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Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

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• (1530)

[Translation]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)): Good afternoon and welcome to the 75th meeting of the Standing Committee on Access to Information, Privacy and Ethics, today, April 24, 2013.

Today, we are making up for the meeting we weren't able to have with the Information Commissioner, Suzanne Legault. She is joining us today to discuss her office's annual reports for 2010-11 and 2011-12.

As usual, we will start with a 10-minute presentation, followed by members' questions. Ms. Legault will address both reports in her statement, so members of the committee are free to ask questions on either of the reports.

Without further ado, I will turn the floor over to Ms. Legault to present her two reports.

Ms. Legault, please go ahead.

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

[English]

Good afternoon. Thank you for your invitation to appear in relation to your study on my annual reports for the years 2010-11 and 2011-12. These two years represent the first two years following my official nomination as Information Commissioner, on the heels of having served in the position for an interim year in 2009-10.

Preparing for this appearance caused me to reflect on the work the OIC team has accomplished in the last three years. It also caused me to review the conditions that existed at the time I took the helm of the office, conditions that have informed and guided my actions since then.

Let me review these briefly.

First, when I took over as interim commissioner in 2009, the OIC was literally crippled by an unprecedented inventory of old cases, dating as far back as 2002. The number in the inventory at the beginning of that year stood at over 2,500 cases. This is compounded by the fact that the OIC has received in the last four years an average of 1,600 additional cases a year. The average turnaround time for a case at that time was around 450 days.

Second, the Federal Accountability Act had recently come into effect. It brought 69 new institutions under the purview of the act,

most notably, as you know, a number of crown corporations, along with new exclusions and exemptions, which added a new level of complexity.

Third, there had been a steady decline in two key performance measures in accessing federal government information. In terms of timeliness, only slightly more than half of all requests made to federal institutions were completed within 30 days. In terms of disclosure, less than one-fifth of all requests resulted in all information being disclosed.

Fourth, the open government movement was developing rapidly at the time, in countries like the United States, the United Kingdom, and Australia.

And fifth, the office's corporate governance was in need of a serious makeover.

[Translation]

Given these challenges, I set out a clear direction in 2010-11 in the OIC Strategic Plan, which has three key result areas: exemplary service to Canadians, a leading access to information regime, and an exceptional workplace. The annual reports of 2010-11 and 2011-12, as well as the upcoming 2012-13 annual report, highlight our achievements in addressing these key result areas.

When I first took on the role of information commissioner, I made a commitment to maximize the effectiveness and timeliness of my office to meet the needs and expectations of Canadians. As the annual reports show, we have made great strides towards the achievement of this objective through sustained and ongoing efforts.

Let me give you some of the key numbers.

• (1535)

[English]

Our inventory now stands at—and allow me to do this—1,796 files. I know people tell me I'm not supposed to use exact numbers, but if you lived in my world, one less file is one more accomplishment. That amounts to a reduction of 28.5%.

We've had close to 7,300 complaints since April 2009, including some of our oldest and most complex cases that had accumulated in the office over the years.

Our average turnaround time is now 380 days, which is just slightly over 12 months. More importantly, if you take out the outlier, which is the old cases that we are continuing to close, our median turnaround time now stands at 215 days.

The one measure I'd like you to keep in mind for my next appearance on the main estimates is that our median turnaround time, once a case is actually assigned to an investigator, is now around 86 days. That means that when I have somebody to assign a case to, people can expect a result in 90 days. Unfortunately, I don't have sufficient people to assign all the cases to at this time.

One of the challenges we now face is the changing composition of our complaints. Our caseload is almost exclusively composed of complex refusal files. Really, about 88% of our files are now complex files, a large proportion of which deal with issues of national security and international affairs, complaints against the Canada Revenue Agency, and complaints against the CBC.

[*Translation*]

During the period of time under review, we dealt with some key investigations, such as the first referral to the Attorney General under section 67.1 and the special report dealing with interference in the processing of access requests.

During that time, we also had some key court decisions, such as the Bronskill decision, clarifying cases dealing with national security. There was also the Federal Court of Appeal's decision confirming the commissioner's authority to compel the production of documents under the control of the CBC. In addition, the Supreme Court of Canada issued a decision stating that ministers' offices are not part of the government institutions for which they are responsible. These decisions are now being applied through our investigations, and our upcoming annual reports will shed light on their implications for requesters' rights.

On the key result area of a leading access to information regime, we have been active on several fronts. It is, of course, not a secret that I am a strong believer in the need for the Access to Information Act to be reformed. But the focus of our activities for the period under review was on the overall performance of the access regime and on open government.

[*English*]

During this period I completed the three-year plan on report cards, which specifically looked at timeliness. In the course of this project, we reviewed 32 institutions among those that receive the most requests.

We made a number of recommendations, both at the institutional level and at the Treasury Board Secretariat, the body responsible for the administration of the act. Most of these recommendations have been implemented and have achieved positive results, the most noteworthy being the collection of detailed statistics with a view to better diagnosing the problems in the system and the various modifications to Treasury Board policies dealing with delegation of authority in mandatory consultations.

[*Translation*]

The scrutiny of this committee over the years has also played an important role in prompting institutions on to better compliance with

the act. I have asked institutions in the most recent report cards to report their progress in implementing our recommendations in their mandatory annual reporting to Parliament under the Access to Information Act. That request was granted by the Treasury Board Secretariat, which, to my knowledge, is going to require that institutions indicate their response to our recommendations in their reports to you.

It is my hope that this committee will review these reports and follow up on them as you see fit, to ensure ongoing scrutiny of the performance of institutions in meeting their access to information obligations under the act.

• (1540)

[*English*]

We also completed the investigation into the coordination of access to information request system, called CAIRS, where I recommended to the President of the Treasury Board that all federal institutions post the summaries of completed requests on their websites, and that a central search feature be enabled to allow the public to search the lists of requests.

Since January 2012, all federal institutions have to post this information on their website, and the government is planning to have searchable summaries by next year.

