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Chair

Mr. Nathan Cullen

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•(0850)

[English]

The Chair (Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP)): Good morning, everybody. Apologies for my lateness.

I want to welcome our guests. Because we've lost a few minutes already, I want to get started.

[Translation]

Welcome, Ms. Legault. You may begin your presentation.

Ms. Suzanne Legault (Information Commissioner, Office of the Information Commissioner of Canada): Good morning, Mr. Chair. Thank you.

Good morning to all the members.

[English]

Good morning. I'm very pleased to appear before you today as the committee starts its work on access to information, privacy, and ethics in this 41st Parliament.

You will find in the package that was distributed to you a number of documents that provide more information about my mandate, the accomplishments and priorities of my office, as well as a report and action plan related to a recent audit of our investigative processes. My opening remarks, unfortunately, are not finished being translated, so we will bring them to the committee a little bit later this afternoon.

Clearly this committee plays a crucial role in holding the government to account. You're vested with the responsibility of ensuring that the Canadian government's transparency agenda fulfills Canadians' needs and expectations for timely disclosure of valuable public sector information. Indeed, timely access to public sector information drives democracy and citizen engagement.

In an era of highly developed and ever-evolving information in communication technologies, it is the fluidity of public sector information that is key to competitiveness and socio-economic growth. That being said, it's important to remember that not all government information should be disclosed. As the Supreme Court of Canada stated last year:

Access to information in the hands of public institutions can increase transparency in government, contribute to an informed public, and enhance an open and democratic society. Some information in the hands of those institutions is, however, entitled to protection in order to prevent the impairment of those very principles and promote good governance.

It's a very delicate balancing act.

One of my responsibilities as Information Commissioner of Canada is to ensure that this right balance is struck. My annual report, tabled in June 2011, highlights the activities of my office in this endeavour.

[Translation]

The core of my mandate is to investigate complaints under the Access to Information Act. I am proud to report that we completed more than 2,000 cases for a second consecutive year.

We reduced by 8% the average time needed to complete investigations, and we further decreased our inventory at year-end by 11%. This success is due to a combination of efficiency gains, agile case management and collaboration with institutions. Overall, we can count on institutions' collaboration in resolving issues and implementing recommendations.

However, to deal with more complicated problems of non-compliance, I issued last year seven reports of findings with formal recommendations to heads of institutions. After the reports had been issued, three of these cases were ultimately resolved and the recommendations implemented. The four remaining cases are now before the courts.

I bring forward or intervene in legal proceedings when important principles of access legislation must be defended or clarified. This is the case with proceedings involving the Canadian Broadcasting Corporation and Canada Post Corporation.

[English]

To maximize compliance with the act, we must address the root causes of widespread or recurrent issues that adversely impact the timeliness and quantity of information disclosed. I take a systemic approach to assessing and investigating institutions' compliance. My goal is always to provide institutions, central agencies, and Parliament a thorough, fact-based diagnostic with specific and tailored solutions to guide efforts for improvements.

[Translation]

Last year, we implemented year two of our three-year plan for report cards and systemic investigations. The exercise included the assessment of a group of crown corporations and agents of Parliament that had recently come under the act. We followed up with 13 institutions that had performed poorly in previous assessments. Based on the data collected, we also launched a systemic investigation into the sources of delays, particularly mandatory consultations.

We are also investigating allegations of interference with the access to information process at Public Works and Government Services Canada.

In the current context of fiscal restraint, all institutions must seek more efficient ways to serve Canadians. This is why, upon taking office, I undertook a strategic planning process with my staff and key stakeholders to determine priorities and chart a roadmap for the first years of my term.

This plan will help us achieve significant outcomes in three key areas: exemplary service delivery; a well-governed workplace of choice; and a leading access to information regime.

To provide exemplary service, we will continue to refine our case management strategies while developing a comprehensive talent management framework. In this endeavour, we will build on the results from the audit of our investigative processes.

Mr. Chair, that is what I did last year as part of our internal auditing, in the wake of the incidents within the Office of the Public Sector Integrity Commissioner.

● (0855)

[English]

I commissioned an audit of my investigative function at the OIC, and I made sure that the criteria that the OAG had used to do its audit of the Integrity Commissioner's office was incorporated into the audit we conducted.

This morning, as part of the documents before you, I've tabled the results of this audit, which basically show that our investigative function conforms with our legislation. It made some recommendations, which we plan to incorporate into our action plan this fall.

Mr. Chairman, you can count on my continued support and advice to foster a leading access regime. I applaud the Canadian government for its commitment in the Speech from the Throne to ensuring that citizens, the private sector, and other partners have improved access to the workings of government through open data, open information, and open dialogue.

Minister Clement has taken the helm of the open government initiative, which notably includes an open information component that promises to take access to information closer to the digital age. I also welcome Minister Baird's commitment this week to having Canada join the multinational open government partnership. We will follow these government initiatives with great interest. In my view, they are key to embedding a culture of openness in federal institutions.

However, an open government initiative and a commitment to transparency must include a willingness to improve the efficiency of our access to information regime. In this area much work remains to be done. As reflected in Treasury Board statistics, over the past ten years there has been a steady decline in the timeliness and disclosure of information by federal institutions.

Current needs and expectations of Canadians require that we reverse this declining trend in timeliness and disclosure. I've committed to using all the powers and tools at my disposal to influence this outcome, starting with effective and timely investigations of complaints.

Mr. Chair, next year will mark the 30th anniversary of the Access to Information Act. I submit that the way forward must include the review and modernization of the act to bring our regime up to par with the most progressive international models. In preparation for this event, I have started an in-depth review of international benchmarking of our legislation to be in a position to advise Parliament of necessary amendments to the act.

[Translation]

To provide information about our work, I will be hosting the International Conference of Information Commissioners, which will be held in Canada for the first time, in collaboration with the Canadian Bar Association from October 3 to 5.

This forum will provide an excellent opportunity for commissioners, practitioners and advocates to exchange ideas for the advancement of access to information principles.

I am very excited to host this important event here in Ottawa. I invite you all to join the discussions, as we have an agreement with the Canadian Bar Association to allow all the committee members to attend the conference and some of the presentations.

In closing, I would like to acknowledge the hard work and unwavering dedication of my staff, to whom I owe much of our accomplishments.

I urge this committee to continue to advocate for more open government, for more timely and greater access to information.

Mr. Chair, I am now ready to answer any questions the members may have.

● (0900)

The Chair: Thank you so much for your presentation.

[English]

Also, thank you for coming in on such short notice so well prepared.

I'll now turn it over to the official opposition for questions, for up to seven minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair.

Thank you, Madame Legault, for being here. I was very heartened to listen to your discourse this morning, particularly your words in terms of the “crucial role” of defending the public interest, of ensuring accessibility and transparency: that it really is a cornerstone of accountable government. I want to commend your work as a commissioner in ensuring that there is accountability for the people of Canada, because without that accountability there is no ability to say that we are truly democratic.

I preface these remarks because this week we learned of a SLAPP suit that was brought against three civic organizations: Newspapers Canada, the Canadian Taxpayers Federation, and the B.C. Freedom of Information and Privacy Association, which asked our committee to look into the Access to Information Act and the possible failings of the information act after the RCMP failed to follow up on the case of Sébastien Togneri and his complicity in obstructing information requests. Now, I find this attempt to use legal SLAPP suits to tell citizens that they can't come to our committee, or to try to obstruct citizens from looking to a parliamentary committee to investigate something that's clearly a cornerstone of democracy, to be outrageous and a possible serious breach of our privilege as parliamentarians.

But I also want to comment on the fact that Mr. Togneri made a number of comments publicly about your work, wherein he accused you of “grandstanding” for the sake of publicity. He said he hoped that in the future your office will demonstrate a little bit of caution and understand the consequences of “grandstanding against a political staffer”. I mean, who is this guy? I have to ask you. These are serious allegations to make against someone in your position. What do you think of the kind of public attack Mr. Togneri has waged against your work and against the work of citizens' groups that are trying to get accountable government?

Ms. Suzanne Legault: Mr. Chair, I really do stand by my work. I stand by my office's work in the investigation that resulted in the special report to Parliament. Frankly, I am in the hands of parliamentarians to judge the work we did in this file. The special report provides ample details to explain exactly what we did and the results of the investigation. Aside from that, I have no comments on Mr. Togneri's stance or Mr. Togneri's lawyer's stance. That is really outside the purview of my actions.

Just so I can reassure the committee, I do conduct the investigations that I think appropriate, and I conduct myself objectively and fairly in conducting these investigations respecting my legislation. That's the assurance I can give this committee.

Mr. Charlie Angus: Thank you very much for that.

I'm concerned. There has been talk in the public that the failure of the RCMP to follow up on this and in fact the failure of the RCMP to follow up on any attempt to destroy information, mislead the public, and interfere with investigations...that it's essentially created a black hole in ministerial offices. I think Vince Gogelek has said that it creates a class of people above the law who are able to interfere with information requests.

What recommendations would you make to our committee to ensure that everyone who works in government offices is accountable to the law and cannot interfere with access to information and destroy documents? Are there steps that we need

to take to bring the law into compliance with the spirit of the act? How is this black hole being created?

Ms. Suzanne Legault: Mr. Chair, in the first investigation I made some recommendations for legislative changes that were directly linked to the experience we had in the first investigation.

