



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 037 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Monday, May 25, 2015

—
Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

Monday, May 25, 2015

• (1530)

[Translation]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)): Good afternoon everyone. Welcome to the 37th meeting of the Standing Committee on Access to Information, Privacy and Ethics.

As per the agenda, we have some distinguished guests with us for the first hour of our meeting, Mary Dawson, Conflict of Interest and Ethics Commissioner, as well as two of her directors, Ms. Robinson-Dalpé and Ms. Benoit. Ms. Dawson will have 10 minutes for her presentation on the main estimates.

Following that, the Information Commissioner of Canada, Ms. Legault, will also have 10 minutes for her presentation on the main estimates. Committee members will have until 4:30 p.m. to ask them both questions. That's the plan for our first hour.

I'd like to thank the witnesses for appearing before the committee today and giving us their time.

And now, without further ado, I will hand the floor over to Ms. Dawson for a maximum of 10 minutes.

Ms. Mary Dawson (Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Thank you.

Mr. Chair and honourable members of the committee, I am pleased to appear before you this afternoon as you consider my office's budgetary submission for the 2015-16 main estimates. I thank the committee for inviting me.

Accompanying me are Lyne Robinson-Dalpé, Director of Advisory and Compliance; and Denise Benoit, Director of Corporate Management.

[English]

I was appointed commissioner in July 2007 with a mandate to apply the Conflict of Interest Act for public office holders and the Conflict of Interest Code for Members of the House of Commons. These two regimes seek to prevent conflicts from arising between the public duties of elected and appointed officials on the one hand and private interests on the other. The act applies to over 2,400 public office holders and the members' code applies to all 308 elected members of Parliament. Ministers and parliamentary secretaries are subject to both regimes.

My office supports me in fulfilling my mandate. It includes advising public office holders and members on how to comply with the act and the members' code, receiving and reviewing their confidential disclosures, maintaining confidential files on these

disclosures, making some information public in the public registry that my office maintains for the act and for the members' code, administering an administrative monetary penalty regime under the act, and investigating alleged contraventions of the two regimes.

In its first five years, my office maintained an operating budget of \$7.1 million. I felt this amount would be sufficient once my office was fully operational. We have had surpluses each year that can be attributed to my reserve, vacant positions, and cost-saving practices. I reduced the non-salary portion of my operating budget by a total of 3% over the past two fiscal years. Although that reduction was partially offset by an increase in my salary envelope to cover economic increases, I was able to proactively offer an overall budget reduction of 1.4% in 2013-14 and again in 2014-15. Savings were achieved by centralizing some functions such as printing and procurement and by reducing the amount set aside as a reserve.

I've determined that I can accomplish my current mandate in 2015-16 with planned expenditures of \$6.95 million for my office. This is up slightly from the \$6.94 million approved in last year's main estimates because of a small adjustment to the employee benefit plans where contributions have increased from 16.5% to 16.8%, as determined by the Treasury Board.

I note, however, that any amendments resulting from the reviews of the act and the members' code could have resource implications for my office.

Finally, I expect that an adjustment to the salary envelope will become necessary next year to compensate for economic increases that have been absorbed by my budget over the last few years. I do not plan to request an increase in my overall budget but rather an adjustment between the salary and the non-salary envelopes.

Over the last eight years I have built a solid internal management framework. It's based on the principles of sound resource management followed in the public service, even though as an entity of Parliament my office is not subject to most Treasury Board policies and guidelines. This framework is supported by transparency. Annual financial statements, quarterly financial reports, and status reports on travel, conference, and hospitality expenses are posted on my office's website, and since 2010-11, our annual financial statements have been audited by an independent auditor.

My office uses external partners to provide expertise in the area of information technology and security, accounts payable and financial reporting, and compensation through shared services agreements. This provides greater efficiency and adds one more level of scrutiny in the management of resources.

• (1535)

Given the nature of my mandate, salaries represent our largest budgetary expenditure. Non-salary expenditures are mostly related to the cost of shared service agreements and the standard costs of running an office.

Measures implemented internally to reduce spending continue to produce expected results. My office continues to spend less than its allocated budget, in part because of these measures, but also because we have explored new management structures and have decided not to fill vacant positions immediately. I maintain a reserve to cover unexpected operational pressures such as an increase in investigation activities. I also use it to fund special projects and initiatives internally.

My primary goal as commissioner continues to be to help public office holders and members meet their obligations under the act and the members' code. The focus is reflected in the size of my office's advisory and compliance division, which is the largest of the five divisions and accounts for over a third of my staff.

Our advisers help members and public office holders to comply with the members' code and the act. This is done in part through formal mechanisms set out in the two regimes such as the initial compliance process, the annual review process, and the requirement to disclose material changes. Members are also required to disclose sponsored travel and gifts that have a value of \$500 or more, and reporting public office holders are required to disclose gifts with a value of \$200 or more.

In addition to these formal mechanisms, advisers provide information and confidential advice on an ongoing basis to individual members and public office holders and in some instances to their organizations as a whole.

In 2014-15 my office had over 4,000 communications with individuals who were subject to the act or the members' code. This volume is expected to increase this year as a result of the upcoming election.

While the major focus of my office is on prevention, I also investigate possible contraventions of the act and the members' code. In 2014-15 it was a typically busy year in terms of investigative activity. My office dealt with 45 investigation files including six that were opened during the previous fiscal year. Some of those files resulted from formal requests from members of the House of

Commons or referrals from the Public Sector Integrity Commissioner. Others were initiated by myself as a result of information that came to my attention in other ways such as media reports and communications from the general public.

We closed the majority of those files without proceeding to an examination under the act or an inquiry under the members' code or issuing a public report. Five files resulted in the release of public reports this year, all of them under the act. Eight investigation files were carried over into the current fiscal year, and we have since closed two of them.

Last month, after 12 months of work by my staff in collaboration with the House of Commons, my office launched a new public registry of public declarations. We previously maintained separate registries under the act and the members' code. The new registry combines the two making it possible for visitors to more quickly and easily access information. The registry's launch was the first component of a two-phase initiative. The second phase will give members and reporting public office holders access to a portal system that will enable them to file their public declarations electronically.

[*Translation*]

Four positions are currently vacant, and staffing processes are either under way or will be launched shortly for three of these four positions. While employee turnover remains low, I expect some departures in the coming year, including some as a result of planned retirements.

This concludes my opening statement. Again, I thank the committee for inviting me to discuss the budgetary requirements of my office. I will be pleased to answer your questions. Thank you.

• (1540)

The Chair: Commissioner, thank you for your presentation.

And with that, I will turn the floor over to Ms. Legault, Information Commissioner of Canada, for a maximum of 10 minutes.

Ms. Legault, thank you for joining us today. You may go ahead.

Ms. Suzanne Legault (Information Commissioner of Canada, Office of the Information Commissioner of Canada): Mr. Chair, thank you for inviting me to discuss the main estimates of the Office of the Information Commissioner of Canada.

The salary and operating budget for my office in 2015-16 is approximately \$11.3 million, including employee benefit plans. I have 93 employees to assist me in carrying out my mandate.

As always, I dedicate as many resources as possible to the program while maintaining internal services functions at a sufficient level to ensure proper stewardship and governance of the office.

[*English*]

My office is a very lean organization. In addition, year after year my office receives unqualified opinions from the Office of the Auditor General of Canada.

In 2014-15, the office received 1,749 new complaints and we completed 1,605 investigations. Since 2012-13, we have seen an increase of about 10% in complaints overall, with a spike of 30% between 2012-13 and 2013-14. At the beginning of this year, our inventory of files is standing at 2,233.

During my last appearances before this committee, I raised concerns with my organization's budget and the risks the current funding level had on my ability to carry out my mandate and to face contingencies. I've also pursued all available channels within government to seek and obtain additional funding.

The most immediate impact of our financial situation has been longer wait times for complainants. There is currently an overall delay of about five months before a file gets assigned to an investigator. For the more serious complaints—the refusal complaints alone, which comprise about 87% of my inventory—the delay before I can assign a file is about seven months. This situation will continue and is only getting worse as no new source of funds was granted to my office through the most recent budget exercise.

[Translation]

However, I plan to continue to safeguard the right of access to the greatest extent possible under the circumstances.

To further enhance efficiency and bring discipline, predictability and clarity to the complaints handling process—internally and with institutions and complainants—my team and I continue to improve our investigative processes.