During the two years under review, I spent considerable effort on promoting the benefits of the open government movement—in speeches, before this committee in 2012, and through a joint resolution of all information and privacy commissioners in 2010, which called on all governments to embrace open government principles for greater transparency and accountability.

I was really happy to see that the government adopted an open government platform in the spring of 2011.

On behalf of all the information and privacy commissioners of Canada, I also sent a letter to the President of the Treasury Board last year to provide recommendations for the government's action plan for its work as a member of the open government partnership. The key recommendation, which was supported by all commissioners across the country, was to update the Access to Information Act.

[*Translation*]

In the fall of 2011, I hosted the 7th International Conference of Information Commissioners in collaboration with the Canadian Bar Association. This was the first time that the conference was held in Canada. This event brought together more than 250 participants, including 36 international, provincial and territorial commissioners. The conference culminated in the release of a joint resolution signed by commissioners of 23 countries, calling on governments to enshrine the right to information in national laws.

On the key result area of an exceptional workplace, we focused on developing an integrated human resources plan and modernizing the corporate governance of the office with the leading initiative of modernizing our IM/IT systems. This five-year strategy started in 2009 and is slated to finish in 2013-14. So far we are on time, on target and on budget.

[*English*]

This is but a snapshot of the work conducted at the OIC during the period of time under review today. As you can see by now, I'm actually very proud of everything we have accomplished. However, as you will see in my upcoming annual report for the year 2012-13, which will be published likely in June, much remains to be done, especially since the modest gains at the system level, which I reported upon in 2011-12, appear to have disappeared. After all, 2013 marks the 30th anniversary of the coming into force of the Access to Information Act, the key driver of democracy, transparency, and accountability. Let's make sure that we actually have cause to celebrate.

You will find in the package that was distributed a number of documents that provide a lot of additional information on the work of the office. I hope these documents will actually be helpful in answering your questions this afternoon.

With that, Mr. Chair, I'm ready to answer your questions.

[*Translation*]

The Chair: Thank you kindly for your presentation.

I will now hand the floor over to Ms. Borg, who has seven minutes.

Ms. Borg, please go ahead.

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): Thank you, Mr. Chair.

Thank you, Ms. Legault, for being with us today. Your comments were very informative, and I am certain your answers will be just as helpful.

In your report, you state that only 20% of access to information requests were answered in full, and that is a pretty troubling statistic from Canadians' standpoint. You also said, in an interview, that wait times for access to information requests had never been so long. I would like you to elaborate a bit more on that and speak to its impact on government transparency.

• (1545)

Ms. Suzanne Legault: I am using statistics released by the government. Usually, the delay is over a year. The most recent statistics are from 2011-12.

The two major performance measures are response time and the quantity of information disclosed. Over the past 10 years, the best rate of performance has been 69% for cases processed within 30 days. That figure is now 55.5%. What that means is 7 out of 10 people used to receive the information requested within 30 days. Today, that number is 5.5 people out of 10.

The percentage for disclosure was as follows. Basically, in 40% of cases, all the documentation was disclosed. Now that figure stands at

around 20%. That means, then, that 4 out of 10 pages used to be received, whereas today, it is 2 out of 10.

Ms. Charmaine Borg: Thank you very much.

[*English*]

My second question concerns the open data initiative. It's really important that governments open up their data to be more transparent, so that Canadians can easily access that information. However, what we're seeing is a yearly increase of about 2.5%.

In your opinion, is that enough? Is that a good, steady increase of the amount of data we're putting online, or should we be doing better?

Ms. Suzanne Legault: I really don't know whether we have a 2.5% increase in the amount of data that's published. I really don't have that statistic.

The government has done quite a lot since it actually decided to adopt the open government movement and the open government partnership. It's actually doing quite well in terms of its own action plan. There are numerous data sets that are being published. We have joined the international aid transparency initiative. There are statistics from Statistics Canada that are published on the website for free. Some of them used to have user fees.

Overall, the government is doing really well in the open government, and it's continuing to progress. The posting of summaries of complete requests is also part of their action plan. It followed one of our recommendations several years ago, but it's something the government has acted upon. All in all, on the open government, we've made some great strides.

[*Translation*]

Ms. Charmaine Borg: Very well, thank you.

My third question is this.

Obviously, we're in a digital age where information is more easily accessible. Could you elaborate on the pilot project you launched?

The U.S. is using a model whereby access to information requests can be made online. Do you think that is something we should be working towards? Is that a model Canada should adopt?

Ms. Suzanne Legault: Yes.

One thing the government needs to do, and has actually begun to do, is improve how access to information is administered by using a more modern technology platform. The government launched the pilot project, not the Office of the Information Commissioner. One of the recommendations I have long been making is to examine other jurisdictions like Mexico that have what is known as a transparency portal.

It is possible to make requests online and to obtain answers online. It is also possible to make a complaint, do a search and access all the requests and all the results online. In short, there are certainly technology platforms available to improve the system, and keep in mind, that in the majority of cases, people still have to write a cheque for \$5, mail a letter and so forth.

I have long been saying that the system needs modernizing, and the government is in the midst of doing that. I think that's a positive step.

Ms. Charmaine Borg: Do you think the pilot project is working?

Ms. Suzanne Legault: I can't comment on that because I haven't used it personally. I believe it was made available last week. We'll have to see how things develop.

Ms. Charmaine Borg: Very well.

My fourth question pertains to the 8% budget reduction imposed on your office. How does that affect your mandate, as well your ability to manage your office and meet demand efficiently and effectively?

Ms. Suzanne Legault: As I touched on in my opening statement, the most noticeable impact is that, when I have investigators I can assign cases to, we process complaints fairly efficiently. What's happening now is that, despite the considerable reduction in the inventory I inherited, we still have 1,800 cases in the inventory on top of all incoming cases. That means that our ability to reduce that inventory and to keep processing complaints effectively and efficiently is obviously hindered by the budget cuts. In fact, I said that last year.