The issue I have with making recommendations now is that I still have three other investigations that are ongoing that have similar allegations. The committee can rest assured that once I complete these investigations I will make recommendations as is appropriate in relation to the legislation and perhaps some of the gaps in the legislation at that time. I'm highly uncomfortable doing that now because the other three investigations are not completed, and those investigations will also inform my recommendations.

Clearly, what happened in the first investigation.... The provision that deals with an infraction under the act, section 67.1, was added to the act in 1999, and that was done by way of a private member's bill. As a result of that, there was actually no full review of the legislation to see if that specific amendment created other problems in the legislation.

One of the clear problems that it created and that became evident in the first investigation is that the section 67.1 provision talks about any person who—and I don't have my act with me—alters, falsifies, or destroys documents or conceals documents. But my ability to disclose information to the Attorney General is limited to people who are actually public servants. So there's a gap in the law. The provisions that allow me to share this information have actually not been amended, so in consequence—

● (0905)

Mr. Charlie Angus: Just to clarify, are you saying that there's a difference between a public servant and a political staffer who has access to that information who might attempt to block it?

Ms. Suzanne Legault: According to my legislation, my ability to share the information certainly makes a difference. The provision that was added—we refer to 67.1 as the Beaumier amendment—talks about any person. There's no issue there. That's why I elected to make a recommendation to Minister Ambrose that she refer the matter to the RCMP. This case was very public and therefore it was possible that this was all in the public domain, so there was no issue with the minister making this recommendation.

In most instances, my investigations are done in private and confidentially. So if a minister decided not to refer to a matter, I might not be able to share this information. In that circumstance I would probably do another special report to Parliament so that Parliament could be apprised of that and I could use that mechanism.

The Chair: Thank you very much, Mr. Angus.

Mr. Charlie Angus: And you would simply shut down this investigation?

The Chair: We'll continue that line of questioning.

We'll now move to Mr. Butt for up to seven minutes.

Mr. Brad Butt (Mississauga—Streetsville, CPC): Thank you very much, Mr. Chair.

Thank you, Ms. Legault, for being here. As a new member of Parliament, it's nice to meet you and know of the work that your office does.

When you were appointed, as I understand it, you made a commitment to maximize the effectiveness and the timeliness of the investigative function to fully meet the current needs and expectations of Canadians. Can you give us a little bit more detail on your progress on that and the timeliness of how you are dealing with requests that are coming through your office?

Ms. Suzanne Legault: Well, we're making some progress, but there is still a lot more work to be done, in my view.

It used to be that 50% of the complaints that would come in would be administrative complaints and 50% would be the more complex cases. Also, when I first arrived, we had about 1,600 cases that were very old. Out of the really old inventory, I now have about 99 left as of this morning. So we've really done a lot of work there. In terms of administrative files, I now carry over, as of today, only 14% of my inventory. So we've become a lot more effective at dealing with these simpler cases.

Where we have to do a lot more work is on the complex cases. What I've been doing this fall, and since the summer, is undertaking new strategies to deal with some key chunks of cases. For instance, I have over 300 cases with the Canada Revenue Agency, and we've been working with them diligently to try to become more efficient at dealing with these cases. They have few complainants as well. So we try to broker this to maximize the efficiency of the investigations. It was very effective the last fiscal year, and I'm going to continue that.

I also have in excess of 300 cases that we refer to as special delegation cases, which deal with national security and international relations. They're very difficult to deal with. As you can imagine, they're very sensitive files and I only have eight investigators who can look at those files. In my legislation, the number of folks who can do that is limited.

So what we're doing now is developing a strategy for these national security cases. I have a lawyer specifically dedicated to that, because these cases are more complex. We're going to train these folks better. We're going to have a more streamlined approach. We're going to be more formalized with the institutions as well, and hopefully we will start to move a lot faster.

It's the same thing with the priority files. I have about 100 cases out of 2,000 that are priority files. I have just hired a new lawyer, who is also going to be leading that group.

So these are two big pilot projects that I'm going to start in order to deal with the really complex cases, because dealing with those complex cases, to be very honest with you, generally still takes over a year, although we've made some headway and have reduced the timeline by about 8%. So in my view, there is still a long way to go to being where I would like to be, and we still have a large inventory. We've reduced the inventory of our cases that carry over from 2,500 to 1,800 at the beginning of this fiscal year. So we've reduced them by 700 in two years, which is significant. But I want to end up having about 700 carrying over, which would be a more manageable amount.

Those are the kinds of things we're doing. Aside from that, we also develop different strategies with various institutions and so on, depending on the types of cases we have.

CBC, of course, has over 300 cases as well. There are 194 on hold because of litigation, but I have dedicated staff for these cases as well.

• (0910)

Mr. Brad Butt: You mentioned having 300 cases with CRA, the Canada Revenue Agency, as an example. Are there certain departments or ministries or areas where you tend to have a much larger case file than others? As an example, do you find you are getting more requests from directly run government ministries versus, say, crown corporations, or from arm's-length government agencies versus direct government departments like the CRA?

Ms. Suzanne Legault: The two crown corporations that have really stood out in the last five years, since the Federal Accountability Act, are definitely CBC and Canada Post. Canada Post does not have a high number of complaints, but compared to the number of requests they get, their ratio is very high.

Last year, I did a report card and issued a red alert. I've only done two red alerts since the.... One was the Department of Foreign Affairs and last year it was Canada Post. In fact, I had a meeting with the head of Canada Post yesterday to discuss this. They have a very high ratio of complaints. Aside from that, the main institutions in the top tier are CBC, Canada Revenue Agency...Correctional Services Canada had 100 complaints. There's also National Defence, the Privy Council Office, the Department of Foreign Affairs, and Citizenship and Immigration Canada. For instance, if you take Citizenship and Immigration Canada, I now have 67 live complaints, but they get around 50,000 requests. So in fact even though they're high up on my list, if you wish, they're actually very efficient at handling their volume of requests.

The number here is not necessarily the ratio you're looking for, but these are the institutions that are the core of my work. If you look at our annual report, there's usually a list every year. I highlight the top ten in terms of number of complaints. It's fairly consistent too. I would say CBC is a recent addition, but the list of the main institutions is fairly constant.

The Chair: Thank you, Mr. Butt.

Mr. Brad Butt: Thank you.

The Chair: We'll now turn to Mr. Andrews.

Mr. Scott Andrews (Avalon, Lib.): Thank you, Mr. Chair, and thank you, Madam Commissioner, for coming in today.

Just getting back to the Togneri case for a minute, obviously your decision to refer it to the RCMP was quite serious, and you obviously had some basis to do that. I was wondering if you could just explain a little bit more why you referred it to the RCMP, why you think the RCMP didn't proceed with the information you put forward, and maybe a little bit of an explanation of what documents and things were withheld or destroyed.

● (0915)

Ms. Suzanne Legault: In the interference case there was an access request for a report, and the access to information folks at Public Works decided that the whole report should be disclosed. They had prepared to send the report, and in fact the report was already in the mailroom. Mr. Togneri sent an e-mail saying to unrelease. Following that, there was a series of incidents that basically led to this report not being disclosed for several months, and it was only disclosed in its entirety after the requester made several additional requests.

Referring a matter to the RCMP is a serious matter. The act says that if I have evidence or I feel there is evidence, then I may refer the matter to the Attorney General. In this case, I asked the minister, for the reasons I explained before, to refer the matter to the RCMP.

The actual contents of my investigation are not something that we disclose to the police. My investigation is administrative in nature. I do not make any determination of civil or criminal liability. That is not the purpose of the investigation we do. What we do is an administrative investigation to determine what happened in the processing of an access to information request.

What the RCMP does, whether they decide to conduct an investigation or whether the public prosecutor's office decides to lay charges, is really up to them. I am not involved in this process at all. I do not speak with the RCMP about these cases. It is really up to the RCMP to conduct their own investigation and to come to their own determination and conclusion.

Mr. Scott Andrews: So you wouldn't provide any information to the RCMP?

Ms. Suzanne Legault: No.

Mr. Scott Andrews: Do you think you should provide information to the RCMP to conduct an investigation?

Ms. Suzanne Legault: I think if that were the case it would... And it says in here, in the act, that I "may disclose" some information, but the way these confidentiality provisions are sort of intertwined in the legislation is very complicated. What one would not want in fact...disclosing information obtained during an administrative investigation actually has a negative impact on the criminal investigation. So it is actually probably more appropriate to not disclose information, and that has always been the stance my office has taken. You have to remember that in some cases I do conduct examinations under oath. I can compel people to give testimony by way of subpoena.

So in order to protect the integrity of a possible criminal investigation, it is best that the police conduct their own investigation. You must remember that all of this information we base our investigation on is contained within the department, so this information or these documents are available to the police to conduct their own investigation. If they wish to do so, they can interview their own witnesses, and therefore the investigation is separate and not tainted by anything that I would do as part of an administrative investigation.

You might want to ask this question of the public prosecutor's office; they would be much better to advise you on this one. I haven't practised criminal law for almost 17 years, or something like that.

Mr. Scott Andrews: That's fair enough.

You're also conducting other investigations into interference in eight departments, if I'm not mistaken. I have just a couple of questions on that. When should we expect these reports? Will they be special reports to Parliament? Are these interference requests all at the political level or at a departmental level?