[English]

Together we are resolved to maintain the course of excellence we value and to uphold Canadians' information rights to the best of our ability and our capacity. Given the quasi-constitutional status of the right of access, Mr. Chair, anything less would be unacceptable.

With that, I'm prepared to answer your questions.

[Translation]

The Chair: Commissioner, thank you for your presentation.

I will now turn the floor over to committee members, who will, no doubt, appreciate the opportunity to ask you questions until 4:30 p. m.

Mr. Martin, you have seven minutes.

[English]

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

Thank you to both of our witnesses here today. I want to start at the outset by saying what a rare pleasure it is to have these officers of Parliament here presenting before a parliamentary committee, because it's a rare and a wondrous thing, in my view, in my recent experience, given the efforts we've gone to in order to have annual reports, etc., dealt with by parliamentary committees.

We have very little time, seven minutes for questions and answers. I'd like you to consider this as if you were playing *Reach For the Top* and this was the short, snappers segment of the TV program.

First of all, to Madame Legault, does your office have adequate funding to meet its responsibilities?

Ms. Suzanne Legault: No.

Mr. Pat Martin: Can you confirm that, since 2011, when the government achieved its majority and ended the advisory panel for providing independent oversight for your funding, your funding has been reduced by 11%?

Ms. Suzanne Legault: That's correct.

Mr. Pat Martin: Can you confirm that, for two years straight, you have requested additional funding from the government, and the government's response has been to further cut your budget?

Ms. Suzanne Legault: The cuts were announced government-wide, but yes, I have requested additional funding and received none.

● (1545)

Mr. Pat Martin: Can you confirm, though, that for two years you went to the President of the Treasury Board and he said, "I am committed to working with the Office of the Information Commissioner of Canada so that it has the resources to fulfill this role. He also said, "should the information commissioner put forward a submission for funds", which implies you did not apply for funding.

Can you correct this seeming contradiction?

Ms. Suzanne Legault: This is somewhat internal to government workings, but we are being advised by the Treasury Board Secretariat to put forward our requests for funding through the budget exercise, which is it first goes through Treasury Board Secretariat analysts, then is referred to the Department of Finance, and then we have to wait as to whether or not there is an item in the budget allocating additional resources to our office. Should that be in the budget, we are then advised that we can make a Treasury Board submission.

We have been ready to make a Treasury Board submission and have been working with Treasury Board Secretariat for the last two years. Otherwise, we have followed all the processes that the Treasury Board Secretariat has told us to follow.

Mr. Pat Martin: Do you believe it's disingenuous on the part of the President of the Treasury Board to imply that you have not requested additional funding to be able to fulfill your mandate?

Ms. Suzanne Legault: The truth is that we have followed all the appropriate lines to seek and obtain this funding. Whether that's disingenuous of the President of the Treasury Board, I think you would have to ask that question of Minister Clement.

Mr. Pat Martin: If we can ever get him before a parliamentary committee, we will do just that, Ms. Legault.

The government has a history of being tough on watchdogs. In fact, budgets have gone down. Those who hold them accountable seem to be either punished by budgets or worse: Linda Keen, Peter Tinsley, Paul Kennedy, Pat Stogran, Munir Sheikh, Kevin Page, Howard Sapers. In looking back at this, have you spoken to other parliamentary agents and oversight commissioners about the funding of your budgets recently? Were you signatory to a letter to Parliament in the last few years signed by seven agents of Parliament asking for independence for your budget-setting process?

Ms. Suzanne Legault: Letters were written some years ago in relation to the advisory panel. I'd have to see which letter you're referring to, but that would be some time ago in terms of the advisory panel.

Mr. Pat Martin: I'm going to move on to the budget implementation act, directly related to the estimates we're dealing with here.

Do you believe that the RCMP has broken the law in the matter of the gun registry records?

Ms. Suzanne Legault: In the special report to Parliament I advised Parliament that I have made findings with the RCMP and Minister Blaney, so first I asked Mr. Blaney to process additional records that I believe are responsive to the request of the complainant. That recommendation was rejected. I have also recommended that the remaining records that deal with the Quebec registry, a static copy of the remaining records, be preserved. I have received assurances from Minister Blaney that this was going to be done.

Mr. Pat Martin: Do you believe, Madame Legault, that there has been political interference in this case, whereby the RCMP may have broken the law?

Ms. Suzanne Legault: I have referred the matter to the Attorney General of Canada for an investigation as to whether or not there was a breach of section 67.1 of the Access to Information Act.

Mr. Pat Martin: You wouldn't have referred this to the Attorney General if you didn't have reason to believe that there was such a violation of that section of the act.

Ms. Suzanne Legault: I do have evidence that the records were destroyed. I do have letters that ask for assurances that the records would be preserved. I did not investigate whether this was done with a clear intent to deny the rights of access under section 67.1.

Mr. Pat Martin: What do you think of the retroactive changes in the budget implementation act regarding your powers? Do you see this as a dangerous precedent?

Ms. Suzanne Legault: Yes, I have said so very publicly. The retroactive application of the provisions of the Ending the Long-gun Registry Act goes back to October of 2011, even before the Ending the Long-gun Registry Act was in effect. It nullifies the request of the complainant in this case. It nullifies all my investigations. It nullifies all the use of the formal powers in the documents that we've obtained through that. It nullifies the application we made to the Federal Court, and it nullifies any potential administrative, civil, or criminal liability of any of the actors involved.

• (1550)

Mr. Pat Martin: Do you believe it offends the rule of natural justice and the rule of law to contemplate passing legislation that affects people retroactively? Could we not do the same thing with the Mike Duffy affair and make it okay to give a sitting senator a \$90,000 cheque?

Ms. Suzanne Legault: I think that this retroactive application and the retroactive stripping of the application of the Access to Information Act is a perilous precedent. I think it could be used in any other file, of course. It could be used in any of our further investigations, and we are pursuing all avenues possible.

You have to understand this was just tabled on May 7, and these are complex matters. We are looking into whether or not this raises issues with relation to the rights of access, and whether it raises constitutional issues under subsection 2(b) of the charter, and whether it raises constitutional issues with the rule of law.

The Chair: Thank you, Madame Legault.

Now I'll give the floor to Madame Davidson for seven minutes as well.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thank you very much, Mr. Chair. Thanks to both of you for being here, and to your colleagues, Madame Dawson, for coming along. It's good to see you all again. I have a few questions on the estimates, which I believe you're here to answer today.

First of all, thanks very much for the overview that you gave us, Madam Dawson. It was certainly very informative. I note you said that in your first five years you had the operating budget of \$7.1 million, and that you have reduced the non-salary portion by 3% over the past two fiscal years. I think it's remarkable that you've been able to do that and continue on with the work you've been doing.

You said you've been able to do that by centralizing some of your functions, and you mentioned printing and procurement. You also talked about reducing the amount that you set aside as a reserve. Can you tell me what your numbers were prior to the reductions and what they might be down to now?

Ms. Mary Dawson: I think they were around \$600,000.

Denise, am I right there?

Ms. Denise Benoit (Director, Corporate Management, Office of the Conflict of Interest and Ethics Commissioner): Exactly, and it's now down to close to \$500,000, but it's been reduced. The reserves took the biggest chunk of the cut we made to the budget.

Mrs. Patricia Davidson: What was the purpose of those reserves? When or why would they be used?

Ms. Mary Dawson: We established them when the new office was established because we had no idea of what kind of activity we'd have, on the investigation front in particular. Generally, over the first few years... It took a year or two to even get organized to start the investigative exercise, but once it started it did increase significantly over the next few years. It's levelled off now, but that's what the main purpose of it was. We really did not know what would be entailed in the investigations.

Mrs. Patricia Davidson: Do you feel that things have levelled out and that you do have a better handle on what might be expected or what may happen?

Ms. Mary Dawson: At the moment it seems to have levelled off some, yes.

Ms. Denise Benoit: If I may add just one piece of information, we also use the reserve to fund the development of new applications. The commissioner made a reference earlier in her opening remarks about the new public registry that was released at the beginning of April, and that was funded mostly out of the reserve. Without the reserve we wouldn't be able to invest in that kind of application development.

Mrs. Patricia Davidson: You talked about transparency within your organization. Certainly we all know that's extremely important. You also talked about your status reports on different things.

You also said that since 2010-11 the annual financial statements have been audited by an independent auditor. How is that different from other organizations within the government structure? What happened before 2010-11?

Ms. Mary Dawson: Before 2010-11 we did not have an independent auditor. We decided, in the first few years, to have one because we wanted to allow people to be as certain as possible that we were doing a good job with our money.