No doubt, the topic will come up again in two weeks when I appear before the committee regarding the main estimates. But, yes, when you consider that our median turnaround time to process a complaint stands at 215 days, as compared with 86 days when I have someone to assign a case to, the difference is significant. That is important because, when it comes to access to information, clearly the office's ability to independently review government decisions is one of the keystones of a well-running access to information regime. So, in my view, yes, the budget cuts do adversely affect requesters' rights.

• (1550)

Ms. Charmaine Borg: Do I still have some time, Mr. Chair?

The Chair: Ten seconds.

Ms. Charmaine Borg: I'll stop there.

Ms. Legault, thank you for your answers.

The Chair: I will now turn the floor over to Ms. Davidson.

[English]

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

And thanks, Commissioner, for coming back today. Hopefully we'll get through today and get our questions asked and our answers received.

I know you faced quite a challenge, when you became the acting commissioner and then the full-time commissioner, with the backlog. When you were appointed, you made the 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 about your progress on that, as well as on the timelines in terms of how you're dealing with the

requests coming through your office? I know you've given us some of that, but do you have any more detail that you can share with us?

Ms. Suzanne Legault: Essentially what I gave you are the key figures.

I can tell you what our targets are. In our report on plans and priorities, my targets for the OIC are quite ambitious. Basically, I want to have all of the more simple complaints, what we call the administrative complaints, dealt with within 90 days. About 85% is my performance measure. This year, in that respect, I am at 50% from the date that files were registered. From the date they were assigned, I stand at 70%. So I think we're making good progress on that.

In terms of the old files, we used to have, you remember—or maybe not, but I do—1,600 files dated prior to 2008. I have 30 left. I closed another one last week. I'm hopeful that these will be gone. Some of them were the CBC files, which had been on hold for quite a while because of the Federal Court of Appeal decision. But all of those really old files have been assigned.

My goal, ultimately, when I finish this mandate in four years, is to leave the next commissioner with a contemporary inventory of a manageable size, which would be about three months of cases. Whether that's feasible or not...

If you go to the bottom of page 5 of my handout, to table 7, you will see a summary of the caseload. In there you will see how many cases we've closed in the last four years.

In the last two years, the year we just finished and the year prior to that, we slowed down a little bit in terms of total number of cases. That's because we were dealing with national security files, CBC files, and Canada Revenue Agency files.

So these three groups...on the special delegation files, these are all the cases that deal with national security. We have about 300 of those cases in inventory. They are the most sensitive files, in that we have a special team, we have dedicated lawyers and we have portfolio people, who deal specifically with the institutions. We're making good progress. We've closed more of these files this year than in the last four years. We still have quite a way to go, but that project is working.

We meet with the Canada Revenue Agency regularly. They have very complex files, large-volume files, dealing with very complex international tax files. We have folks specifically assigned to these files, which tend to be more litigious.

In terms of the CBC files—I was looking at this earlier today, actually—we now have about 200 files left with the CBC. We started with almost 1,200 cases with the CBC and we're now at 214 cases. With those, we are now dealing with a specific new provision that was put in play with the Federal Accountability Act, and with the difficulty and complexity of interpreting that provision. However, I must say that it's going very well with the CBC in terms of dealing with the investigations.

I don't know if I answered your question, but these are essentially the three main groups we have.

●(1555)

Mrs. Patricia Davidson: Yes, you did answer my question. Thank you.

I notice in the information you've given us—I'm looking on page 6 at tables 8 and 9—that in the list of institutions, they are mainly, although not all, direct government-run ministries versus crown corporations.

Are the crown corporations' numbers captured under the ministry they're responsible to, or is there another chart that shows crown corporations in smaller amounts?

Ms. Suzanne Legault: No, they would be reported individually; it's just that the amounts they have are quite small.

What you have in table 8 are the top 15 institutions that have generated complaints to my office this past fiscal year. The other table lists the institutions that have been the top 15 generators of complaints to my office in the last four years.

The reason I put that there is that, essentially, in terms of scrutinizing performance of institutions, this is the focus, or where the focus needs to be. Out of 250-some institutions, these are the institutions where you have the most issues in terms of access to information: the most requests, the most complaints. That's why these are there.

In terms of the crown corporations, they now have very few requests, year over year.

Mrs. Patricia Davidson: When a complaint came in, I know there used to be issues with trying to get the information back and having dedicated people in the departments or in the ministries to deal with things. Has that issue been corrected?

Ms. Suzanne Legault: Several years ago we issued an advisory notice indicating that we expected institutions to provide us with records within a period of 10 days. I must say, generally speaking, the institutions are very collaborative in that respect. That has generated a lot of efficiencies in our office in dealing with complaints, because we actually get the records in a timely manner.

Mrs. Patricia Davidson: Good.

Am I done?

[*Translation*]

The Chair: Yes, your time is up.

[*English*]

Mrs. Patricia Davidson: Thank you.

[*Translation*]

The Chair: Mr. Andrews now has seven minutes.

[*English*]

Mr. Scott Andrews (Avalon, Lib.): Thank you, Mr. Chair.

Welcome, Commissioner.

Looking at table 6 on page 5, at the number of access requests to the number of complaints, we see that the number of access requests from 2008 to 2012 has increased and the number of complaints has decreased significantly. What do you attribute that to?

●(1600)

Ms. Suzanne Legault: This is what I reported in my annual report in 2011-12. What we had seen, which I thought was very positive, was a decline in administrative complaints. Administrative complaints are complaints dealing with delays and extensions. That had been going down quite significantly year over year. Unfortunately, this past fiscal year—and we don't have these numbers—those complaints have increased again.

If you look at page 7, figure 2, you'll see in the last column the administrative complaints. In 2009-10, it was almost 50% of the caseload, and then it went down and down. Now this past fiscal year it has increased again. We have seen an impact in some institutions in terms of their ability to respond to access requests.

We don't have the actual total number of requests for the year 2012-13, so I can't tell you the percentage of complaints versus the percentage of requests for this past fiscal year.