● (0920)

Ms. Suzanne Legault: There's one investigation with Public Works. That really was the result of the work of this committee in the last Parliament. This committee asked for additional information from the government. A list of documents was then provided to the committee. Minister Ambrose provided me with these documents. When I consulted those documents, I elected to initiate my own investigation based on these documents. That's one. At the same time, there are also still in my roster two investigations where there were allegations of political interference: one with the Department of Foreign Affairs and one with the Department of National Defence.

These are all ongoing. I'm hoping that they're going to be finished before Christmas. That's really my goal, but I really don't control all the steps in any investigation. There are various parties involved. I cannot control the timelines of everyone.

In addition to that, what is also ongoing in my office is that after the last report card, when we got information from people in various departments that there were delays and various kinds of interference—not necessarily political interference, but interference in the actual processing of access requests—I thought I had enough information there to cause me concern, so I did start a systemic investigation. Now, that systemic investigation, I will be very honest with you, is always the one that takes the back burner because I have very few resources to allocate to it. I'm hoping it's going to be finished if not before December, then early in 2012.

The Chair: Thank you, Mr. Andrews.

We'll be going to Mr. Dreeshen for up to seven minutes.

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

Welcome, Madame Legault. It's nice to see you again. I was on this committee back in 2008, so I did have an opportunity to discuss many of these types of issues. It's great to see that so much progress has taken place. I'm also on the public accounts committee, and of course your earlier comments with regard to the Integrity Commissioner are something we studied.

I'm just curious, and I wonder if you could perhaps go over some of your action plans as far as the audit is concerned. I noticed some of the dates that you had already pencilled in to have some of these things accomplished. Could you do that perhaps in the context of the systematic work you are using to improve access to information as a whole at all the different levels?

Ms. Suzanne Legault: Thank you.

As I indicated, Mr. Chair, after the events with the Integrity Commissioner's office, given that we were going through audits in any event, I decided to do an audit of our investigative function. I figured that it would be a really good idea for this committee to have some reassurance from an external body that our investigative function was respecting our legislation and that it would be a measure of accountability to this committee, while at the same time be an audit that would be useful for us. So that's what we did.

Essentially there were some uniformity issues within the office in terms of documented events and investigative plans. We have some cases that are fairly simple and some that are more complex. Last year we brought in some new investigators so we needed to make sure that we had a better, more streamlined approach. That's what we're going to do.

One area I'm keen on is priority cases. I have some priority cases that are taking way too long. So how do I make sure I can put more emphasis on those out of a roster of 2,000 cases? We're going to try another pilot project, as I explained to your colleague earlier, which will be headed by a lawyer. I'm doing that because these are complex cases and by having a lawyer supervise the investigators, we can address the issues and questions of the investigators much more quickly and we can go to the institution and ask for representations that are more targeted more quickly. That's part of the problem I'm seeing in the investigations: there's a lot of delay in the back and forth between institutions. It's fine to do that for a while, but it really has to be more disciplined.

Another concern I have is that sometimes an investigation is not necessarily identified as being a priority when it comes in, but events occur and they should be given priority. I felt that this process was not well oiled in my office. We're going to try to do something with our communications folks so there is more interaction between what's going on in the world outside of my office and how we give priority to our investigations should we need to change that.

To me, systemic issues and how we deal with systemic investigations are key things, because when there are individual complaints, each one is conducted in private. I will get additional disclosure, hopefully, for the complainant and the case will be closed. That's fine. We report on those in our annual report. But when we do systemic investigations or report cards, we actually are able to see systemic problems and make recommendations for changes across the system. In the long run, doing that is more effective in improving the access regime. This work, I think, is extremely important. It always taxes my organization, but I think it's valuable, and in fact a lot of the recommendations we've made over time on the report cards and on the systemic investigations have been implemented or are in the process of being implemented, and those perhaps have more of an impact.

• (0925)

Mr. Earl Dreeshen: Do I have more time?

The Chair: Absolutely. You have about two and a half minutes.

Mr. Earl Dreeshen: You were also speaking about some of the international travelling you had done. I wonder if you could update us on some of the things you and your office have been responsible for in that regard and perhaps talk about some of the best practices. I know the committee wants to have you here so that we can

understand the types of things that are taking place and use your experiences.

Ms. Suzanne Legault: It has been unusual this year. I have been travelling a lot more than I normally do, but there seems to be a thirst internationally for the experience of Canada.

I was in Nigeria this summer. They just passed a law and wanted advice on implementation. I was invited there by the Canadian high commissioner in Nigeria.

I also attended the inaugural meeting in Washington of the open government partnership. I'll speak a little bit about that because it's also a symptom of the thirst internationally.

I was also in Mexico for its national transparency week, at the invitation of the commissioners there. Mexico is, in some ways, legislatively and technologically advanced, but they still have a lot to learn on the implementation side. Canada was the guest of honour there this year.

I've also been invited by the Carter Centre to assist in a couple of weeks with China's new regulation.

The open government partnership, which the Canadian government has decided to join, is an excellent initiative. The reason is that there are many countries around the world now who are wanting to explore transparency, not only in legislation but also in proactive disclosure and in implementation. And Canada can really provide a lot of leadership and expertise. The government can do that; the Treasury Board Secretariat has been implementing access to information in Canada for almost 30 years.

My personal view is that there is a worldwide benefit from increasing transparency, because it decreases corruption. There is always a clear and direct link, a correlation, between a reduction in corruption and an increase in transparency.

Canada is now looking to expand its trade with some of these countries. Brazil needs to have a law; they're actually coming to my office in two weeks to get assistance. Honduras, Costa Rica, Chile, Argentina, all of these countries are developing their transparency agendas, and Canada can really assist them. But I think Canada benefits because one wants to conduct trade in and with a country that has low corruption levels. So that is ultimately the benefit to Canadians in providing this assistance.

The Chair: Thank you, Mr. Dreeshen.

[Translation]

Mr. Dusseault, you have up to five minutes.

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair.

I want to welcome Ms. Legault to our committee.

I would like to get a few clarifications, as I am new to both Parliament and this committee. I would like to be up to date on what you do.

First, I want to talk about the Supreme Court's ruling that ministers' offices are not considered to be government institutions and are therefore not subject to access to information requests.

Can you confirm the fact that access to information requests do not apply to ministers' offices?

Ms. Suzanne Legault: Yes, that is what the Supreme Court ruled. The ruling is a bit more complicated than the simple statement that those offices are not subject to the act.

Basically, the Supreme Court stated that the minister is not part of the department. The documents that may be in the minister's office are not completely exempt from the terms of the act. The Supreme Court developed a two-step control test. The first step consists in asking whether the records relate to a departmental matter. If the answer is no, the act does not apply to the records. If the answer is yes, another question is asked: Should a senior official of the department reasonably be able to obtain a copy of the record? If so, the record is covered by the act and can be disclosed. To determine whether a senior official should be able to obtain the requested record—my apologies, the control test is complicated—the document's content, the circumstances under which the record was created and the overall legal relationship between the government institution and the person who holds the record must be scrutinized. The test is quite complicated.

In addition, another decision by the Supreme Court concerns the commissioner's powers. Usually, I am allowed to enter and search a department's offices. I can go into a department and conduct a search. I have the power to do so. But the Supreme Court ruled that, since the minister's office does not come under the act, I do not have that right. However, I can issue a writ to compel the records located in a minister's office to be disclosed so as to ensure, for instance, that the control test was applied correctly.

• (0930)

Mr. Pierre-Luc Dusseault: I have to cut you off, as I have only five minutes.

Do these exemptions and the complexity of the process not create a black hole of sorts, making documents that could be available to the public inaccessible?

Ms. Suzanne Legault: Yes, I think that is a major risk. In terms of Canadians' access rights, this decision is unfortunate. That's what I said when it was made. I feel that ministers' offices should be covered. It would be a lot easier for them to be covered and for the act to contain provisions protecting parliamentary privilege, as in the case of documents belonging to people in your ridings. Those are truly documents of a political nature.

I think that modern legislation covers ministers', MPs' and magistrates' offices. My opinion is that the act should do the same. Does this mean that Canadians would not have access to certain documents? That's sort of what the Supreme Court's decision means. That decision covered little-known documents. Yet, if we consider the facts, we realize that the outcome is really disastrous.

The minister in charge of the Department of National Defence and some of that department's senior officials have held a number of meetings, and the only notes on those meetings were taken by the political employee of the minister's office. But those notes will never be accessible. The court actually ruled that they were not accessible or covered by the Access to Information Act. I think that those notes were very relevant to the meetings and should have been covered by the act. That's a concrete example of where this issue stands. The

Supreme Court issued this ruling, which is problematic. The other problem is that, even though I have the power to request records from the ministers' offices, I can never be sure that they have sent me everything.

• (0935)

The Chair: Thank you, Mr. Dusseault.

[*English*]

Mr. Calkins, you have up to five minutes.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chair.

This is my first committee meeting where I've had an opportunity to ask a question and I want to start things off on the right tone.

I have a couple of questions for you. You spoke in your opening remarks on the open government initiative, that three pillars initiative. You spoke very briefly about it. I was hoping you could elaborate on what you see as positives coming out of the three pillars of that open government initiative and what they might be.