I really don't know enough about comparing it to the others, but Denise can perhaps add something.

•(1555)

Ms. Denise Benoit: If I remember well from my years in the public service, the Auditor General usually will audit the financial statements. In our case, because of our status, we actually went out. We're using Ernst & Young to do it, but they're using the same accounting principles. They're verified, like any other financial statements that would be done within the public service.

Mrs. Patricia Davidson: I guess it's the feeling from your organization, then, that the independent auditor gives you that other, extra arm's-length. Is that the reasoning?

Ms. Denise Benoit: Absolutely.

Mrs. Patricia Davidson: How many employees do you have? You said that you are managing the non-investigative portion of it by cutting back on some of the other costs. Then you said that salaries represent your largest budgetary expenditure, and you do not always fill every position as it becomes vacant. I think you noted later on in your opening remarks that you have four that perhaps aren't filled at this time, if I heard you correctly. How many employees do you have and what is your long-term plan for filling those positions?

Ms. Mary Dawson: We have 49 positions, and I believe there are 45 on strength at the moment. We're in a "let's see how we can make do with what we've got" space at the moment. A lot of the absences...usually we have a maternity leave or two each year and that's still a budgetary charge. We are using part-time workers, like one-year terms and things, sometimes to fill in behind those people. We're increasingly trying to establish a pool.

We're not sure what's going to happen after the election, of course. Even if nothing unusual happens there's always quite a bit more work right after an election with new people in, and with new staff for people. There's an uncertainty there as to just what we will face in the fall. What else? I'm not sure what else. I'm sure there are other things.

Mrs. Patricia Davidson: Maybe I can ask you a bit about the investigation files. You said that there were 45 that you dealt with

during the past fiscal year, six were opened during that time, and then I think you said eight have been carried over and two have been closed since. Can you just elaborate a little bit more on what the normal number, or usual number, is on a yearly basis, and how this compares to it, including the number of files that have closed and those that are still undergoing investigation?

Ms. Mary Dawson: Usually there are a number of investigations going on at the same time and they take varying lengths of time to complete. What we found this past year was that as the year began we had quite a few investigations that had been going on for more than a year or two, so we were determined to get those ones closed down. We actually managed to close down five of them. Not all of them were carried over. I think that's approximately the numbers that we're having of investigations.

There's not a huge difference. The lowest number was in 2010-11 and there were 39 files opened. The highest was in 2012-13, which was 48. This year it's 45, so we're within the same ballpark generally. You have to distinguish the files opened and the files for which we actually initiated an examination. Of course, the 49 are all the files opened, which is why so many are closed, because we look into them and see whether there's any merit. Sometimes it's from getting a request, and sometimes it's something I've seen or that has come to my attention from the general public. We're very careful though that with any information that comes in we consider it carefully to determine whether indeed there is anything that should be investigated.

There are many more files that are opened and closed than there are examinations begun.

[Translation]

The Chair: Thank you.

Unfortunately, I have to cut you off there, as it is Mr. Simms' turn.

Mr. Simms, you may go ahead for seven minutes.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Thank you, Mr. Chair.

[English]

Thank you for coming, all. This is my first time here in front of you, although not the entire crew.

I have a question, Madame Legault, just for my own information here. In the expenditures the statutory spending goes from \$358,000 in 2013-14 up to over \$1 million in 2014-15. By the same token the program expenditures change. What is that supposed to mean?

•(1600)

Ms. Suzanne Legault: Can you tell me what you're looking at?

Mr. Scott Simms: I'm talking about the main estimates budgetary voted.

Ms. Suzanne Legault: What page?

Mr. Scott Simms: Actually, it's here.

Ms. Suzanne Legault: This is a document that was prepared by the Library of Parliament. It's not the main estimates.

Mr. Scott Simms: Yes, it is.

Okay. I just want you to explain the expenditure between the budgetary vote as well the non-budgetary vote.

Ms. Suzanne Legault: You're looking at the 2013-14 numbers?

Okay, the 2013-14 numbers—I don't know these numbers. These numbers are not familiar to me. I don't know where they come from, but I can explain to you the difference in the amounts between 2013-14 and 2014-15. There's a significant decrease and that's because we moved in 2013-14. That's the difference in those numbers, but they're not the main estimates numbers, as far as I can gather.

Mr. Scott Simms: Okay. That's fine.

We've been here before, obviously. We've been talking about the terrible strain on your office and the ability to function with all the information coming in, and so on and so forth. There are other jurisdictions around the world that seem to be current in the way they deal with information. You spoke about that quite a bit.

In the budget implementation act there's obviously nothing available for you to be up to par, we'll say, in what you hope to do. One of the policies that I've always believed in is open by default, but it seems to be very difficult here because of the lack of funds you're receiving. Is that correct?

Ms. Suzanne Legault: Those are two things.

The funding of my office—it's just a reality. There are 2,300 files. The budget is \$11 million, including employee benefits. Just do a bit of a comparative exercise with the number of files that we have to deal with. That's the issue with the budget at the Office of the Information Commissioner of Canada. We're not talking about 50 files; we're talking about 2,300 files and more are coming in every year in the same amount.

That's the reality of the OIC. That's what happens in terms of protecting Canadians' rights of access.

Open by default has to be embedded in government policy whereby the government would take the approach that they would foster an open-by-default type of exercise and that has a lot of ramifications. It has ramifications in terms of, when you create documents, whether you create them with principles of access by design, for instance, which was developed by my colleague in Ontario, or whether when you create your document you're mindful, particularly with databases, of the personal information that's embedded in those databases, and things like that.

That's a different issue from the budget of my office.

Mr. Scott Simms: When you approached the Treasury Board what was their reaction to what you just explained about how it's difficult for you, given the resources you have?

Ms. Suzanne Legault: Everybody at the Treasury Board Secretariat who has looked at our numbers agrees that we cannot, even if we were superwoman and had 90 super people, which we do but they cannot be more super than they are now. There are just so many files people can close. That's the bottom line and everybody's quite aware of it.

We have done all the resource allocations, all the efficiencies. We have imparted all the services we can. We beg all the time for people to lend us services and share their services. We have done all these exercises and we have done all the efficiencies. We can maybe muster a bit more in efficiencies, but it's not going to allow us to close 2,000 files.

Mr. Scott Simms: Thank you, ma'am. We could have this conversation all day but I have other guests here too.

Ms. Dawson, would it be correct to say that you've had 149 confidential rulings since 2007?

• (1605)

Ms. Mary Dawson: I'm not sure what...that would be the number of files that I did not pursue into an examination. Is that what you're talking about?

Mr. Scott Simms: The fact that there have been private rulings on matters pertaining to members of Parliament or public office holders in general.

Ms. Mary Dawson: We get requests for advice every day and I said there are 4,000 of them, so I'm not sure....

Mr. Scott Simms: How many violations have you had since 2007?

Ms. Mary Dawson: We have those numbers but I think we found they're in the order of perhaps between 20 and 30.

Do you have those numbers there?

Ms. Lyne Robinson-Dalpé (Director, Advisory and Compliance, Office of the Conflict of Interest and Ethics Commissioner): It depends if we're looking at monetary penalties or—

Ms. Mary Dawson: I'm sorry I thought you were talking about investigations. You're talking about monetary penalties.

It took us a few years, as I was saying, to get the investigations up and running because there hadn't been such a thing when my office was first established. We have had how many? Have you got them there, Lyne?

Ms. Lyne Robinson-Dalpé: We have had about 39 violations.

Mr. Scott Simms: In terms of the funding of the registry that was started in April, you spoke earlier about the amount of money that was required to do that. How much money was required to do that?

Ms. Denise Benoit: The total investment was \$240,000.

Mr. Scott Simms: You said you had to go to a reserve.

Ms. Denise Benoit: We used our internal reserve, because from within the budget that the commissioner gets every year there's an amount that is set aside for that type of investment. We actually were able to fund it internally, but from this pot, a reserve that we set aside every year.

The Chair: Thank you, Mr. Simms. Your time is up.

I'll turn the floor over to Mr. Maguire for seven minutes.

Mr. Larry Maguire (Brandon—Souris, CPC): Thank you very much, Mr. Chair.

I have some questions. First, I want to thank you for your presentations. This is the first time I've had an opportunity to be on this committee and I welcome everyone here today. I had some queries as I heard your presentations and I had a few questions I'd like to ask Ms. Dawson as well.