Mr. Scott Andrews: Do you feel that requesters quite often request information, get the information, don't effectively know the laws of the information they're allowed to have access to, and they don't lodge complaints because they don't know the difference, they don't know they are entitled to certain pieces of information under the act? Do you have any idea if that's a common practice? Is that a concern?

Ms. Suzanne Legault: I can't measure something I don't see, obviously. I can't speculate on what Canadians know or don't know.

There are two things. First, when institutions actually respond to a requester, they inform them of their right to complain to my office. Second, one of the issues I have with the Access to Information Act is that there really is no one responsible for educating the public under the Access to Information Act. This really is a deficiency that is almost now unique to the federal act.

Mr. Scott Andrews: How would we address that deficiency?

Ms. Suzanne Legault: That needs to be amended in the legislation.

Mr. Scott Andrews: I've gone through the information process a couple of times. Luckily, I had someone on staff who knew the act inside out and could say, "No, you're entitled to that." We initiated a complaint and it did get resolved. But it was complicated. You wouldn't have known you were entitled to that information unless you were well versed in what you were entitled to. That's why I asked that.

In your statement you looked at the report cards. You made a number of recommendations both at the institutional level and at the Treasury Board Secretariat level. You said that most of these recommendations have been implemented.

What has not been implemented to date?

Ms. Suzanne Legault: We made more specific recommendations on training professionals and professionalization of the ATIP professionals within the institutions. I know the Treasury Board Secretariat is working on that, but that's the one area where there still needs to be more progress.

We also had issues with consultations and delegation of authority. We still have the ongoing, systemic investigations that are looking at how that's being implemented in various departments. So there will be more recommendations coming out of that.

Mr. Scott Andrews: What have been the responses to your report cards through 2010-11—the report cards you put out? Has there been compliance?

Ms. Suzanne Legault: Yes. In the second report card, the last report card, we looked at 18 of the institutions that either were at risk or had done poorly in the initial report card. Of those 18, 13 had made improvements. That was very positive. I was very pleased with that in terms of timeliness.

As I say, the concern I have is the past fiscal year. I think once we have all the stats it's not going to be the same picture, because that's certainly not what I'm seeing on the complaint side. The increase in administrative complaints and some of the institutions that have generated a lot more complaints than in previous years, such as the RCMP, cause me concern in terms of what's going on in the system.

Mr. Scott Andrews: Because they're getting more requests? Has there been any indication as to why you're getting them in these institutions in the current year?

Ms. Suzanne Legault: Some have told us it's because they don't have enough resources to actually respond to the requests.

Regarding the RCMP, I know there was a change in the number of people who worked in their ATIP shop.

There has been an increase in complaints this year for the Canadian Food Inspection Agency. So far I don't know what the reason is; it's too early for us to tell. But there have been some strange things happening there, such as their response to requesters that they have one year to complain to my office, when in fact the law was amended in 2007 and it's 60 days. I don't know what's happening in terms of that institution.

We're seeing these kinds of things in this past fiscal year.

•(1605)

Mr. Scott Andrews: In your 2010-11 report, you describe a number of noteworthy investigations. Can you provide us with some highlights? Which investigations were most meaningful to you in 2010-11?

Ms. Suzanne Legault: The most meaningful investigation was really the one that led to the special report on political interference. That was the most significant investigation, and it was really the one that generated a lot of work at the office, certainly, in terms of how we conducted that investigation. We conducted many examinations under oath for that investigation, which is unusual for our office. That really is the one I would point to in terms of seminal investigations for that period of time.

Mr. Scott Andrews: What....

Oh, sorry, Mr. Chair.

[Translation]

The Chair: Mr. Andrews, you are out of time. Perhaps you can continue later.

Right now, we're moving on to Mr. Carmichael for seven minutes.

[English]

Mr. John Carmichael (Don Valley West, CPC): Thank you, Mr. Chair.

Thank you, Commissioner, for your reports today.

Commissioner, in your 2011-12 report you referred to the portfolio approach that you've adopted to bring a more efficient resolution, let's say, to the number of complaints. Over 30% of your inventory involved two institutions, the CBC and the CRA.

I wonder if you could first go a little more in depth in explaining the approach and how it works. Is it a bundling process? Is it consistently people who can work on specific accounts, for lack of a better term? Also, could you provide us an update on these two situations? Are we seeing progress? Is it working? How are you feeling about it?

Ms. Suzanne Legault: Let me explain a little bit how I work these files. We're a very small office. Every Friday morning I sit down with the assistant commissioner and the intake director and we go through all the new files. It seems strange for a commissioner to do that, but it gives us a sense of file groupings. We have the case management system, which is a database, and we look at that, but by looking at what's coming in, we actually have a pretty good grasp of groupings. For instance, in a matter of two or three weeks we'll see several complaints in relation to a specific topic. We then assign these files to one investigator, or two, or we keep track of where they are so that they're consistent and they move along at the same pace. Or we'll get one complainant making a large number of complaints to one institution. We'll group those and assign them to one person.

We do these kinds of things as they come in, because we see the trends. For instance, when hot topics come up we'll see an influx of complaints, or, as I was saying in relation to the RCMP, in the course of a short period of time we'll see that there seems to be a problem in the institution because of the types of complaints we're getting.

Depending on what these situations are, we address them differently. We assign them to specific investigators, or I'll keep a closer eye on these files and their progress because of the nature of the topic. If it's something that seems to be wrong administratively in the institution, I'll call the head of the institution and give them a heads up. I find sometimes it hasn't necessarily come to the attention of the head of the institution at that time, so I serve as a heads up. I'll basically phone them and say "Something's not going right in your access shop." Usually people respond and address it fairly quickly.

We have specific groupings, a special delegation, as I was saying to your colleague, such as national security files. A lot of them are with Library and Archives, CSIS, National Defence, or Foreign Affairs. We have a very small group of people that work on these files. These people are followed; I follow the group of these files and the progress on them.