Recently it was announced that Public Works is engaged in a 10-year plan to reduce its data collection centres—its legacy systems and so on—from over 300 centres to about 20. I think that's what the report that was commissioned came out and said. I'm just wondering what information you can provide, or what concerns you may have with that centralization of information and centralization of data, and how it will affect your office, if at all. How will it affect how government departments work with each other insofar as protecting the privacy of information of individual citizens, as departments are not supposed to be sharing information with each other and so on?

Last but not least, I'd like some comments from you. My colleague Mr. Butt did address this a little bit. I think we started going down this road. It's about some of the perceptions out there, about the varying standards when it comes to information that's received, depending on the different responses that are given or the different questions that are asked, particularly when it comes to certain organizations.

In particular, I'll ask about the Canadian Broadcasting Corporation. If you can talk about some of the inconsistencies there, some of the problems that might be there, or some of the issues that should be brought to the attention of the committee, I would appreciate that.

Those three questions should use up my five minutes.

Ms. Suzanne Legault: In terms of the open government initiative, I would say that I think the best people to speak with would be the Treasury Board Secretariat people. They are the lead in this endeavour. I'm on the outside, as you are. I basically see the initiatives that are being announced or the initiatives that are put forward. We're consulted on some of them.

One of the really positive things I see is that we are going to make some data sets available. They're being put into centralized databases. Normally, when databases are put together, departments have to conduct a privacy impact assessment. I'm assuming these things are being conducted by the Treasury Board Secretariat. This is something the Privacy Commissioner would be more aware of. I don't deal with that.

There are some initiatives within the access to information regime that I think are very positive and of which I have just recently been apprised. Among others, for instance, is the move towards full disclosure of access to information requests on a website. That has already started. Also, electronic requests as opposed to letters and electronic payments as opposed to cheques will be allowed. As you know, probably nobody under 30 uses cheques anymore. They just do all their transactions electronically.

These may seem like small things, but I think they will actually improve the efficiency of the access to information regime. In my office, for instance, we do get double or triple requests for access for things that have already been posted on our website, so we don't have to redo them. Basically, the information is already there. So we are seeing some efficiencies with that process.

So limits like that to open government.... I think it's really starting, and we'll see how it evolves. I think it's very positive. I think open government partnership is extremely positive as well, but we'll have to see how it evolves. I think the Treasury Board Secretariat would really be able to explain to the committee their plan going forward, and so on.

In terms of the variety of requests going between institutions, a lot of the exemptions are discretionary. In that context, each institution must always make a judgment call when it gets an access to information request. So it is not impossible that some access requests would generate different results from one institution to another even if the requests were the same. In fact, we do see that quite a bit, particularly from access requesters who are more experienced. They will send the same request to several departments. Of course, the departments may not all have the same information holdings in response to a specific request, so the results may be different.

In terms of performance, it is very uneven across institutions. I've always said that when the head of an institution is really committed to access to information and is committed to presumption in favour of disclosure, we usually see very good performance on access to information as a result.

• (0940)

The Chair: Thank you, Madam Legault.

If there's a third part, perhaps you can weave it into the answer to the next round of questions.

Ms. Suzanne Legault: Okay.

The Chair: Mr. Angus, I believe you're going to split your time with Madame Brosseau.

Mr. Charlie Angus: Yes. I just want to clarify one statement, and then I'll turn it over to my colleague.

I'm interested in your explanation of the extreme complexity of identifying which documents in ministerial offices are accessible and

which aren't. I want to go back to Mr. Togneri's statement, which was very much a warning to you to "understand the consequences of grandstanding against a political staffer". It seems to me that the decision of the court to interpret section 67.1 is creating a sense that an entire class of political staffers see themselves as being immune to being investigated, and that if there are questions about documents that may be damaging to ministers, the only persons who can make decisions about those documents being released are the ministers themselves. Are you concerned that we're in a situation again, an information black hole, that will ultimately undermine accountability within this government?

Ms. Suzanne Legault: As I explained, I don't think the decision of the Supreme Court is a good one. The court basically interpreted the act as it stands, so the only way to fix it would be to amend the legislation. It's not something that can now be fixed administratively. I think the decision is quite clear, and that's the test we have to live with. My preference would be that ministers' offices would be covered.

In relation to section 67.1 and cases of interference in ministers' offices and so on, as I explained before, I think it would be more appropriate for me to report to this committee in full once these investigations have been completed, because I will really have the full picture at that time. I'm making a commitment to this committee to do this. I'm basically promising you that this investigation is going to be in a special report. I already said that in my annual report. I think there is a lot of interest in this, and a better way to report on these cases is to have them in special reports to Parliament, as I did the last time.

The Chair: Madame Brosseau, you have around three minutes.

[*Translation*]

Ms. Ruth Ellen Brosseau (Berthier—Maskinongé, NDP): Thank you very much, Ms. Legault. I have just a few questions for you today. I would like to know what changes you propose to improve Canada's access to information regime, and which ones are the most pressing right now.

Ms. Suzanne Legault: That is a good question, an important question. As I mentioned in my speaking notes, I have undertaken an initiative to genuinely review the legislation, and I did so for a reason. It has been years since the information commissioner carried out a detailed review of this nature—the last one was done by Commissioner Reid. Since then, we have seen new models emerge in other countries, including Australia and Great Britain. Now, we can really see how these laws have evolved specifically within a Westminster parliamentary system, much like Canada's Parliament. That will give us a better idea of the situation. I have not completed my analysis. I expect to be spending a lot of time on it, and I plan to have something to present to the public next year.

Some changes are pressing. Commissioner Marleau made 12 recommendations to this committee, if I recall correctly. The authority to issue administrative orders, the authority to review Cabinet confidences are, in my opinion, very pressing.

Last year, our investigations revealed that 20% of the complaints regarding Cabinet confidences were founded, and yet I could not see the documents in question. Just by looking at a simple table that told me which documents fell under Cabinet confidence—documents that I did not even lay eyes on—we were able to determine that some 10 complaints out of 50 were founded. That remains a major concern for me.

My office's mandate to provide education, to conduct research, to do the work we do and even to appear before the committee are all activities that are not funded and that pose a real challenge for us. At the same time, I feel that we always provide Parliament with a different perspective than the government's. We offer what I consider to be a relevant perspective on the access to information regime and its administration.

• (0945)

The Chair: Thank you very much, Ms. Brosseau.

[*English*]

Mr. Del Mastro, we're going to wedge in just a few minutes. With the indulgence of our witness, we're going to go just a little bit over time.

Mr. Dean Del Mastro (Peterborough, CPC): Thanks very much, Mr. Chairman.

You know, it never ceases to amaze me. This week we see in the press members of the NDP out actively lobbying or indicating that they believe folks trafficking in narcotics just require more love, but Sébastien Togneri should be publicly flogged, and perhaps executed, if they could get their heads around execution—

Mr. Charlie Angus: A point of order, Mr. Chair.

The Chair: One moment, Mr. Del Mastro.

Mr. Angus.

Mr. Charlie Angus: That's really the kind of stuff for saying—

Mr. Dean Del Mastro: Charlie, come on. You've said outrageous things about Sébastien this morning. Come on—

The Chair: Excuse me, Mr. Del Mastro.

Mr. Angus.

Mr. Del Mastro, I think the line of questioning that we'll have for

Mr. Charlie Angus: We've never suggested that Mr. Togneri should be flogged or executed. I think he should retract that comment.

The Chair: It will be up to Mr. Del Mastro whether he chooses to retract or not.

Mr. Del Mastro, if you just focus your attention on—

Mr. Dean Del Mastro: These character assassinations the likes of which you've undertaken, Charlie, are just as harmful—

A voice: [*Inaudible—Editor*]

The Chair: Mr. Del Mastro, please: through me and to the witness.

Mr. Dean Del Mastro: Ms. Legault, just two crown corporations you've specifically indicated have performances that you consider to

be substandard. In the case of Canada Post, you've said they don't have a lot of requests, but they're not answering them satisfactorily.

In the case of the CBC, they're using an exemption that provides for journalistic kind of integrity...I suppose it's the way I would put it. Are they upholding the spirit of the Accountability Act? Is that really what we're talking about? CBC is responding. Canada Post is responding. Is this really about not upholding the spirit of the act? Is that really why you're flagging them?

Ms. Suzanne Legault: Each of these institutions had really serious performance issues, for different reasons.

In the case of CBC, when they first became subject to the act, they received an enormous amount of requests—over 500. They really did not anticipate getting so many, and it caused a delay and a backlog in their office. The second thing with the CBC is that the provision that applies to CBC in the act says:

This Act does not apply to any information that is under the control of the Canadian Broadcasting Corporation that relates to its journalistic, creative, or programming activities, other than information that relates to its general administration.

In the case that is before the court—and of course I cannot go into detail because it is to be heard in the Federal Court of Appeal on October 18—they're saying that I do not have the right to review the documents that are subject to the request because the act does not apply. I'm saying that I have the right of review in order to determine whether they're applying this provision appropriately. So that's the nature of the case.

That being said, this language seems to come from the Broadcasting Act. It hasn't been tested under access to information. We will have to see. I anticipate that we are probably going to have a lot of litigation over the interpretation of this provision over the years.