It comes from some of the things my colleague, Ms. Davidson, started out asking in regard to the number of staff you have and some of those areas as well. I believe that the advisory and compliance area is the largest division, and it's about one-third of the staff. Is it 15, 16, or 20 people?

Ms. Mary Dawson: It's 17, so it's closer to 15 than 20.

Mr. Larry Maguire: Thank you.

I just wondered what the division was like in regard to that. Your other four areas are named here as well and it's proportionately smaller numbers in each of those. I assume this is the largest one, as you say.

You've indicated that you have a number of advisers as well who provide you with information. Can you give me some background on what an adviser is or...?

Ms. Mary Dawson: Yes, it's not me they're providing the information to. They're advisers of the people who the members or the public office holders phone or consult with, at least at the first instance, to ask questions. As well, they also deal with the annual reports or the initial reports. They're the initial face with the public office holders or the members.

Mr. Larry Maguire: Yes, thank you.

I assume you have a process for receiving requests. Can you outline that as well.

Ms. Mary Dawson: This is requests for advice...?

Mr. Larry Maguire: For information, for people who are seeking formal help through the Information Commissioner's office.

Ms. Mary Dawson: It can come in through many ways. It can come in by email. It can come in by letter or it could come in by phone call. Each adviser is designated a certain number of public office holders and/or members. Each of those people under the act or the code have a specific adviser, so they develop a familiarity with each other.

Mr. Larry Maguire: For clarity, when an issue comes forward there's an adviser who will take hold of each of those areas and work with people to try to clarify.

•(1610)

Ms. Mary Dawson: No, it's not the issue; it's the individual. They're responsible for a particular individual.

Mr. Larry Maguire: Okay.

Is your role then—and I see it here as one of the areas you mentioned—that you perhaps will keep track of the media and those areas, and look at picking up ideas on your own to see if they need to be requested in? Is that what I interpreted or...?

Ms. Mary Dawson: We certainly watch the media when it has anything to do with our mandate and if we see something.... For instance, there have been a number of investigations I've launched on the basis of information that I've discovered in the media, so yes.

But more of them come in from private citizens than come in from the media. There's always been this discussion about whether private citizens should be allowed to request an investigation. Effectively, the way my office operates, it doesn't really matter whether they have that right or not, because if anything comes in we look into it unless it's nutty, but most of them are not nutty. Some of them are, but....

Mr. Larry Maguire: Thank you.

I'm not going to ask what the definition of "nutty" is or what kind of differences there may be, but I just wondered if you saw your role then more as a watchdog in some of those areas or as dealing with the formal complaints that might be coming forward from the individuals. I assume any individual in Canada has that right to be able to bring something forward.

Ms. Mary Dawson: I see my role as this. If I become aware, in any way, of the act or the code appearing not to be followed, then I should follow up and see what's going on.

Mr. Larry Maguire: Thanks. I want to look at your numbers. You're saying your office has over 4,000 communications as well.

Ms. Mary Dawson: With the media and individuals, yes.

Mr. Larry Maguire: Can you expand on that for me a bit?

Ms. Lyne Robinson-Dalpé: The 4,000 are for communications with public office holders and members of the House of Commons. Again, in there, I'm talking about communications generally. Some of these communications have a number of communications, so there can be a lot of back and forth, but I didn't go into all the details with regard to that. The statistic is communication with an individual. It can be on an annual review, and that takes a longer time and a number of communications for that specific component. I didn't go into those details.

Mr. Larry Maguire: Back to the information management technology and the launch of the first component of the two initiatives—and of course, the launch was your first—can you expand on the registry's launch as being the first component of the two-part phase you're developing?

Ms. Mary Dawson: The objective there was to make it easier for somebody who wanted to find out information about an individual who was under both the act and the code. Up until the beginning of this fiscal year, you had to look under a code registry and under an act registry. We put them together so you can get in and deal with them all in one shot.

The second phase is going to be opening up the possibility of people working directly with our machines, our computers, with putting reports in and that sort of thing.

Mr. Larry Maguire: That's through the portal system.

Ms. Mary Dawson: Yes, the portal.

Mr. Larry Maguire: How is that? Is it set up? Is it running?

Ms. Mary Dawson: It's on its way. We're working on that. That will be launched later this year.

Ms. Lyne Robinson-Dalpé: September.

The Chair: Mr. Maguire, you have 20 seconds left if you want to ask a quick question.

Mr. Larry Maguire: That's fine.

The Chair: Now we'll move on to Madame Borg for five minutes.

[*Translation*]

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

My first question is for Ms. Legault.

It ties into my colleagues' questions about Bill C-59 and the investigation into the gun registry records. In fact, I proposed a motion to study your report in the hope that we will have the opportunity to discuss the matter in greater detail.

Is it accurate to say that the office handling access to information requests should operate at arm's length from the Minister of Justice's office?

Ms. Suzanne Legault: The minister is the person responsible under the Access to Information Act. He is the person at the head of the organization, except in special circumstances. At the Office of the Information Commissioner, I am the person who is ultimately responsible. That authority is delegated differently within each institution.

• (1615)

Ms. Charmaine Borg: Was it acceptable for the minister to interfere in the matter or should he not have done so?

Ms. Suzanne Legault: There was no mention of any interference by the minister in my report. I asked Minister Toews for assurance that the records would be kept and that is what I was given. The records were, however, destroyed. What you have in front of you is the evidence, and that is what appears in the report.

Ms. Charmaine Borg: Thank you.

At the end of the previous fiscal year, you appeared before the committee to request additional funding, which you were denied. And now we see in Bill C-59 what you consider to be a change in your authority. The bill actually seeks to apply the change retroactively.

Do you see that as a threat to your mandate and responsibilities as commissioner?

Ms. Suzanne Legault: I think the first and most fundamental change Bill C-59 makes is to retroactively eliminate the right of requesters to access information under the act. In fact, it has the effect of retroactively eliminating the office's entire investigation, all of the evidence gathered, and requesters' right to appeal to the Federal Court. It also retroactively eliminates all potential liability, be it administrative, civil or criminal.

The biggest change probably isn't how it will affect the mandate of the Office of the Information Commissioner but, rather, how it will affect Canadians' right to access information and their right to hold their government accountable for its actions. That's the main consequence of Bill C-59.

Ms. Charmaine Borg: Those are very serious consequences. Do you think the changes are constitutional?

Ms. Suzanne Legault: That's certainly an argument that could be made. We are in the midst of examining those issues. As you can imagine, they are extremely complex.

Ms. Charmaine Borg: What is your next course of action? You said you referred the matter to the Office of the Auditor General. What steps will you take next?

Ms. Suzanne Legault: We referred the matter to the Attorney General of Canada, as per the act. Then, I learned through the papers that the file had been sent to the Public Prosecution Service of Canada and to the OPP for investigation. I wasn't aware of that. I learned about it from the papers and have no idea whether it's true or not.

I think the next steps will involve the courts. If Bill C-59 is passed, the police investigation that has begun will not continue because it will have been based on information that will have been retroactively eliminated. The next step will be the study of the bill by parliamentary committee. It will become Parliament's responsibility.

On our end, we plan to use every available recourse to safeguard the requester's rights.

Ms. Charmaine Borg: Mr. Chair, do I have time left?

The Chair: No, but we have time for another five-minute round.

Mr. Dechert, you may go ahead for five minutes.

[*English*]

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

Thank you to our guests for being here today.

Ms. Dawson, I'd like to begin with you. One of your objectives is to ensure that the public is well informed about your work. I wonder if you could give us some information on your plans for achieving this goal for the next year.

Ms. Mary Dawson: I consider my annual reports very important. I think my annual reports are quite a bit more fulsome than many you might see, so I try to be very honest and full about what my office is doing. I also have guidelines that I put on the website. My investigation reports are information-giving vehicles as well, I believe. In everything my office does, I try to be as transparent as I possibly can and as informative as I possibly can.

• (1620)

Mr. Bob Dechert: I assume your annual report is on the website and available to all Canadians.

Ms. Mary Dawson: Yes, each year's is there, and the other one will be out in a couple of weeks.

Mr. Bob Dechert: That's very good, excellent.

Ms. Legault, maybe you could tell us about the plans at your office to make the public more aware of the functions of your office.

Ms. Suzanne Legault: We are very limited in terms of awareness development, because I do not have an education mandate, as you know. We are restricted in how we can communicate on our investigations, through our annual report and through special reports to Parliament. We do have a website. We do put as much information there as we can. Aside from that, we produce very few publications year over year, aside from the special reports and the annual report.

Mr. Bob Dechert: Okay.