I'm particularly mindful of those because of the sensitivity of the material. I've been quite concerned that the office has accumulated a large number of them. That's why I have this special project to deal with them, because I don't want those files to linger very long. I think it actually becomes problematic because of the sensitive nature of these files.

• (1610)

Mr. John Carmichael: You mentioned the national security number and the CBC number to my colleague. I didn't catch the number on CRA. Was there a number on that?

Ms. Suzanne Legault: I have it somewhere. It's around 300 files for the CRA.

Mr. John Carmichael: That's fine. Terrific.

From a process perspective, so that I understand a bit how your organization works, you receive new complaints on a regular basis. You have your Friday morning meeting, but you have this "massive" inventory of old cases. Do you have a group that focuses exclusively on old files? And to keep current, when you get these new ones with new complexities and all of the various pieces that you've talked about, those would be brought to the front of the table and addressed fairly quickly. Is that more or less how you do it?

Ms. Suzanne Legault: Yes, more or less. As you can imagine, we have more than we can handle, obviously, on any given day, so we do have to make decisions.

You don't have this, but this is my little magic table that I look at all the time. It basically gives me a status of the inventory in terms of numbers and by year. Then I follow through and separate them between special delegations, CRA, and CBC. Then I have the numbers. Actually, I have the number for you here. For CRA I have 282 live complaints, for CBC it's 213, and for special delegations it's 334. That's 46% of the total. My oldest file now is from 2005-06—that's the fiscal year; I have two in that year.

As I eliminate the years, I basically know, because of the old inventory, and I have a specific group of people who deal with the older files. What I'm finding is that the special delegation group actually has a lot of the old files.

Mr. John Carmichael: I'm guessing, then, from that chart, that that's the screen saver you look at every morning.

Voices: Oh, oh!

Ms. Suzanne Legault: Not quite.

Mr. John Carmichael: In both reports you spoke about your two major infractors, CBC and Canada Post, in terms of your report card and some substandard results in that area.

Could you talk to us about progress you've made over the course of that timeframe? Have you seen an improvement in those organizations that would give you hope, or are we still dealing with challenges that are going to linger for a while?

Ms. Suzanne Legault: In relation to the CBC, definitely in terms of responding in a timely manner the CBC got an A in their last report card. I have virtually no administrative complaints with the CBC that have come in. I think I have four or five—nothing to report on, really.

This year we received a low number of complaints with the CBC. I have spoken to the president of the CBC. He is collaborating fully with our investigations. We meet regularly with his team. We are committed to completing the 200 or so remaining investigations.

We will probably at some point come to perhaps an unresolved case in relation to the interpretation of that new provision. It's a new provision. There is really no jurisprudence on it.

When we went to the Federal Court, it was in relation to my ability to see the documents. It wasn't about the specific wording of that provision. Aside from that, there is nothing to report.

Canada Post did send me a work plan following the last report card. They did still get an F. They assured me they were going to make progress, but in truth I have not followed up with Canada Post since the last report card. I haven't seen an influx there that's particularly worrisome, but they do have challenging investigative files with us, for sure.

• (1615)

Mr. John Carmichael: Thank you, Commissioner.

[*Translation*]

The Chair: Thank you.

Mr. Boulerice, the floor is yours.

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Thank you, Mr. Chair.

Thank you, Ms. Legault, for being with us today.

My first question is more general in nature.

The government often trumpets its transparency, but it is known more for its lack of transparency, preferring to shroud itself in a foggy haze. In its last report, Reporters Without Borders dropped Canada's ranking from 10th to 20th with respect to freedom of information. According to observers such as the Centre for Law and Democracy, Canada lags behind other countries in access to information. Scientists and librarians have been muzzled, and reports have been deliberately hidden because they called Conservative government positions into question. The Parliamentary Budget Officer even had to go through the courts to obtain information.

Doesn't and shouldn't that type of attitude concern you as the Information Commissioner?

Ms. Suzanne Legault: As you know, part of your question pertains to investigations that are currently ongoing at the Office of the Information Commissioner. So I cannot comment on specific matters. I was expecting to be asked about government transparency, which may surprise you. I thought long and hard about how I would answer. And I think it's important to be fair and balanced in my answer.

The document I provided contains a diagram. It shows that government transparency is made up of a number of components. What we have here is the open government component. And as I told you earlier, I think the government has made significant strides in that regard. When it comes to the access to information component, I firmly believe we are lagging behind other countries. I think the Access to Information Act needs to be reformed. The report by the Centre for Law and Democracy compares the legislation of Canada and other countries, and it appears that changes are indeed necessary.

Mr. Alexandre Boulerice: We have just five minutes.

You wrote to the President of the Treasury Board, and one of your recommendations was precisely to make legislative changes. You said in your report that the matter concerned you.

Did you receive a positive response from Treasury Board?

Was there some commitment or follow-up from the government as far as possible legislative changes go?

Ms. Suzanne Legault: Not with respect to legislative changes. My colleagues and I wrote to the President of the Treasury Board regarding the international open government partnership initiative. We were told that the government would endeavour to make administrative changes to the access to information regime. That is what the government is doing now, but I didn't get a positive response regarding the legislative changes.

Mr. Alexandre Boulerice: Thank you for clarifying that. I think it's very important.

I would like to read a quote in English by David Akin, since the text was obviously written in English.

[English]

Please take notes. I'm quoting from David Akin's article entitled "30 years of ATI: And it's getting worse". He writes:

For example, the Department of Foreign Affairs and International Trade (and possibly other departments) are now trying to frustrate ATI requests by requiring "preparation fees." I complained about this to the Information Commissioner, the Commission saw the sense of my reasoning, and called on Foreign Affairs Minister John Baird to get his department to modify its practices. He told Commissioner Legault to forget about it.

[Translation]

What do you make of a Conservative government minister taking such an attitude on access to information requests by members of the media?