Canada Post is a different issue. My view, and I expressed this to the head of Canada Post yesterday, is that they don't have a proper delegation order in the organization. Everything needs to be reviewed at the very high level, which is contrary to Treasury Board Secretariat best practices. The ATIP coordinator should be able to make decisions on the release of information. You can ask the president of Canada Post why he's keeping it this way. I think it's leading to a lot of delay. That being said, again, Canada Post was given a specific provision in the act. It's a crown corporation. What does it mean in the context of a crown corporation?

By the way, each crown corporation has a different makeup. CBC is not funded in the same way as Canada post and not in the same way as VIA Rail. These provisions that apply to them look at their competitive market or their commercial interests. They're all competing in different markets. I used to do antitrust, and each market is going to be different. Snail mail is going to be a market. Courier mail is going to be another market. It's generating a lot of complexity, sir, in the analysis.

Again, there is probably going to be a lot of litigation before we have full understanding of the meaning of these provisions.

• (0950)

The Chair: Thank you, Madame Legault.

Thank you, Mr. Del Mastro.

We've gone a little bit over time.

Again, I thank you for your testimony under short notice.

Ms. Suzanne Legault: Thank you.

The Chair: To committee members, there will be an offer, which we are working on between our offices, to meet with some of the access to information commissioners from other countries who will be visiting Ottawa next week. Stay tuned for that. I think it will be a good opportunity for witnesses from other nations to tell committee members what they do and the various stages other countries are at.

Again, Madame Legault, thank you very much.

Ms. Suzanne Legault: Thank you.

The Chair: We'll take a small pause while we change over to the Commissioner of Lobbying.

• (0950) _____ (Pause) _____

• (0950)

The Chair: Let's bring the meeting back.

My apologies, Ms. Shepherd, as we're going to be rushing you a little bit.

As committee members will know, today in the House of Commons is being treated as a Friday, so question period will be up at 11. We'll be very tight with time, and I'll try to give members warning as they're getting closer to their time limits.

With respect to a meeting with other commissioners, Madame Legault has extended an invitation to the other commissioners who will be visiting Canada next week. We'll update committee members. We'll have to seek a small budget to enable us to sit down with them. I think we should host them at a lunch; it would make sense potentially after our committee meeting next Thursday. So you may want to pencil that in right now.

Ms. Shepherd, are you ready to go, or would you like me to run out the clock a little more while I talk?

• (0955)

Mrs. Karen Shepherd (Commissioner of Lobbying, Office of the Commissioner of Lobbying): No. I can start.

The Chair: Okay. Thank you, and welcome to committee. Thank you for coming on such short notice. You have up to 10 minutes.

Mrs. Karen Shepherd: Thank you.

[*Translation*]

Good morning, Mr. Chair and members of the committee.

I am pleased to be here to provide you with an overview of my office and to outline my priorities for 2011-2012. I am joined by René Leblanc, Deputy Commissioner.

[*English*]

My mandate, which comes from the Lobbying Act, is threefold: maintain the registry of lobbyists; raise awareness about the Lobbying Act and the Lobbyists' Code of Conduct; and ensure compliance with the act and the code.

Lobbyists are individuals who are paid or employed to communicate with public office holders to change the state of play concerning government legislation, regulations, or policies or programs, or to try to obtain government grants or contributions. The Lobbying Act recognizes that lobbying is a legitimate activity. The transparency provided by the act is central to enhancing the public's confidence and the integrity of decisions taken by government.

The registry of lobbyists is our primary tool for ensuring the transparency of lobbying activities conducted at the federal level. The registry is the online application that lobbyists use to publicly disclose their lobbying activities. The number of registered lobbyists currently stands at 5,000.

In 2010-11, we streamlined the processing of registrations and managed to decrease the time it takes for lobbyists to register, from an average of 20 days to about three. I believe this improves transparency, as information about federal lobbying activities is now available to the public that much sooner.

[*Translation*]

Another important aspect of my mandate is to foster awareness of the Lobbying Act. I believe that communicating the rationale and the requirements of the act and the code leads to better compliance.

In 2010-2011, my staff and I met with approximately 1,500 individuals to explain the requirements of the act and the code. These events also provided opportunities to receive feedback on how we are doing and helped inform my recommendations for amendments to the act.

[*English*]

The enforcement of the act and the code is supported by an extensive program of monitoring, verifications, administrative reviews, and investigations. Every year my office verifies several hundred individuals, corporations, and organizations after learning that they have lobbied federal public office holders.

In recent experience, we found that the majority had filed returns in the registry of lobbyists or that registration is not required. Last year my office verified the accuracy of about 400 monthly communication reports. Our experience is that only a small percentage of them contained errors such as incorrect dates or job titles. In some cases, the communication did not require a report, as it was not carried out orally or arranged in advance.

In 2010-11, I initiated 37 administrative reviews and closed 31. These reviews look into suspected or alleged contraventions of the Lobbying Act or the Lobbyists' Code of Conduct that are brought to my attention either through monitoring activities or complaints. Administrative reviews, which are fact-finding processes, result in reports that assist me in determining a suitable means of compliance.

There are four possible outcomes following an administrative review. One is that the allegation is unfounded, in which case I inform the relevant parties and close the file. In another, I may open an investigation if I determine that I have reason to believe it is necessary to ensure compliance with either the act or the code. I may also determine that I have reasonable grounds to refer the matter to the RCMP.

Lastly, I may determine that while the allegation is well founded, the gravity of the transgression is low and does not warrant referring it to the RCMP. In these cases, I am choosing to use alternative compliance measures. These measures include educating the person on the requirements of the act or requesting that a correction be made to the registry of lobbyists. These cases are also subject to further monitoring.

In 2010-11, I opened eight new investigations and closed six. Three of the six that were closed resulted in my finding the lobbyists in breach of the code. As required by the act, I tabled three reports to Parliament detailing my findings and conclusions. For the other three cases, I exercised my authority to cease the investigation, either because the subject matter had been dealt with in previous or impending reports to Parliament or because I considered the evidence to be insufficient.

Since 2008 I have referred six files to the RCMP, as I had reasonable grounds to believe that a person had committed an offence under the Lobbying Act. In all six cases the RCMP informed me that no further action would be taken.

•(1000)

[Translation]

A five-year prohibition on lobbying the federal government after designated public office holders leave office was introduced in the Lobbying Act in 2008.

Former designated public office holders may apply for an exemption from the five-year prohibition. I have the authority to grant one if doing so would not be contrary to the purpose of the act. Since 2008, I have received 17 requests for exemptions and have granted 4.

[English]

I would now like to focus on my priorities for this year.

My budget is about \$4.6 million, and I currently have 28 employees. Each year nearly a quarter of my budget goes to administer the registry of lobbyists. In 2011-12, my priorities will be to implement service standards for registration processing and to have searching and reporting capabilities that are more effective and easier for clients to use.

Outreach activities represent about 20% of my budget. In 2011-12, I will continue to reach out to various audiences to raise awareness about the act and the code. We have also undertaken a complete overhaul of our website to improve functionality and simplify navigation. The work is expected to be completed by December.

At any given time, my office has a caseload of about 50 files. They range in complexity and include administrative reviews, investigations, and reviews of applications for exemption from the five-year prohibition on lobbying. A quarter of my budget goes towards those enforcement activities. In 2011-12, my priority in this area was originally to develop an automated case management system to facilitate the tracking and reporting of reviews and investigations. Unfortunately, this project has been delayed.

[Translation]

I am proud of all that my office has accomplished in its first three years to advance the transparency of lobbying activities. My objective is to continue to build on our successes to refine and streamline our operations, and to strive to administer the Lobbying Act more effectively.

[English]

To that end, I intend to adhere to the spirit and intent of the government's strategic and operating review exercise. I have undertaken a review, and I intend to present the results of this review to this committee and in my next report on plans and priorities.

In closing, I would like to note that the Lobbying Act is eligible for its five-year review. At my December 2010 appearance before this committee, I outlined a number of issues related to the review of the act. In March of this year, I tabled a report containing my recommendations to improve on the current legislation.

[Translation]

Although many aspects of the act are working well, my experience with the legislation leads me to believe that further amendments are necessary to improve transparency and ensure better compliance.

[English]

To improve transparency of lobbying activities, I am recommending that the act be amended to increase the number of individuals and activities covered by the act, for example, by removing the provisions regarding the significant part of duties and those requiring that a communication be arranged and advanced.

In terms of enforcement, the act prescribes significant fines and jail terms for offences, yet no charges have been laid. My experience points to the need for a system of administrative monetary penalties that would provide me with penalty options somewhere among my current practices of education, correction, and monitoring for less serious transgressions as well as for the more severe ones, including reports to Parliament and referrals to the RCMP.

It is clear to me that even minor transgressions, such as habitual late filing, may negatively affect the transparency of lobbying activities. In order to deal with such transgressions, the Lobbying Act currently offers no enforcement alternatives. An administrative monetary penalty system could potentially address the lack of flexibility in terms of enforcement options currently provided for in the act.

Not all transgressions have the same gravity. An administrative monetary penalty system would introduce a continuum of progressively more severe sanctions more appropriate to the existing range of possible breaches. Publicizing administrative monetary penalties applied would also serve as a general deterrent to all lobbyists.

•(1005)

[Translation]

I look forward to working with Parliament on the legislative review and other matters.

Mr. Chair, that concludes my remarks. I look forward to answering any questions you and the committee members may have.

The Chair: Thank you very much, Mrs. Shepherd.