Ms. Legault, are there organizations or individuals who file large numbers of complaints about access to information requests?

Ms. Suzanne Legault: There are some. Do you mean in terms of requesters or in terms of complainants?

Mr. Bob Dechert: Yes, I mean requesters. You mentioned that you have an inventory of 2,233 complaints. Are they from 2,233 specific or different individuals or organizations, or are there some organizations or individuals who file a number of these things?

Ms. Suzanne Legault: It varies. There are some requesters who file more requests over the system, and some complainants who file more complaints. We have three big groupings in terms of cases. Special delegation files deal with national security and international relations. That's a big grouping, about 350; and we have a big grouping with—

Mr. Bob Dechert: So the international relations requests, are they from foreign nationals or from Canadian citizens?

Ms. Suzanne Legault: You have to be a resident of Canada to make an access request. Then the other grouping is the Canada Revenue Agency—

Mr. Bob Dechert: Those would be for individual cases, I would assume.

Ms. Suzanne Legault: A lot of law firms are involved in those types of complaints.

In terms of the system overall, you have to understand that about half of the total number of requests in the system go to Citizenship and Immigration Canada. Those really deal mostly with people who are outside of the country wanting to have information about their status with Citizenship and Immigration. They usually tend to be represented by people here. That's about 30,000 requests in the system. That gives a sense of where the bulk of the requests across the system are.

Aside from that, there are about 25 institutions out of 250 that receive over 90% of all the requests—the main departments like Transport Canada, PCO, Treasury Board, Health Canada, Industry Canada. That's where the bulk of the requests go.

Mr. Bob Dechert: Is there any individual organization that's responsible for say 10% of the complaints that you review?

Ms. Suzanne Legault: You can sense my reluctance here, because obviously complaints are made anonymously, and so are requests. Motivations behind requests and complaints are also protected under the law, so I am somewhat reluctant to answer, but yes, there are people—

Mr. Bob Dechert: But you do look at that, don't you?

Ms. Suzanne Legault: There are complainants who have a greater volume of complaints, but it could be because they're

journalists, it could be because they're lawyers, or it could be because they have a specific interest in this specific area, and their requests would go to different types of institutions. Some complaints are issue driven. With Lac-Mégantic, for instance, we had a big surge, with various people requesting. It varies from year to year.

Mr. Bob Dechert: I sat on this committee a few years ago, and when we were talking about the information requests, we were told at that time—in 2009—that a particular individual, a particular media organization, was responsible at that time for more than 30% of access to information requests. I just wondered if there was a correlation between the access to information requests and the complaints filed, which your office deals with.

Ms. Suzanne Legault: I would be very surprised if it was 30% of the requests.

Mr. Bob Dechert: It was at that time, but it may have changed.

Ms. Suzanne Legault: I really don't think that's possible. Perhaps the person was talking about the complaints, and that would have been the time of the CBC complaints. There was a very huge surge the year after CBC became subject to the act, and the complaints went up significantly that year. I think that's what those comments might refer to.

• (1625)

Mr. Bob Dechert: Was that because the CBC was subject to access to information for the first time around that time?

Ms. Suzanne Legault: Yes.

The Chair: Thank you, Mr. Dechert.

[*Translation*]

Our first hour is up. Once again, I'd like to thank the witnesses for joining us today and giving us such valuable input.

The committee will break for five minutes to give our next two witnesses a chance to take their seats.

• (1625)

_____ (Pause) _____

• (1625)

The Chair: We now resume the meeting.

In our second hour, we will hear from two distinguished witnesses, Ms. Shepherd, Commissioner of Lobbying; and Mr. Therrien, Privacy Commissioner. They will each have 10 minutes for their presentations on their main estimates for 2015-16. Afterwards, members will have the opportunity to ask questions until 5:30 p.m.

Ms. Shepherd, thank you for being here. You have 10 minutes. Please go ahead.

• (1630)

Ms. Karen Shepherd (Commissioner of Lobbying, Office of the Commissioner of Lobbying): Thank you.

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

I am pleased to be here today to discuss main estimates and outline my priorities for the fiscal year. I am joined by René Leblanc, Deputy Commissioner and Chief Financial Officer.

[English]

My mandate is threefold: to maintain a registry of lobbyists; to develop and implement educational programs to foster awareness of the act; and to ensure compliance with the Lobbying Act and the Lobbyists' Code of Conduct.

As I have previously said before this committee, I run a lean but effective organization due to the progress made in streamlining operations. Thanks to the hard work and dedication of my staff who continue to perform despite scarce resources, last year I was able to deliver several new tools for lobbyists; improve compliance in the areas of monthly communication reports; and launch our segregated secure network to enhance data security.

In 2013-14, my budget was cut by 5%. I am currently able to deliver on my mandate; however, there are not sufficient funds to implement major system upgrades and policy and program changes, which might be required if the act were to be amended. The amount in the 2015-16 main estimates for my office is about \$4.5 million, which is essentially the same amount as last year. My salary envelope represents about 63% of my budget. The remaining 37% is for operating costs. I have a complement of 28 employees.

The registry of lobbyists is the primary tool for lobbyists to disclose their lobbying activities. A budget of about \$1 million, including salaries for seven full-time employees, has been allocated to manage the registry this year.

[Translation]

Following the budget reduction in 2013-14, the registry was placed in maintenance mode. However, given the importance of the system, this position is not sustainable in the long term. One of my priorities this year is to develop solutions to ensure the registry continues to be stable in the long run.

[English]

In terms of ensuring compliance with the act and the code, I allocated \$1.1 million in 2015-16 to enforcement activities, including the salaries for eight full-time employees. In addition to conducting reviews and investigations, my office undertakes a broad range of monitoring and compliance verification activities. This year my priority will be to continue to refine these compliance initiatives.

[Translation]

The last component of my mandate is to inform and educate stakeholders. The Lobbying Act is a fairly complex piece of legislation. Outreach is thus essential to ensuring compliance. I allocated \$700,000 to outreach activities, including salaries for seven full-time employees. While developing educational tools and delivering outreach activities will continue, my priority this year will be to support the implementation of a new lobbyists' code of conduct.

●(1635)

[English]

The purpose of the Lobbyists' Code of Conduct is to ensure that lobbying is conducted according to the highest ethical standards. While the act has been amended several times over the years, the code has not been amended since it came into effect in 1997.

In 2013, I held a consultation to determine whether revisions to the code were warranted. The consultation indicated that, while the code was working well, there were areas of the code that could be strengthened. As required by the act, I consulted stakeholders on a revised code in the fall of 2014. The act also requires that I submit the code to a committee of the House of Commons, which I recently did.

I look forward to hearing the views from members of this committee, as I see this as an important and final stage in the consultation outlined in the act. Following consideration of your views, I will develop the necessary tools and guidance documents for lobbyists. Finally, I will publish the code in the *Canada Gazette*. At that time, I will indicate the date when the new code will come into effect. Until that date, the 1997 code remains in force.

[Translation]

I would like to highlight three key changes to the Lobbyists' Code of Conduct, which I submitted to you.

First, the scope of the code has been changed to be consistent with that of the act. The main objective of the act is to ensure transparency of communication between lobbyists and federal public office holders. As a result, I have removed all rules in the code that dealt with the interactions between lobbyists and their clients.

Second, I added a new principle concerning respect for Canada's democratic institutions to reflect the role lobbyists play in the public policy process.

[English]

Finally, changes were made to clarify the area of conflict of interest. I simplified the rule dealing with conflict of interest to reflect the 2009 Federal Court of Appeal decision, which included the concept of apparent conflicts of interest. I also added new rules, which provide additional clarity to lobbyists in the areas of preferential access, political activities, and the provision of gifts.

Some relationships between lobbyists and public office holders could create a sense of obligation, for example, when the lobbyist has financial or business dealings with the public office holder or when they are close personal friends. In such cases where a relationship would be perceived as giving preferential access, lobbyists should not lobby that public office holder. Some political activities could also create a sense of obligation. While we live in a democratic country where both political activities and lobbying are legitimate, lobbyists must ensure that no real or apparent conflict of interest is created when these two activities intersect. The code will explicitly prohibit lobbyists from lobbying members of Parliament and ministers when they have carried out political activities that could reasonably be seen to create a sense of obligation. These activities include organizing a fundraising campaign or event, writing speeches, preparing candidates for debates, and serving on the executive of an electoral district association.