Ms. Suzanne Legault: My position on access to information fees is clearly at odds with the government's, especially as regards how the legislation and regulations on fees are being interpreted. We have a clear difference of opinion. I have tried to address the problem in numerous ways, but to no avail. So I took the matter to the Federal Court, and we'll see what it decides.

Mr. Alexandre Boulerice: Very well.

During your presentation, you said,

[English]

I don't have a sufficient number of people.

[Translation]

You said that things went well when you had investigators but that you had to undergo staffing cuts. This government claims to be transparent but, to some extent, is taking the same approach it did to tax evasion. The government said it wanted to tackle tax evasion, but it reduced the number of people doing the work at the Canada Revenue Agency. In your view, have the government cutbacks affected requester's rights?

• (1620)

Ms. Suzanne Legault: I can comment more specifically on the Office of the Information Commissioner of Canada. As I already pointed out last year when we reviewed the main estimates, I indicated that if the office's budget was slashed even further, it would affect our ability to fulfill our mandate. I believe that is the case.

As for the system overall, ATI requests are rising and have risen dramatically. I know the minister said otherwise, but to my knowledge, there hasn't been any additional funding for access to information. Without any confirmation at this stage, what I have observed over the past year leads me to believe that access to information problems are definitely present at the RCMP, the Canadian Food Inspection Agency and Parks Canada. Administrative complaints over the last fiscal year have gone up by 8%. That's a reversal in the trend we saw in the three previous years, when we observed a decrease in complaints. Something is happening in the system. Once we have the data for 2012-13, which is not yet available, we will be in a better position to assess what's going on.

The Chair: Thank you for your answers.

I will now turn it over to Mr. Butt, for five minutes.

[English]

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

Ms. Legault, I want to congratulate you and your office very much. Your reports clearly show that you're making tremendous progress, that you are providing very good service as long as you have cooperative agencies that you are working with. Then we have agencies like the CBC and some of these other crown corporations that have made a decision that they're not going to cooperate—Canada Post and others—and I'm sure you must be frustrated. I think we as parliamentarians are frustrated by that as well.

One of the questions I have for you is, how do you determine the level of investigation of a complaint? How do you weed out nuisance complaints or bulk complaints that come in from one complainant who files multiple applications or multiple requests for your office to look into things?

I know this has been a problem in the city of Mississauga, where I'm from, with its municipal ATIP program, where there have been two or three individuals who have barraged the office. I'm not familiar with how you deal with that. Maybe you can enlighten the committee.

How do you make sure that you're prioritizing legitimate, responsible requests for service in your office versus ones that are really nuance or nonsense complaints from complainants? Do you have a process to determine that, and how do you and your excellent staff make that decision?

Ms. Suzanne Legault: When I say that the access act needs to be amended, there are good reasons for that. There is nothing in the federal legislation to address potential abuses of the access system, either at the request level with institutions or with my office. In my office, I have a positive legal obligation to investigate. It says in the act, "investigate", so whether there are complaints that seem to come in bulk or that seem perhaps to be resolved very quickly...I essentially have to deal with all of them. I deal with the administrative complaints, and these go to one group. We're dealing with the old complaints—they go to another group—and then the rest get allocated mostly to portfolio responses.

There is no discipline system in the act as it stands. I don't have discretion to take a case or not.

Mr. Brad Butt: Is your office charging any fees? Are you recovering any revenue to do the services you are doing?

Again, in the case of the City of Mississauga, there is a fee to file an ATIP request, and depending on how many copies the response is, there could be a photocopying charge, etc., so that the agency being requested of this information isn't out of pocket.

Currently, you are not charging any fees at all associated with the services your office is providing on a cost-recovery basis.

•(1625)

Ms. Suzanne Legault: No. If somebody makes an access request to an institution, there is a fee, and there are charges that apply for photocopying, searches, and so on. There are no fees to complain to my office. When we take matters to court, as a matter of general practice we don't ask for costs. We're usually pitted against government institutions anyway, so it all goes back to the consolidated revenue fund. I don't think it makes sense to ask for costs.

My experience with fees is that they do not act as cost recovery; they do not act as a good discipline in the legislation. They are probably one of the biggest inefficiencies that we see in the system.

I have a case that I will report on in my annual report that deals with a fee of less than \$500 that was charged by a government institution. It had to go through the whole complaint process, all the way up to the minister. That's completely inefficient. That should have been waived.

It costs the system and the taxpayers more to charge those fees than to answer the request. It would be simpler. For me the fees in access to information will never act as cost recovery. In my experience, I think they cost the system more in terms of financial accounting in government, because of the complaints, the delays, and the processing of the fees. I think somebody should study this, because it is not useful as cost recovery, and if we want discipline, we should look to other legislative mechanisms in the law to prevent nuisance actions.

Mr. Brad Butt: Each year when you publish your report card and you give agencies ratings A through F, etc., some go up and some go

down. When you're looking at that, what's your follow-up with those crown corporations and agencies? As an example, I think you said you gave an F this past year to Canada Post.

Maybe they're completely caught off guard. Maybe they think they're doing a good job. I don't know. You've rated them and you came up with the rating of F. It was F one year for the CBC, but A the next year, so obviously something happened. What follow-up do you and your people do with those agencies or government departments to make them all As? We want them all to be As, and I'm sure they want to be As, but they're not.

Do you take specific steps? Do you contact them very quickly thereafter and tell them you're happy to provide your staff resources to help them, so that they have a system in place that gets them that top grade the next time the review is done? Maybe just take a minute or two and explain how you interact with those departments or agencies to improve their performance.

Ms. Suzanne Legault: It depends on the agency.

For the report cards, it was a three-year plan. We did one year and then they had to have an action plan. Then we gave them a year to basically implement it, and then we went back after the third year. That's where we saw a major improvement in those institutions.

I haven't done one since then. In the last exercise, I asked people to report in their annual report. Every body that is a scheduled institution under the act has to provide a report to Parliament every year on their performance. Because I was trying to reduce the burden on institutions, I said to please report on their progress on my recommendation in that same report. Instead of my doing another report and asking them to give me a separate thing, I said to do it in there. I review the reports as well. We'll be able to monitor that way, to see if they're actually moving forward or not.