The first seven minutes are yours, Mr. Angus. Go ahead.

[English]

Mr. Charlie Angus: Thank you, Madam Shepherd, for your appearance this morning. It has been helpful to have you come before our committee and it was certainly helpful to read your report.

I believe we have in the nature of some 5,000 registered lobbyists on the Hill. Is that correct?

Mrs. Karen Shepherd: That's correct.

Mr. Charlie Angus: Yes, and there are about 300-and-some of us, so there are a lot of people knocking on our doors all the time—and there are different kinds of them. I think at the outset it's important to clarify that there are lobbyists who represent small organizations. There are people who might not even think they're lobbying. They're trying to just make connections with parliamentarians because we rely on information to do our job. Without these people coming to us and trying to tell us about their group or organization, whether it's the Heart and Stroke group or arts groups, we can't do our job.

We're not interested in those people who make mistakes if they don't file properly or even understand they're lobbyists. It's a question of the people who are different in terms of being able to open doors and make connections that are for political influence. That's where I think the act has to be vigorously enforced, and we certainly want to make sure there are no loopholes.

I'm looking at the question of some of these examples. For example, in your report I was reading that we had a Mr. Michael McSweeney from the Cement Association of Canada who helped organize a fundraising dinner for the then Minister of Natural Resources, the Honourable Lisa Raitt. In fact, he wasn't the only one; I think there was a Mr. Will Stewart who also helped do a fundraising dinner. You found them in breach of rule 8 for improper influence. What happened?

Mrs. Karen Shepherd: Well, because I found them to be in breach, what I'm able to do under the act, or actually required to do under the act once I open an investigation, is to table a report to Parliament. In this case, because there were two lobbyists, I tabled two reports.

Mr. Charlie Angus: So it just went to Parliament?

Mrs. Karen Shepherd: Yes.

Mr. Charlie Angus: I see. I mean, they weren't raising money for a hospital. They were raising political money for a minister who had access to all key departments. I would think that's a clear attempt to say “we raise money for you and we're expecting favours in return”.

It only goes to Parliament...? You have no other ability to sanction these people, to tell them it is completely inappropriate to be holding political fundraisers in the hopes of helping the cement industry get more contracts?

Mrs. Karen Shepherd: The only authority or consequence for me under the act is, yes, to just refer it to Parliament. That is one of the things when we're going through the legislative review: whether any part of the code should be codified, which would then have other

sanctions, potentially. Other sanctions that could be made available include whether I could limit their ability to lobby if I were to find an individual in breach of the code, but right now the only thing at my disposal under the act is a report to Parliament.

Mr. Charlie Angus: Did Parliament do anything?

Mrs. Karen Shepherd: I don't believe so.

Mr. Charlie Angus: I see. So it's essentially a boy scout's code, then, and as long as these guys do what they do, they're going to be able to continue what they do.

So you've suggested administrative monetary penalties as a way of, again, reminding people that it is completely unacceptable to raise political cash for ministers, obviously with the clear intent that down the road favours might be returned. What kinds of administrative penalties would you see as important?

• (1010)

Mrs. Karen Shepherd: First of all, let me clarify that right now the Lobbyists' Code of Conduct is a non-statutory document, so therefore there are no fines or jail terms associated with it.

Mr. Charlie Angus: Yes.

Mrs. Karen Shepherd: So if Parliament were to choose fundraising, for example, as you're saying, or if certain political activities were at issue and maybe should be codified under the act, that would be one thing. The second would be, yes, getting administrative monetary penalties that I would be responsible for administering and, as I've indicated in my five-year review of the act, the ability to post them as well, because it's not just finding.... If I'm going to show that there really is deterrence, I need to be able to post them on the website as well.

Mr. Charlie Angus: Right.

Well, we've had examples, because again, there are lobbyists and now we have consultants: people who know everybody on the inside and who can open doors by making a phone call. That might not be considered lobbying by some, but certainly it would be very effective if you wanted to get to the people in the know.

I'm thinking of Bruce Carson, for example. It's a notorious case. This guy was a convicted felon; he was the Prime Minister's senior adviser. He knew the Lobbying Act; he'd written briefs on the Lobbying Act. He felt he wasn't subject to the Lobbying Act and yet he was setting up meetings with John Duncan. He was going to set up meetings with Peter Kent.

He seemed to feel that he was exempt from the Lobbying Act because of the loopholes. Yet certainly, being an insider, his being able to open doors is a heck of a lot different from the person who.... What is the threshold limit? Is it 20% of your time? He might have been spending 5% of his time lobbying, but it would have been highly effective. How do we constrain guys like this? What steps are needed to make sure that just because you know somebody in the PMO you can't be opening doors for businesses?

Mrs. Karen Shepherd: To be honest, because that case is currently... I normally conduct investigations and reviews in private, but I have commenced... When I'm speaking in front of this committee, if I'm talking about a matter that's in the public interest...I am looking into this particular issue. So I am looking at the different issues in this particular file.

In general, in response to your question, the act has quite clearly right now outlined that if you are communicating with a public office holder for payment on a registerable activity—so communicating to change or develop a policy or program to obtain a financial benefit. In the case of consultant lobbyists, there is also arranging a meeting and the awarding of a contract.

For in-house lobbyists the other thing that triggers is the significant amount of duties test, which is currently interpreted as 20%.

One of the things I have advocated or recommended during the legislative review, as I see it, as an improvement to the act, is to actually get rid of the significant amount of duties test requirement from the legislation. This will capture a lot more activities and organizations and corporations that are not currently having to register.

That said, as I recommended, there are probably exemptions to that that Parliament may want to consider. I think there was a reason for putting in the significant amount of duties test so that it wouldn't be an undue burden, because one of the principles of the act is that the system for registration should not impede free and open access to government.

The Chair: Thank you, Ms. Shepherd.

Thank you, Mr. Angus.

Ms. Davidson, for up to seven minutes—or Mr. Del Mastro.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Mr. Del Mastro is going first.

Mr. Dean Del Mastro: Very briefly, I just want some clarification. Mr. Angus pointed out that there are a number of registered lobbyists—I believe about 5,000. I would imagine that groups like the United Food and Commercial Workers Union and the CAW and so forth would have lobbyists registered with you?

Mrs. Karen Shepherd: I can get back to the committee as to whether those are actually registered, but again, it would be if they are paid to communicate on a registerable activity and hitting cumulatively the significant amount of duties test.

Mr. Dean Del Mastro: I take from that that when they contravene the Accountability Act and sponsor party conventions and events at party conventions as registered lobbyists, they're probably seeking to get undue influence within a political party. Perhaps Mr. Angus might want to get back to the committee on whether or not they did in fact buy any undue influence within the NDP when they did contravene the Accountability Act, sponsoring events at the NDP convention in British Columbia.

•(1015)

Mr. Charlie Angus: A point of order.

The Chair: A point of order, Mr. Angus.

Mr. Charlie Angus: I know my colleague is eager on this discussion, and I have great respect for Dean Del Mastro, but I don't think it's an issue for the Commissioner of Lobbying. It's actually before Elections Canada, where many of his colleagues are up on charges as a result...so he should refer it to Elections Canada.

Thank you.

The Chair: We'll focus on the testimony in front of us today.

Ms. Davidson.

Mrs. Patricia Davidson: Thanks, Mr. Chair.

It's nice to see you again. Welcome to the committee.

I just want to continue a little bit with the numbers of lobbyists. You indicated in your report that there are currently around 5,000. Does that number remain fairly constant or does it fluctuate much?

Mrs. Karen Shepherd: It fluctuates. If you look at the one-pager I provided to the committee, it's down slightly. But it does go down during the summer months, because if they're not lobbying or their undertaking has finished, they de-register. But over time it seems to be staying roughly at about the 5,000 mark.

Mrs. Patricia Davidson: You also indicated to us that you had streamlined the process of registration and taken it from 20 days to three days. That's remarkable. How did you do that?

Mrs. Karen Shepherd: I'm actually quite proud of the team. First of all, when the Lobbying Act came into force there was a lot of education that had to be done on the new requirements, for lobbyists and even for staff. So there was a lot of time spent going back and forth on corrections and a lot more time spent on having to explain the legislation and help the lobbyists register. But in addition to that, the team did an internal review of how things were working and determined that doing electronic e-mails, for example, would be faster. Also, there were improvements put into the LRS so that when a file comes in it's automatically assigned to the responsible adviser, as opposed to having to have somebody else open it and decide who to give it to. So they've been finding different ways to improve.

Mrs. Patricia Davidson: Congratulations on that. That's great.

Mrs. Karen Shepherd: Thank you.

Mrs. Patricia Davidson: We also know about the designated public office holders and the five-year prohibition. You said you had received 17 requests and had granted four. What are the reasons for granting exemptions? Can you broadly tell us?

Mrs. Karen Shepherd: Sure.

They must not be contrary to the purposes of the act. So some of the things in the act include, for example, whether they were acting a short period of time, doing administrative duties only, and also maybe a student program or something.

One of the things the act does is to specify that when I grant an exemption from the five-year prohibition, I'm required by legislation to post it on my website. So all four are posted on the website. The reasons for the four exemptions I actually granted included that one was for a short period of time and another involved administrative duties only. In one case the individual's employer was not going to gain an unfair advantage.