The rule extends to a prohibition on lobbying public office holders who work in ministers' or MPs' offices. When certain political activities are carried out by a lobbyist it is reasonable to think that political staffers who serve at the pleasure of a member or minister may also feel a sense of obligation. By contrast, activities such as donating as per the Canada Elections Act, putting a sign on a lawn, being a member of an electoral district association, or attending fundraising events do not create a sense of obligation that would result in the appearance of a conflict of interest.

The final rule concerning conflict of interest prohibits lobbyists from offering a gift to a public office holder except when such a gift would be a normal expression of courtesy or protocol.

[*Translation*]

I would like to end by stating that I am very proud of my staff and all of their work and support in achieving my mandate. Thanks to their dedication and professionalism, I am able to look forward to all that we will once again accomplish this coming year. In particular, with their help, I look forward to implementing a new lobbyists' code of conduct.

Mr. Chair, this concludes my remarks. I welcome any questions you or the members may have.

• (1640)

The Chair: Thank you for your presentation, commissioner.

And now, without further ado, I will turn the floor over to Mr. Therrien, Privacy Commissioner of Canada, who will have up to 10 minutes for his presentation.

Mr. Daniel Therrien (Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada): Thank you, Mr. Chair. Good afternoon, honourable members.

I am pleased to address our office's main estimates, and with me today are Daniel Nadeau, our chief financial officer; and Patricia Kosseim, our general counsel.

In my time, I will outline our fiscal outlook, describe how we are managing rising demands, and announce our new privacy priorities, which will influence our work in the future.

To begin now, in the coming years, our resources are forecasted to remain at their existing levels. When looking at our 2015-16 report

on plans and priorities, there appears to be a drop from the last two fiscal years to this one. This difference is due mainly to the expenses incurred in previous years with the mandatory move of our headquarters in February 2014. Looking forward, for the next three fiscal years, our resources are set to remain relatively stable, at just more than \$24 million annually.

That said, we face rising demands. Over the last few years, we have generally seen increasing levels of complaints, while our investigations are becoming more complex. On top of reviewing privacy impact assessments, we are also increasingly requested for consultations to provide advice earlier as new federal initiatives making use of personal information take shape.

Meanwhile, data breach reports from departments were already increasing before a new Treasury Board directive came into force a year ago, making material breach reports to us mandatory. And at the end of the last fiscal year, breach reports in the public sector hit a record high for the fifth consecutive year.

Facing rising demands, we have taken steps to continue meeting our obligations within our existing resources. For example, we are settling more complaints by early resolution, through which parties are satisfied without the need for a full investigation. We are also managing situations where many complaints come from various people about the same issue by opening one all-encompassing investigation. And, we have also implemented measures for situations where one individual submits many complaints, to better balance the needs of all complainants, ensuring all Canadians have access to our services.

All told, Mr. Chair and honourable members, we are using most, if not all, of the tools available under our acts to manage rising demands. But, today, we are left with precious little room to manoeuvre to meet our obligations. We are nearly one year in after taking on new responsibilities under Canada's anti-spam law.

We also anticipate the passing of Bill S-4, which will make breach reports from private sector organizations to our office mandatory. Bill C-51 will also create new work for our office as we are called upon to investigate whether its implementation respects the Privacy Act.

So, while I am not ready to say our office needs new resources today, I think it will be quite difficult to meet our existing and new responsibilities with our current level of resources. After we have some experience fulfilling our new roles and a better sense of the impact on our resources, I may need to appear before you to make the case for an adjustment.

[English]

Turning to strategic priorities, when I appeared before you to discuss my nomination for the position of Privacy Commissioner of Canada, I said that during my mandate my goal would be to increase the control Canadians have over their personal information.

One of my first initiatives after assuming my role was to launch a priority-setting exercise that would guide the discretionary work my office does towards realizing this vision in the most efficient and effective way possible. As part of this exercise, our office engaged representatives from business, government, civil society, and academia. We also held focus groups to gauge the views of the public. Today, I am pleased to share our results.

• (1645)

To begin, one of our four privacy priorities will be the economics of personal information. Our discussions highlighted the need for user clarity about the personal information they provide in exchange for online services, how that data is used, and the question of meaningful consent. As a result, some of our key work under this priority will be closely examining the issue of consent in today's digital world, increasingly marked by the emergence of big data and the Internet of things.

The overall goal of this priority will be to enhance the privacy protection and trust of individuals so that they may confidently participate in an innovative digital economy.

The “body as information” will be another privacy priority. Whether it is biometric information tied to a trusted traveller card or that generated by medical devices, genetic testing, or wearable fitness trackers, this data may be used in many ways that could compromise people's privacy. This issue concerned the experts we engaged, and it is one about which we will learn more and raise awareness among both developers and users about the potential privacy risks of these new technologies.

The goal of this priority will be to promote respect for the privacy and integrity of the human body as the vessel of our most intimate personal information.

Of course, one of the hallmarks of today's information technology is sharing information with the world in a click, and as the saying goes, “the Net never forgets”, which means youth growing up today may no longer get to outlive their past mistakes. These are among the reasons why reputation and privacy will be one of our priorities, and one under which we will work to help enhance digital literacy

among vulnerable populations, while also examining the right to be forgotten.

Our goal with this priority will be to help create an environment where individuals may use the Internet to explore their interests and develop as persons without fear that their digital trace will lead to unfair treatment.

Fourth and finally, government surveillance will also be among our priorities. As mentioned, we will be directing investigative resources to ensure the Privacy Act is duly respected by the information sharing made possible by Bill C-51. We will also give advice to departments, through privacy impact assessments or otherwise, to prevent privacy breaches. We will also work with private organizations and government to establish appropriate standards for transparency in accountability reports.

Ultimately, our goal with this priority will be to contribute to the adoption and implementation of laws and other measures that demonstrably protect both national security and privacy.

In order to make progress on these priorities, we will focus our activities around five cross-cutting strategies: first, exploring innovative and technological ways to protect privacy; second, enhancing accountability and promoting good privacy governance; third, taking into consideration the fact that privacy knows no borders; fourth, enhancing our public education role; and fifth, paying special attention to vulnerable groups.

In closing, our new privacy priorities will help hone our focus to make best use of our limited resources, and further our ability to inform parliamentarians and to protect and promote Canadians' privacy rights. Having identified what we believe are the 21st century's most pressing privacy concerns, our office will now chart a course to address them, in partnership with individuals, organizations, legislators, and fellow oversight bodies.

With that, I look forward to your questions.

[Translation]

Thank you.

• (1650)

The Chair: Commissioner, thank you for your presentation.

The committee members no doubt have many questions for you. I will give them the floor, starting with Ms. Borg.

Ms. Borg, you have seven minutes.

Ms. Charmaine Borg: Good afternoon. I would like to begin by thanking you for appearing today. We always have a lot of questions, but we have to prioritize. I will start with you, Ms. Shepherd.

To ensure that the government is working on improving the lives of all Canadians, access to government organizations must be equal and there must be transparency. Your mandate mainly consists in making sure those two requirements—access and transparency—are being met.

Senator Mike Duffy's trial has been dominating the news lately. During the trial, Mr. Duffy's schedule was made public. We saw that a number of meetings with various lobbyists were not registered.

Do you think there are deficiencies in the way the law currently operates? In particular, do you feel that the 20% rule is difficult to apply?

Ms. Karen Shepherd: I mentioned something while the bill was being reviewed. It depends on the how it is applied according to the 20% rule. Some lobbyists would probably not be covered by the legislation. That may be one of the reasons. If an organization did not have to register initially, it would not have to produce a monthly report, either.

Ms. Charmaine Borg: Thank you.

During Mr. Duffy's trial, we also learned that he was often the one who initiated meetings, so they did not have to be registered. Is that something we should address?

Ms. Karen Shepherd: Lobbyists currently have to produce a report if they are organizing the meeting. If the meeting yields a financial benefit, whether for the public office holder or the lobbyist, that person has to produce a monthly report.

Ms. Charmaine Borg: Mr. Duffy organized several meetings with Enbridge. The company apparently informed the Office of the Prime Minister that it had contact with the senator on a number of occasions and was somewhat uncomfortable with that. Was your office informed of those contacts?

Ms. Karen Shepherd: Yes, my office was informed of those meetings. I always take allegations seriously. I can confirm to the committee that I am looking into the lobbying activities to determine whether there is a problem.

Ms. Charmaine Borg: Thank you.

I will switch departments and ask you a few questions, Mr. Therrien.