I must say, though, that when you look at the list of the main institutions that generate complaints to my office, they're pretty much the same group. What we do now is the assistant commissioner actually sees CBC, CRA, and Privy Council Office regularly. We now have contacts with Transport Canada, Health Canada, and various institutions. I follow up with the deputy ministers of those institutions, and then the assistant commissioner follows through with the assistant deputy minister to make sure the complaints actually go through.

I will have to see whether I will do other report cards. At this point I have four ongoing systemic investigations, and I want to complete those before I start report cards. We're just too strapped to do all of that.

I'm hoping that between the detailed statistics, the follow-up in the annual reports, and the ad hoc interaction with the institutions, we'll be able to follow their performance. I'm waiting to see how that's going to unfold. It depends how this year and the next year goes, in terms of the institutions.

•(1630)

[Translation]

The Chair: Thank you for your answers.

It is now Mr. Godin's turn.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you, Mr. Chair.

Ms. Legault, welcome to the committee.

Earlier, you said something that bothered me a bit. It had to do with your responsibilities as commissioner, especially with a government that was elected on the promise of transparency. It seems to me that things should be going better than what we are seeing now. When the rate drops by 10%, it's vital to examine what's happening.

You mentioned earlier that you meet with your colleagues on Friday morning and you go through your files. You said that was something you shouldn't do. I'd like you to explain that practice because it bothers me. I would think the commissioner has more important things to do. The next thing we know you'll be doing the janitor's job.

Ms. Suzanne Legault: This is a personal management style. I am sure that every commissioner has their own management style. On a daily basis, there are 2,000 active files at the Office of the Information Commissioner of Canada. There are 2,000 files in the inventory. I have an excellent memory, so when we receive new files, I have a good idea of what kind of work I need to do. That is very personal. I probably shouldn't be doing that, and leadership experts would probably say that I micromanage too much. That's why I said this. It could be seen as self-criticism. That approach has been working very well for me, and I am very comfortable with it.

Mr. Yvon Godin: So you are not doing other people's work, but rather looking at the work that has to be done.

Ms. Suzanne Legault: Our team is very small. So we are all doing other people's work.

Mr. Yvon Godin: That is why I want to come back to your small team. Is your team small because the government is not giving your organization enough money? This government talks about transparency—it got itself elected in 2006 on a transparency platform—and you, Ms. Legault, just said that your team is very small and that you have 2,000 active files. That's a lot. So shouldn't this transparent government—this dear transparent government of ours—increase the funding instead of reducing it?

Ms. Suzanne Legault: You will hear me talk about this over the next few weeks. We will meet to discuss the main estimates. Now that I have been on the job for four years, I firmly believe that—with all the measures we have taken to improve efficiency—if the office does not receive additional resources to conduct investigations, our ability to process the remaining 1,800 files will definitely be threatened. I will let you draw your own conclusions. That is not my job.

Mr. Yvon Godin: I would like to come back to the cost issue.

Ms. Legault, you said that it made no sense for someone to have to pay up to \$500 to obtain documents. You said that you should adopt measures to make those documents available. You also said that the process could even end up costing you more and that it would perhaps be better to abolish those fees.

Don't you rather think that the government could care less about that \$500 and that the goal is simply to discourage people who don't have that kind of money from submitting complains? An ordinary

person cannot necessarily afford \$500 for information. The government thinks nothing at all of spending \$10,000 to prevent people from submitting complaints.

• (1635)

Ms. Suzanne Legault: In departments—and this is what we really see—access to information professionals make decisions on ways to proceed. They follow their guidelines when it comes to fees and charge applicants accordingly. I don't think there are any great non-transparency designs here. People respond—

Mr. Yvon Godin: I am talking about the amount you yourself said you disagreed with.

Ms. Suzanne Legault: I don't agree with charging fees for access to information. Internationally, countries are much more likely not to charge fees.

Be that as it may, from a much more practical perspective, I would like to point out that, first of all, fees never ensure costs recovery. Second of all, the costs of cashing in a \$5 cheque is higher than the value of the cheque. I am sure of that. In addition, fee implementation leads to complaints. The investigation of complaints is expensive. As I was telling your colleague, we do not impose fees just to end up investigating complaints.

I think our system lacks efficiency and effectiveness. This is not a way to recover costs. It's not my job to decide whether or not the government's actions are transparent. I simply find that, from a practical perspective, this is not an effective approach.

The Chair: Mr. Godin, your time is up.

Mr. Dreeschen, you have five minutes.

[English]

Mr. Earl Dreeschen (Red Deer, CPC): Thank you, Mr. Chair, and thank you, Ms. Legault, for being here today.

I remember back in 2009 I was also on this committee. You were here and we talked a lot about report cards, and we talked a lot about the different types of issues that were taking place. Of course, one of the discussions had to do with staff turnover. I would like to kind of draw that out just a little bit.

You want to make sure you have that institutional knowledge, so that it's easy for you when you group all of these different files together, that it's working well. I'm just wondering, when you're talking about your strategic plan, and you talk about how the organization is almost fully staffed...I wonder if you can talk about your staffing situation, plus the concept of the institutional knowledge that actually does exist.

Ms. Suzanne Legault: Actually this past year has been quite difficult in terms of staffing because of the cuts in my office. Two years ago, because we had the cost containment measures, I significantly reduced our internal services quite a lot, and we were able to find positions for all the people where we had to cut positions.

This past fiscal year, though...I must be very honest, I wasn't expecting my office to have cuts to its budget, given our financial situation. We had to go through a workforce adjustment process, and because I wanted to protect my employees, I actually kept vacant positions for them; I cut positions in the chiefs and the higher levels in the organization. I didn't cut any investigator positions, but I had vacant investigator positions. In order to secure my employees' employment, I kept those positions open.

