happened? What was your resolution of those complaints? Did you find them meritorious, or did you find them not meritorious, and the individual then appealed to the Federal Court? Why are they before the Federal Court?

Mr. Robert Marleau: I found them meritorious in the sense that they were late, so they were deemed refusals, and I had extracted a commitment from the CBC of March 31, 2009. At that point the complainant can initiate an action to the Federal Court, which he did.

Mr. Bob Dechert: Was it because of the late response?

Mr. Robert Marleau: Not because of my—

Mr. Bob Dechert: Right. Fair enough. I'm just trying to understand the nature of the complaint.

Mr. Robert Marleau: In part, that action challenged my decision to lump them all into one and to accept the commitment of one year.

Mr. Bob Dechert: So the CBC agreed with you to supply this information in one year, and the—

Mr. Robert Marleau: Over the year, it trickled down. They didn't do it all on March 31. They provided it throughout the year.

Mr. Bob Dechert: So that individual is not happy with that response and is therefore appealing to the Federal Court. Okay, I understand. Thank you very much.

In your statistics, you also note that you had 226 new complaints with respect to the Department of National Defence. What is the nature of those kinds of complaints—well, the complaint obviously

would be delay, but in terms of the request, what is the nature of the type of request being made there?

Mr. Robert Marleau: The bulk of them have the word “Afghanistan” in them.

Mr. Bob Dechert: What are they looking for? Obviously I don't want you to give me the specifics of any individual request, but what kinds of information—

Mr. Robert Marleau: Some of it has been in the media. They're looking for treatment of detainees. They're looking for spending on equipment, the costs of the new tanks, the whole gamut.

Mr. Bob Dechert: They're looking for information about costs of equipment?

Mr. Robert Marleau: Yes, and policies on treatment of detainees, reports on particular—

Mr. Bob Dechert: Can you tell us who the complainants are, as a group? Are they individuals? Are they media organizations? Are they third parties?

Mr. Robert Marleau: I have not broken them down that way, per institution.

Mr. Bob Dechert: They're not individual taxpayers looking for their own personal information from the government, by the sounds of it.

Mr. Robert Marleau: There would be some. Some would be media. Some would be parliamentarians. Some would be lawyers. I think it would cut across the gamut.

Mr. Bob Dechert: What would a lawyer be looking for in terms of the cost of a tank in Afghanistan?

Mr. Robert Marleau: A contract for his—

Mr. Bob Dechert: So that would be a commercial venture, perhaps.

With respect to the one individual who has made 500 requests to the CBC, resulting in 400 complaints, would there be an argument for a differential fee for a large-volume user of the access to information system? I know the current fee is \$5 per request, and it costs approximately \$1,400 to respond to each of those requests. Can a valid argument be made that perhaps that one individual should pay more than \$5 if the number of requests exceeds, say, 25 or 50 in any given year?

Mr. Robert Marleau: There's an argument to be made. I'd like to have a little debate offline with you on whether it's valid, but my recommendation number 12, which would allow time extensions for multiple and simultaneous requests by single requesters, would go a long way to cure that in terms of the pressure on the agency and the number of complaints that result, as well as giving discretion to the commissioner on whether to investigate or not.

In Ontario, a limit has been imposed on the number of complaints any one individual can hold with the commissioner. The commissioner has that discretion.

• (1650)

Mr. Bob Dechert: So there should be some limitation on the volume of complaints in your view, or at least—

Mr. Robert Marleau: I hesitate—

Mr. Bob Dechert: —that's one way of getting it. The other way to get it would be to tell people to make as many as they wish, but the more they ask for, the more component of cost-recovery there will be built into the fee structure. That's another way of maybe deterring multiple requests.

Mr. Robert Marleau: You see, it's difficult for me to be in a position to judge the motive. It could be very valid. So that's why I think having the discretion would give me the opportunity to discuss it with the complainant requester and come to a conclusion as to the merits of the situation.

It could be a life-and-death situation related to immigration or otherwise, and they have no choice but to ask for it.

Mr. Bob Dechert: Fair enough, but if you're making 400 or 500, it's probably isn't.

Mr. Robert Marleau: Probably isn't, but again...

Mr. Bob Dechert: Right. Okay, I appreciate your comments.

Thank you.

The Chair: Are we okay? Okay.

Commissioner, the concern of this committee for some time, with regard to both privacy and access areas, has been the human resources dilemma. You're making progress on the human resources problem, but you still have contract people and we're still recruiting from within the public service, which means we're just passing our problems on to somebody else and we're not helping the whole situation.

Are there any discussions going on, coordinated by Treasury Board or whoever, to get us off this merry-go-round?

Mr. Robert Marleau: Well, in several reports, including the latest report card, I've made comment on that. I've made specific recommendations to Treasury Board about recruitment and training of ATIP coordinators in the community and to the school of public service management for constant training.

In an earlier report, when you were looking at the issue of human rights in Afghanistan, I made recommendations about a program at the University of Alberta, which is actually a certificate program for IAPP. There's no doubt that there has to be a major investment in resourcing this program properly.

What happened at Justice was, to get a five-star rating, the minister made a commitment and the deputy minister made a commitment to resource it adequately. What happens when that deputy minister leaves, I can almost predict to a T: over a couple of years it will simply regress. So yes, resourcing continues to be an issue.

As far as my office is concerned, I'm confident that by the end of next year we'll have reduced the backlog or the so-called inventory to a very manageable level. We'll have achieved our goal, and probably we'll be fully staffed and not dependent on contracts. But system-wide, it's a major issue.

The Chair: Well, this is something the Auditor General raised many years ago about the habits: it was easier to put a contract or a part-time person into a desk than it was a full-time person. The time differential was enormous.

All right, I thank you kindly for coming before us to answer the members' questions on important things. I hope we will resolve, through supplementary estimates (A), the panel issue we had. But do I understand that you have the means to be able to make it, from a cashflow point of view, until the supplementary estimates (A) are dealt with?

Mr. Robert Marleau: Yes, we will. We can get to June 30.

The Chair: As long as I know you're in business. All right, fair enough.

Thank you, kindly. The committee does have some other business it would like to transact, and it's going to have to go in camera. So thank you, and you're excused.

I'd like to suspend and ask all those who should not be in the room for the in camera session to leave as quickly as you can.

Thank you.

[*Proceedings continue in camera*]

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