During this session of Parliament, the committee considered several bills directly related to protecting the privacy of Canadians, including Bills C-44 and C-51. Unfortunately, you were not invited to testify. I think that those bills may negatively affect your ability to ensure that the privacy of Canadians is respected. What do you think?

Mr. Daniel Therrien: I was not invited to appear before the committees of the House, but I did appear before a Senate committee to speak to Bill C-51, and I made presentations to the appropriate committees of both Houses. All I can do is make the strongest possible case to parliamentarians. It is better if I am invited, as we can then discuss the proposed recommendations.

That said, my views on all bills, including Bill C-51, have been communicated to parliamentarians. A public debate was held on those matters. I am satisfied with that debate.

•(1655)

Ms. Charmaine Borg: I assume it's always good to have as many forums as possible.

I would now like to briefly discuss Bill S-4, which will soon become law. We examined it in committee at second reading. You testified at those meetings. You proposed a few amendments, including to clauses 6 and 7 of the bill. However, those proposals were not accepted, and no changes have been made to the original version of the bill.

Are you worried about the repercussions that may have?

Mr. Daniel Therrien: On the whole, I think Bill S-4 is a positive development. It contains a number of positive aspects, including newly granted enforcement powers. Agreements could be applied more directly. Overall, we feel that Bill S-4 is positive.

I did recommend a few amendments to the bill that were rejected, especially the ones related to legal access and information disclosure to police authorities by telecommunications companies. Of course, I would have preferred it if those amendments were adopted.

That being said, as I indicated as part of the strategic priorities established by my office, since the bill will be coming into force, I intend to strongly encourage public institutions—departments and private telecommunications companies, among others—to produce transparency reports. That way, the public would be able to find out how much personal information those private companies are sending to various police authorities. I hope that will move the debate forward. In light of those facts, some changes might be made in the future.

I am assuming that the bill will be passed as is. I am trying to ensure that the measures to inform the public will be applied as transparently as possible.

The Chair: Thank you, Ms. Borg. Your time is up.

I give the floor to Ms. Davidson, also for seven minutes.

[English]

Mrs. Patricia Davidson: Thank you very much, Mr. Chair.

Thanks to our presenters here again this afternoon. It's always great to see you back again and to hear your views. We have an opportunity to ask you about the main estimates, so that's a good thing too.

Mr. Therrien, in your opening remarks you made the comment that we've seen increasing levels of complaints, and they've become more complex. Can you expand upon that a little, please?

Mr. Daniel Therrien: Yes. In terms of volume, there has been a significant increase in the number of complaints under both the Privacy Act and under PIPEDA, if we look at a period of several years. In the last year the increase under the Privacy Act has been less important, approximately 10%. Under PIPEDA, the private sector legislation, it has been more important. We're trying to accommodate and manage this increase in complaints through the various measures that I mentioned, including early resolution of complaints rather than fulsome investigations.

We try to look at these complaints in accordance with the complexity of each case. The increase in complexity, if I look at the Privacy Act for instance, is a function essentially of the fact that many years ago many complaints had to do with access rights; that is, whether individuals about whom the government had information were properly given information held about them. More recently there are more and more files or complaints or investigations that have to do with more systemic issues like information-sharing practices of departments; for instance, Bill C-51 but also border initiatives or other initiatives. We've gone from complaints and studies and investigations that were focused more on individual treatment and we are now moving to more systemic issues, which of course make things a bit more complex.

• (1700)

Mrs. Patricia Davidson: Okay, thank you.

You talked about your all-encompassing investigations. Did you find that's working well? Is it creating any issues for anyone in the system?

Mr. Daniel Therrien: I'll give you a bit of a long answer, as short as possible.

The worst consequence, I would say, would be that under the Privacy Act regime the treatment time of complaints is growing because of limited capacity. That said, we closed more files last year than we received so the backlog has decreased in the last year. But treatment time has increased to something like nine months, which we think is too long and we want to address it.

Under PIPEDA, the number of complaints has risen by roughly 50%, and through a number of means we have been largely successful in meeting the demand.

Mrs. Patricia Davidson: Okay, thank you.

I'm going to ask a question of Ms. Shepherd, now, please. I might come back to you, Mr. Therrien, if I still have time.

Thank you very much for your presentation this afternoon. In all our previous visits when you've been here, we've talked a lot about education and I see in your opening remarks you're talking about developing and implementing an educational program to bring awareness of the act and the code. How is that going, and are you doing anything specific that's different or are you continuing along the same lines?

Ms. Karen Shepherd: What's probably different is we're doing a lot more webinars for first-time registrants on the education front. We're trying to use the website as much as we can continuously to reach out to as many as we can.

The biggest thing probably that's different is with the new Lobbyists' Code of Conduct and the strategy that's going to have to go around it. I see maybe doing a lot more round tables across the country as I did during the consultation process. It turned out to be very effective. We're looking at maybe doing an annotated code as well, because we did an annotated act that got a lot of positive reviews. Part of the tools and guidance I'll be working on over the summer with staff will be to come up with some of these new tools.

Mrs. Patricia Davidson: Okay, and that's what you're referring to when you're talking about the new tools for the lobbyists, and those types of things.

Ms. Karen Shepherd: Yes, because with my experience, as I've said before to this committee, lobbyists very much want to comply with both the act and the code. I feel it is my job to make sure that they have the necessary guidance and tools to be able to do that. At the time of gazetting I'm looking at having the tools and guidance ready.

Mrs. Patricia Davidson: You also talked about launching the segregated peer network. Can you tell me a bit more about that?

Ms. Karen Shepherd: Yes, the segregated network was done so we could better protect the security of the compliance files. But we're also finding an additional benefit in it, in that it's providing a great development environment that's allowing us to replicate the lobbyists' registration system.

Mrs. Patricia Davidson: Further down in your opening remarks you were talking about the registry of lobbyists and you were saying following the budget reductions in the past two to three years that it was placed in maintenance mode.

Ms. Karen Shepherd: Yes.

Mrs. Patricia Davidson: Can you explain what you mean by "maintenance mode" and what your plans are to change that?

Ms. Karen Shepherd: Right now the maintenance is just that. It's what's keeping it running on an ongoing basis, so the normal bugs or fixed things that may come up on a daily basis are there. It's just literally keeping the system running and running well.

We've invested a lot over the years, so it's a very robust system. That said, in order to be viable in the long term, I can't stay in maintenance mode. One of the things in my priorities this year is that we're replicating the lobbyists' registration system and looking at ways where we can be more cost efficient, to get onto a newer platform, because some of the technology is starting to become outdated. While it's still functioning now, we're running out of people who can support us on some of the technology, so it's time to do something.

• (1705)

[Translation]

The Chair: Thank you.

[English]

Now, I'll turn the floor over to Mr. Simms for seven minutes.

Mr. Scott Simms: Thank you.

Ms. Shepherd, you've been busy, obviously, since the fall of 2014.

Ms. Karen Shepherd: Oh, yes.

Mr. Scott Simms: You've widened the scope; there's no doubt about that.

I have a couple of questions, though. It says here in this publication you gave concerning the committee:

A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation.

In your testimony you talked about a simplification of the code, which I respect, like as a close personal friend. The simplification aspect I get, but it leaves open a lot of questions as to knowing where the parameters are. I'm just putting myself in someone's shoes to try to figure out whether I should engage with a person I know. For all intents and purposes, this town is not that big, so we tend to see each other in social settings and so on. I'm just trying to figure out what kind of parameters you are looking at.

Ms. Karen Shepherd: Part of this summer we're sure to be looking at developing the guidance that will go with it. But as I was saying in my opening remarks, certain relationships create more that sense of obligation, so relationships where this is a partner relationship, financial or business dealings, for example, a relative. Having your sister call to arrange a meeting with the brother, the minister, would be a relationship that I think a reasonable Canadian will look at and see a sense of obligation.

Mr. Scott Simms: I see that. That's clear enough. Let's take the case where you have a lobbyist approaching a member of Parliament's office and she had worked for that member of Parliament, say, a year ago or two years ago. How is that connection interpreted by you?

Ms. Karen Shepherd: The situation you're describing, to me, would be like a working relationship, where we all have acquaintances and friends. I would think a reasonable person would look at that and say it's not creating a sense of obligation. But a close personal friendship, where there's a close personal bond, almost as if the friend is your relative, I think would be a situation where a reasonable Canadian might question that particular relationship.

Mr. Scott Simms: I can see what you're saying about the fact that there's a direct connection with people and sometimes we know of situations where that happens—I won't go into detail. It tends to hit the news in a hard way and people get disgusted by it, as I do, as a lot of people do. We don't want to see that. We want to see transparency.