Mrs. Patricia Davidson: You said your priority was originally to develop the automated case management system for 2011-12, but that it's being delayed. Is that still going to be done or is it off the books?

Mrs. Karen Shepherd: What happened is that being as small as we are, with 28 individuals, we're dependent on having services provided by other providers. Currently, our IT is supported by another department. We were hoping to move forward, but the department has indicated that it can't post a particular project that we were looking for. We were hoping to go with SharePoint.

Given the current consolidation that's going on within IT right now, that's affecting whether I can even move to another department, and will do so until that is determined. So internally we are still looking at whether there is a case management system we can put in place.

That said, the directorate of investigations has done quite a bit in consolidating all of our files onto an Excel spreadsheet. It's not the ideal way that we would like to manage the files, but it has done a lot to help us manage and keep track of them.

Mrs. Patricia Davidson: To help us better understand the process, could you tell us whether you assign an investigator to a complaint right away when you receive it, and then does an administrative review start? Is that correct?

• (1020)

Mrs. Karen Shepherd: Yes. Actually, I have the ability under my legislation to initiate something if I see a possible contravention of the act or the code. So if I see something, then I would assign it to the directorate of investigations.

And, yes, we open up an administrative review first. That's my fact-finding stage, which allows me to determine what other consequences or compliance measures may be necessary.

Mrs. Patricia Davidson: Can you tell us of any specific ways you think the registration system could be simplified any more than it already is? I know you've gone from the 20 days to the three days. Do you think you're at the optimum right now?

Mrs. Karen Shepherd: The team has done quite a bit for improvement. You always want to say there's room for improvement. So we will look at ways through the technology. We're spending time now on the search functions to see if we can do those any better.

We've actually established client service standards as well. We focused on that. The idea there is that aside from putting the registration up on the system within three days, we will acknowledge e-mails within 24 hours; that there will be a response to an inquiry within two days, unless it's more complex and we say that it will take us 14 days to respond; and that phone calls will be answered by the adviser. With somebody on the phone, we're looking at 80% of the time....

So we're working on different ways to improve.

Mr. René Leblanc (Deputy Commissioner, Office of the Commissioner of Lobbying): It's within 30 seconds.

Mrs. Karen Shepherd: Within 30 seconds. Thank you.

Not 80% of the time, but within 30 seconds. That's an important factor.

The Chair: Thank you very much, Ms. Davidson.

We'll turn to Mr. Andrews for up to seven minutes.

Mr. Scott Andrews: Thank you, Mr. Chairman

Welcome, Ms. Shepherd.

Getting back to the five-year prohibition on lobbying by former MPs, my question is in regard to the former MP Stockwell Day and his opening of a non-lobbying government relations firm. Your office was asked why it would not investigate that.

Could you please explain why you would not look into this matter of a former MP starting a government relations firm within months of leaving office? It would look to be, obviously, some form of lobbying. Obviously, Stockwell Day thought enough to ask the Ethics Commissioner whether it was ethical, so why wouldn't the Lobbying Commissioner look into this as well?

Mrs. Karen Shepherd: Actually, I'm not sure if you're referring to a media article or what. The office has not said that we would not look into any particular issue. In fact, I take all possible allegations or contraventions quite seriously and look into them. What was probably said was that I don't comment on specific files, because I conduct them in private.

Mr. Scott Andrews: Okay, so are you looking into this particular file and this particular case?

Mrs. Karen Shepherd: Because it is in the public domain, I will respond to that. I did open an administrative review and determined that there was no breach, and I closed the file.

Mr. Scott Andrews: So you opened a review—

Mrs. Karen Shepherd: Yes.

Mr. Scott Andrews: —and you determined that it wasn't lobbying. Did you interview the former minister to get to the bottom of what exactly a non-lobbying government relations firm is?

Mrs. Karen Shepherd: We did everything necessary to satisfy ourselves that we could close the file.

Mr. Scott Andrews: Okay. Maybe you could tell me the difference between a government relations firm, a consulting firm, and a lobbying firm.

Mrs. Karen Shepherd: I have to admit, I'm not the expert on the different types of firms. I'm the expert on what constitutes a registerable or lobbying activity. I'd probably have to answer it in a different way.

The act requires that if an individual is, for payment, communicating with a public office holder regarding a registerable activity... and, as I mentioned earlier, a registerable activity is one that makes a development or change to any policy or program, legislation, or regulation, or tries to obtain a financial benefit such as a crown contract or contribution. In the case of a consultant lobbyist, it depends on whether they're actually being paid to arrange a meeting between their client and a public office holder or trying to obtain a financial benefit. So all of those factors need to be there, and they will determine whether, in the case of a consultant lobbyist, something needs to be registered.

•(1025)

Mr. Scott Andrews: I'm still a bit confused, because I would not know. You're an expert, so in your expert opinion is there a difference between a government relations firm and a lobbying firm? I don't understand the difference between the two. Do you see a difference, in your expert opinion?

Mrs. Karen Shepherd: As I mentioned, I'm not an expert in terms of the different opinions.... What I'm looking for is whether an individual or a firm is required to register under the legislation.

Mr. Scott Andrews: Do you monitor what former MPs do in the way of any potential lobbying, or does your office take a case only if it is referred?

Mrs. Karen Shepherd: We conduct monitoring activities—what we call our media monitoring—to see whether we see cases of lobbying or lobbyists being mentioned. As for my mandate, I do not see former people as being part of my mandate.

Mr. Scott Andrews: You mentioned that you did an investigation of Stockwell and you closed it. Have you done any other such investigations of former MPs that we wouldn't be aware of?

Mrs. Karen Shepherd: As I've said, at the administrative review stage, I inform the relevant parties, but there needs to be a reason or a possible allegation for me to look at something.

Mr. Scott Andrews: So if you do a review and then close the case, you don't report that publicly?

Mrs. Karen Shepherd: I do not report the names of the individuals, because if I've closed an investigation at the administrative review stage, that's because it's unfounded. Otherwise it goes further. If I do an investigation, then I'm required by legislation to table a report.

Before the parliamentary break, the committee asked me if, when something was in the public interest, I would confirm whether I was looking into it and/or why I was not looking into it.

Mr. Scott Andrews: Thank you.

The Chair: Thank you, Mr. Andrews.

Mr. Mayes, go ahead, please, for up to seven minutes.

Mr. Colin Mayes (Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

This is a new committee for me, so I have a lot to learn.

Thank you for being here today.

There is something I'd like to understand. You receive a complaint, it's brought to your office, and you assign an investigator to review it. Could you just give me an idea where you go from there? Do you assess where the complaint is coming from? Is it politically motivated? Where does the assessment come in, and then when you proceed, what process do you take?

Mrs. Karen Shepherd: We actually have published what I call the guiding principles and criteria on my website, which are the criteria we use in assessing each file, and also the different compliance measures.

In terms of your question, I'm looking at the facts of the case. First of all, what is the allegation? Is somebody breaching the act, for

example? Has the individual not registered and performed lobbying activities? In that case, if it's consultant lobbyists we would be trying to gather information through interviews or other means as to whether the individual received payment, evidence that they did communicate orally or in writing with a public office holder on a registerable activity. For the consultant lobbyists we would also be looking at whether they arranged meetings.

One of the reports that I tabled to Parliament last year, where I found the individual to have breached the code, was that the individual had been organizing meetings with public office holders for two mining firms and had not registered, which is a requirement under the act. Even though they don't register under the act, the Lobbyists' Code of Conduct still applies if they should have registered.

Mr. Colin Mayes: Just to clarify something, I saw the news clip with regard to Stockwell Day's discussion about his new career. He wasn't going to lobby; he was going to advise people how to lobby, so he was actually helping your department and letting people know what the rules and regulations are and how to approach lobbying government. He wasn't lobbying on behalf of any particular interest. I think that should be on the record.

As far as non-profits are concerned, I have a family member who is working for a non-profit overseas in Africa. The non-profit she deals with does get some funding from CIDA on occasion, and we're always very sensitive about that. I'm just wondering, is there any way you deal differently with a non-profit organization?

•(1030)

Mrs. Karen Shepherd: For a non-profit organization, because it is non-profit, it would be an in-house organization lobbyist. For an in-house organization lobbyist, again it goes down to the criteria: are the employees paid; are they communicating on a registerable activity or trying, as you just indicated, maybe to get a grant or some kind of financial benefit. In addition, there's the significant amount of duties test. For a non-profit organization, when you're looking at the significant amount of duties test, which is a cumulative test.... For example, if I was paid and lobbying 12% of my time with federal public office holders and René—I'll pick on you—was lobbying 8% of his time, collectively we're hitting that 20% mark. The non-profit would be required to register by the senior officer, listing all of those who are being paid and are lobbying.

So they're treated the same as other non-profits or even corporations in the current legislation, with the exception of corporations where they have two lists in terms of the individuals who are lobbying, whereas for a non-profit, once the organization has to register, no matter what percentage of time they spend registering they need to be listed. So that particular organization may or may not be registered if they haven't hit the significant amount of duties test.

As I indicated, I'm looking at the fact of transparency, and therefore I've recommended in the amendments to the act potentially, for the legislative review, to remove the significant amount of duties test. But I have also suggested in my recommendations that Parliament might want to consider whether particular exemptions should be there for particular non-profits of certain sizes, for example, or charities. So that may be a difference that could occur should Parliament choose to take the significant amount of duties test off.