That process finished in late January, and we have started a staffing process now. I have eight vacant positions in my investigative functions now. I knew I was going to cut some, and I kept the lower-level positions empty until people had decided what they were going to do. Now we're going to staff those positions

I still try to reallocate some funding to investigations out of the internal services. We have 42 positions now just to do investigations. I'm hoping to increase that a little bit within the allocated budget. I have eight vacant positions, which I have basically staffed with consultants since the end of the fiscal....

Mr. Earl Dreesen: So you feel fairly confident that you can bring in replacements who will have the skills you require to fit in well with the staff you already have.

Ms. Suzanne Legault: It's a challenge in the access to information world. In the new staffing process, however, I have asked that applicants have university degrees. The other thing I did... about 18 months ago I shifted a little bit. I increased the number of lawyers within the organization. I have lawyers more involved with the investigations. I find that this better supplements the difficult investigations at an earlier stage, and that's working better. I'm looking at that sort of complement all the time. The lawyers' involvement with the investigators at an earlier stage actually works well. We need to constantly do training. We do in-house training on the various provisions of the act.

•(1640)

Mr. Earl Dreesen: With regard to the code of conduct, taking a look at that side of it, because if we're going to talk about people who are there or who have moved on.... In the 2012 Values and Ethics Code for the Public Sector, you have guidelines on conflict of interest and post-employment. They are scheduled to come into effect in 2012-13. Has your code of conduct come into effect, and how is that implementation going?

Ms. Suzanne Legault: As part of our strategic plan, we consulted our employees, and we basically chose our values at the office. This is part of our strategic plan. As to the code of values and ethics, that's a good question. I think we're still applying the one from the Treasury Board Secretariat. We are having an internal audit committee in May. Our external audit committee, coming up at the end of May, is focused on human resources. That's when we'll be discussing values and the code of ethics for the organization.

Mr. Earl Dreesen: In table 4, we have the institutions that received the most requests and the percentage of requests. I wonder if you could comment on volume versus complexity. We don't have to go through all of them, but we do get a lot in certain areas. How complicated is it for you to deal with this? Can you give us a quick overview?

Ms. Suzanne Legault: When you try to understand access to information at the federal level, one thing that everyone has to remember is that Citizenship and Immigration Canada receives half of the total requests across the system. The increase that we've seen over the years is mostly within Citizenship and Immigration Canada. If Citizenship and Immigration Canada performs well, the overall system will perform well. If CIC doesn't perform well, the whole system will come down. They are the main driver of government performance in access to information. The other groups in table 4 of my handouts are essentially the top 10 institutions. These are the ones that also have an impact on statistics.

The Canada Revenue Agency has a large volume of complex requests. But CIC doesn't; 80% of their requests are less than 100 pages. We've just received that from the recently published disaggregated statistics. In half of the system, the requests have a low number of pages. The exemptions there are simple to apply. You will find complexity in the other agencies. In the top 10 you have more complexity, investigations, commercial information, and national security.

[Translation]

The Chair: Thank you.

Mr. Dreesen, your time is up.

I will yield the floor to Mr. Andrews, for five minutes.

[English]

Mr. Scott Andrews: Thank you, Mr. Chair.

Getting back to the CBC and the progress that has been made after the ruling, can you give us some idea of how that ruling freed things up with regard to the number of requests at the CBC? Why are there still 200 outstanding with the CBC?

Ms. Suzanne Legault: It's because we're working through them.

With the ruling, we got the records. We hadn't received the records, so we couldn't investigate; we didn't have the documents. That basically allowed us to do the investigation.

Out of the 214, there are 113 that are section 68.1 cases. Out of the numerous cases that I have seen so far in four years, 1,100 or so, and I'm saying this because perhaps the private member's bill in relation to CBC is going to come up, there have been no cases where there's been an issue with journalistic sources.

All of the issues really relate to creative programming material. We're working our way through the various facts of each file and trying to resolve them on the analysis that we're working our way through. So far we have resolved our cases with the CBC, and as I said, we are working very closely with the CBC. I think the assistant commissioner meets every month with the CBC to go through the files. We have a priority system. We deal with these files. So they are moving along.

Eventually, we will come to a disagreement, I'm sure, on the interpretation of that section, but so far we haven't gotten there.

•(1645)

Mr. Scott Andrews: So far there's been no disagreement on that section of the act? The information that was requested has actually gone out?

Ms. Suzanne Legault: It's a little bit more complicated than that. In the annual report you will see more details of some of these investigations that have gone through. You can have issues in relation to commercial information, for instance, and then there's general administration and then there's program and creative material.

Each case is fact-dependent, so I really can't talk about a specific file. It's extremely complex to work this through, but the institution is cooperating. We are completing the cases. So far, certainly, we have not taken a case to court, and the complainants, so far, have not taken a case to court.

Mr. Scott Andrews: What ongoing cases in your office are consuming most of your resources? Are there some that are consuming the majority of your resources?

Ms. Suzanne Legault: It's the three groups: CBC, CRA, and special delegation.

Mr. Scott Andrews: You mentioned going to court. How many cases do you have before the courts right now?

Ms. Suzanne Legault: I don't have a lot. I actually provided this to you in that document, in case you wondered. If you go to the last page of that handout, you have the last four years and how many

cases were in court. That doesn't include the appeals or leaves to intervene in higher courts, but this is essentially what we had in court. This year I have six in court.

Mr. Scott Andrews: What are those six?

Ms. Suzanne Legault: That's a good question. I just received a decision last week, so that was two, the RCMP and Justice. I have one with National Defence. I have one intervention. I have the reference in relation to the fees, and I have another case with Fisheries and Oceans.

Mr. Scott Andrews: Thank you.

[*Translation*]

The Chair: Thank you.

This concludes Ms. Legault's testimony on the two reports.

Ms. Legault, I want to thank you for joining us today. We will meet again to discuss the main estimates.

As for the committee members, we will see each other next Monday.

The meeting is adjourned.

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