When I look at some of my provincial colleagues, there are some that are not including either non-profits—actually the City of Toronto has an exemption as well for non-profit communities, I think it is. I can get back to the committee on the exact exemptions if you like.

Mr. Colin Mayes: I'm just curious. We have to do disclosure forms as far as conflict of interest.... I'm wondering, is there any thought of you doing a disclosure for members of Parliament? I would say, okay, I have a daughter working for this NGO who does receive funding from CIDA—just to be above board and open. Is there any thought of doing that, or do you think it would be something that would be of any value?

Mrs. Karen Shepherd: In terms of the current mandate I have right now, it's about lobbying and the lobbying legislation. So it would be changing the focus of the act, if I were actually getting disclosure from parliamentarians as to where their conflicts were.

Mr. Colin Mayes: Okay, I see what you're saying. I guess a daughter telling a father, over a turkey dinner, how to run government is not lobbying.

Voices: Oh, oh!

Mrs. Karen Shepherd: Yes.

Mr. Colin Mayes: That was just an interest of mine, because I have run across.... The NGO has been in my office and I have talked to them, so I just wondered about that.

The Chair: Thank you, Mr. Mayes. And thank you for your disclosure as well.

I'll ask all members to go through their disclosures in their questioning.

[Translation]

Mr. Dusseault, you have the floor. You have five minutes.

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

I would like to thank the commissioner for appearing before us today.

I will be focusing more on lobbying. I will not be touching on the matters dealing with Elections Canada.

As my colleague mentioned earlier, some lobbyists hold fundraisers for ministers in the hope of—at least we assume—obtaining favours in return.

You said that the investigation in such cases was referred to Parliament. I was wondering if it would be more appropriate for you to handle the investigation. I don't think Parliament is independent enough. Certain political parties are biased.

What are your thoughts on that?

• (1035)

Mrs. Karen Shepherd: I think I understand your question.

I do not refer the investigation to Parliament. I, myself, conduct the investigation when there is an alleged violation of the act or the code. In three cases, I submitted a report to Parliament upon completion of the investigation.

I think what you are really asking is what the outcome was. However, all I can do is submit....

Mr. René Leblanc: Table.

Mrs. Karen Shepherd: ...table the report in Parliament after conducting the investigation. I do not refer the investigation to Parliament; I do it myself.

Mr. René Leblanc: She tables an investigation report. The investigation has been completed, and the report is tabled in Parliament for information purposes.

Mr. Pierre-Luc Dusseault: If it is then revealed that there was a violation, that something should not have been done, is it up to us, as parliamentarians, to determine what measures should be taken? In cases where the law was violated, we would like to see jail terms, fines or other similar penalties imposed.

Is that possible?

Mrs. Karen Shepherd: In cases involving rule 8, there is a conflict of interest. As I just said, in those instances, there are currently no penalties, jail terms or fines set out. If you consider that a very important addition, you could decide to codify it when Parliament conducts its review, and that would allow for the inclusion of those kinds of provisions in the act.

Furthermore, I would like to add something to my recommendation: I could take action if I had an administrative and monetary penalty system at my disposal.

Mr. Pierre-Luc Dusseault: You table reports stating that an individual has violated the law, and afterwards, you have no authority to impose a penalty. Is that what you are saying?

Mr. René Leblanc: Actually, those reports are produced following an investigation. In cases where the investigation deals with the act, and not the code, the files or the individuals are initially referred to the RCMP. The RCMP is the only body with the authority to legally go after the parties or individuals in violation of the Lobbying Act. The commissioner does not have that authority.

Mr. Pierre-Luc Dusseault: Okay.

Mr. René Leblanc: If, for some reason, the RCMP decides not to follow up on the file—and the act does indeed prescribe jail terms and fines, so they can be imposed further to an RCMP investigation—the case comes back to us. We can then report to Parliament and make the case public.

Mr. Pierre-Luc Dusseault: I would like to discuss another case that has been on my mind. During the last session of Parliament, we heard about the case involving Rahim Jaffer. I know that you will be submitting a report, and I was just wondering where you were in that reporting process specifically.

Mrs. Karen Shepherd: My investigation is ongoing, I am still working on it. I plan to submit my report by the end of December.

Mr. Pierre-Luc Dusseault: Excellent.

The Chair: Thank you very much, Mr. Dusseault.
[English]

Mr. Del Mastro, for the final five minutes today.

Mr. Dean Del Mastro: Thank you very much.

And thank you, Ms. Shepherd and Mr. Leblanc, for your appearance here today, especially on short notice.

Obviously, there are an awful lot of questions, especially for MPs, as to what they're responsible for when it comes to lobbying and what their role is, with respect to Mr. Mayes' question. I think the important thing to note here is that the onus is on the lobbying firm or the lobbyist to register and for them to report their contact with MPs. If I'm not mistaken, the changes we made last spring.... Under the Accountability Act there was some question as to when you had to report contact, but we are now requiring them to report contact with all MPs. Is that correct?

• (1040)

Mrs. Karen Shepherd: There's always been a confusion, too, whether initial registration was required or the monthly report. MPs and senators have always been public office holders, so an initial registration was always required if all of the other elements that I've been mentioning today were there. The difference now, with MPs and senators becoming designated public office holders since September 2010, is that if there is oral and arranged communications as per the regulation, then there would be a monthly report. One of the reasons why—and again, when I talk about removing significant amount of duties and the transparency of activities, given why the monthly report, I believe, was put in—is if an organization or corporation does not have to file an initial registration because they do not hit the significant amount of duties test, then they would not be required to file a monthly communication report either.

Mr. Dean Del Mastro: Okay. The onus is on the lobbyist or lobby firm to report their contact. Is it almost an honour system? I'm just curious.

In the case of the NDP, their party president is also the president of ACTRA, a registered lobby firm, and obviously has a lot of contact with all of the members of the NDP, including right to the very top of the leadership of the NDP. How would you determine when he's in fact acting as a lobbyist and when he's in fact acting as president of the NDP, or should he report all contact he's having with the NDP members as he's president of a registered lobby firm?

Mrs. Karen Shepherd: Well, the act is pretty specific in terms of what constitutes a registerable lobbying activity and that it needs to be oral and arranged. One of the things that I have actually recommended as well is that the arranged issue be taken out of the requirement so that it would capture more perhaps of the ad hoc discussions that occur. But again, it needs to be on a registerable activity. Running into someone and talking about the latest hockey score or the kids would not be a registerable activity.

Mr. Dean Del Mastro: Okay, but theoretically, being that there is all kinds of interaction and it would be arranged interaction, because as members of Parliament especially, the upper tiers of parties...their

schedules are frankly very tight, very busy, so these would be arranged meetings.

Is it really just an honour system for Mr. Topp to indicate when he's actually working on behalf of ACTRA and when he's actually working on behalf of the NDP?

Mrs. Karen Shepherd: Well, the onus is on the lobbyist to ensure that they are complying with the legislation, in terms of either filing an initial registration or a monthly report, and to ensure—as I mentioned earlier, there is a Lobbyists' Code of Conduct—that they are conducting themselves to the highest ethical standards. You've seen from reports that I have filed to Parliament that there is a principle of professionalism as well, which is that you must conduct yourself at the highest ethical standards and abide not only by the law but by the spirit of the legislation, including the Lobbying Act and Lobbyists' Code of Conduct.

Mr. Dean Del Mastro: Thank you very much. I have nothing further.

The Chair: Thank you.

I have one small question for you, Ms. Shepherd, if I may. I know in some jurisdictions this percentage of work or percentage of time can be a tricky thing to actually understand, even for the people who are potentially lobbying. Have we ever considered, or have jurisdictions considered, just a flat hourly compendium to find out if, once you've passed a certain number of hours per month or per year in the effort of lobbying members of government, that act should be registered? If you plan in this month to spend 15 hours, that would trigger some sort of effect. Has that ever been considered, or would that system not work?

Mrs. Karen Shepherd: Actually, I'll get back to committee on the particulars of it, but I believe B.C. and Alberta both use hours as a means of determining.

The Chair: That's rather than a percentage?

• (1045)

Mrs. Karen Shepherd: Yes.

The Chair: It seems to me, and maybe to some others, that the subjectivity of the percentage of work can be difficult if you spend 40 hours a week doing this and some percentage down. It seems to add an element of vagueness, and maybe potentially a loophole for those who are looking for one, to decide when they have to register with you and when they don't.

Mrs. Karen Shepherd: That would be one way of getting.... I think also, from what I understand—and that's why I said I could get back to you on what this—100 hours preparing one case is.... I know one of the provinces does not include preparation time, for example. As you can see from my significant use of the interpretation bulletin, I think preparation time is quite important, because you can spend hours preparing for something and send your CEO for only 15 minutes. That's quite an impact.

The Chair: Sure.

Thank you very much, committee members.

This is one last reminder that witness lists with respect to the CBC and access to information are to be submitted for the discussion by five o'clock tomorrow and earlier if possible. It would be helpful for Chad. His birthday is today. He has struck the grand old age of 30, which apparently, according to the Information Commissioner, makes him no longer a youth—Chad, I'm sorry. But you still get to write cheques. Happy birthday, Chad.

I'd appreciate members getting those witness lists in as soon as possible.

Thanks, everybody. The meeting is adjourned.

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