Again, as I say, I get the simplification, but the question mark surrounding this is if you're doing this for a living, then sometimes it gets hard to decipher what the relationship is. You talk about the reasonable person test; I guess that's what you're saying.

Ms. Karen Shepherd: Yes. The conflict of interest commissioner has used a definition. She's defined a close personal friend, in relation to the difference between acquaintances and close personal friends. I find that to be a definition that does make it a little clearer to work with.

When I was doing the consultation I actually heard, from some lobbyists, some concerns like the ones you're raising, but also an appreciation that there were certain friends they were not lobbying because they didn't want to put that particular friend in a conflict of interest. Those are the friendships I'm trying to address in this code, because of the court case.

Mr. Scott Simms: Yes. I see the downside of it, as was illustrated earlier by the question about the Senate, the Duffy scenario, and so on and so forth. I can see how some of that is frightening, to say the least. There are other cases, too, when as a former critic—I was critic of Heritage—I was lobbied. I had discussions with a lot of groups in the arts community and the broadcasting community, and it was a real education for me. Yes, they want to further their interests, but my interests were served as well. I wouldn't want to see a chill over this kind of industry, where there are these loose parameters and we're not sure where we're stepping, always treading on—

Ms. Karen Shepherd: Yes, I fully agree with that. One of the reasons the rule reads the way it does now, as opposed to the way I had it previously, where it actually referred to friend and relative in the rule, is that I appreciated, in listening to the consultations and upon hindsight, that you don't want to stop good public policy. You don't want governments operating in vacuums, so I'm very aware of that in terms of making sure it doesn't happen.

Mr. Scott Simms: What kinds of enforcement tools do you have? You obviously want to increase the amount of enforcement you can put on people who go awry.

Ms. Karen Shepherd: In terms of enforcement powers, if I find that there's a breach of the act and I have reasonable grounds to believe that the act has been breached, then I have to suspend my particular investigation and refer it to the RCMP, who will then look at it.

• (1710)

Mr. Scott Simms: Are there certain provinces that have more powers than you? I believe that's the case, isn't it?

Ms. Karen Shepherd: Yes, there are. There are two provinces that have the ability to issue administrative monetary penalties.

Mr. Scott Simms: It's Quebec, and Newfoundland and Labrador. What do they do specifically that you can't?

Ms. Karen Shepherd: They can issue administrative monetary penalties. They can actually put a sanction appropriate to the breach, so like a late filing, or lesser transgressions that I just—

Mr. Scott Simms: It seems rather reasonable to me. How do you feel about that?

Ms. Karen Shepherd: During the review of the act, that was one of the powers I asked for. The government's response indicated it is looking at that.

Mr. Scott Simms: Sorry, I'm short on time, here. Thank you very much, Ms. Shepherd. I appreciate that.

Mr. Therrien, you said, and I'm quoting you here, that in meeting new responsibilities, the case for an adjustment will be necessary in the future. You said that under PIPEDA it went up 50%. Is this the adjustment you're seeking, in cases under PIPEDA?

Mr. Daniel Therrien: I'm not seeking it right now. My point is that—

Mr. Scott Simms: But you will, right?

Mr. Daniel Therrien: My point is this: we have to deal with complaints, and they're growing. We have a number of means to address them efficiently. That's one side of the picture.

What I'm referring to when I say we have new responsibilities is mostly new statutory responsibilities, under Bill S-4, to receive and advise on reports that we will receive from companies when there are privacy breaches. There is no funding that comes with these responsibilities. Under Bill C-51, we will investigate whether the collection and sharing practices of departments conform with privacy. There is no funding that comes with that.

I'm not asking for money right now. I'm suggesting it's going to be difficult to balance the books with these new responsibilities. Rather than to ask for money at this point, I say we will see, with the experience of implementing these new responsibilities, whether there is a need for additional funding. I think it is extremely possible, but I want to see what history tells us.

[Translation]

The Chair: Thank you, Mr. Simms.

I now give the floor to Mr. Dechert, who has seven minutes.

[English]

Mr. Bob Dechert: Thank you, Mr. Chair, and thanks to our guests. Mr. Therrien, Ms. Shepherd, it's nice to see you both again, and thank you for being here with your officials.

Mr. Therrien, you mentioned a number of priorities in your opening remarks, including the economics of personal information. I was wondering about the issue of identity theft, which of course is a very significant issue for all Canadians, especially seniors who in my riding are facing increasing threats to the theft of their personal information. Can you tell us about what your office is envisioning doing to bring the dangers of identity theft to the general public and educating people on how they can protect themselves against these sorts of things?

Mr. Daniel Therrien: Sure. When we consulted either the general public or stakeholders, but particularly the general public, the risk of identity theft was one of the biggest concerns among the general population. We certainly plan to have public education initiatives to inform the public about these risks. We also want to do more in public education with companies, with organizations, to ensure that they take appropriate measures to protect against these risks.

One of the strategies that I mentioned in my opening remarks would be to strengthen the accountability of organizations in privacy generally, but this is particularly relevant, I think, in terms of breaches and the risk of identity theft to make sure that organizations, companies, are held accountable for the measures they take or do not take to prevent this type of risk.

Mr. Bob Dechert: You're talking about, for example, online merchants who might be collecting economic information on individuals who purchase things over the Internet. Would you be providing guidelines for those companies on how they deal with the information they receive?

● (1715)

Mr. Daniel Therrien: Yes. We plan, for instance, to provide more guidance to small and medium-sized businesses. We find that although they don't have a perfect record, large companies are better at protecting privacy, particularly in terms of breaches, although there are instances of problems even with large companies. We've seen that small and medium-sized companies, because they are smaller, because they have other things to do, do not necessarily spend as much energy as they should in protecting against these breaches. That will be one of our focuses in our public education campaigns.

Mr. Bob Dechert: That's very good. As you know, the majority of businesses in our economy would be classified as small or medium-sized enterprises. As you point out, these organizations are often not large enough to have the in-house resources to deal with some of these issues, so that's a very significant benefit to our citizens if you can help those companies with that type of information.

Ms. Shepherd, I want to ask you a question about generally how the lobbyist registration system is going. You talked about how you're reaching out to stakeholders, developing tools to make it easier for people to understand. I think probably most government relations firms, that call themselves that, understand what's required of them under the Lobbyists Registration Act. Probably most law firms do, and a lot of law firms do, as you know, what you would describe as lobbying. It's not just the government relations firms.

I wonder what others—smaller businesses like the ones Mr. Therrien just mentioned, individuals who might do it very sporadically on behalf of their business or organization—reach out to members of Parliament, to ministers? How were you reaching that level of stakeholder? What more do you think needs to be done in that regard?

Ms. Karen Shepherd: Actually, in the enforcement regime that I have, I'm very pleased with what the team has been doing in terms of being even more proactive in terms of how we can ensure compliance. For example, I've mentioned before to this committee that we do what I call media monitoring. That might seem simplistic in itself, that you're just checking the media, but it isn't. There's further analysis that goes on to see whether these companies are registered, or if they're registered federally. If they are not registered then we're sending them advisory letters advising them about the act. That's one way.

We've also started in the last year doing what we're calling a net compliance analysis, where we're looking at what's actually happening maybe from coming out of the budget and looking at some trends in the data. For example, this year we were looking at doing a project on institutions that were saying they were receiving government funding but weren't registered federally. We're reaching out to them to educate them that there's federal legislation and determining if they need to register. Some of them may not have to register, and that's what we're finding largely because of the fact that they're not hitting the significant duty threshold.

We're also doing compliance audits. Again, it involves individuals who are registered and we try to make sure that the information is complete and accurate.

Any of the outreach activities that we do lead to sometimes further analysis of where there are areas.... Part of the reason that we spend time educating public office holders is that the more they understand the act, they understand the people coming to them.... We sometimes say to ask them if they're aware of the Lobbying Act, and if they're not, to send them to our office. That's another way of getting the message out, because public office holders also play an important role.

Mr. Bob Dechert: Certainly with my office we always ask that question when somebody calls us or writes to us and asks for a meeting. From my perspective it seems to be working very well. I haven't found too many who have not taken the steps proactively to register before they make a call or request a meeting, so I think you're doing a great job.

Thank you very much.

The Chair: Thank you, Mr. Dechert.

Now the last five minutes goes to Madam Borg.

[*Translation*]

Ms. Charmaine Borg: Thank you, Mr. Chair.

Mr. Therrien, I would like to come back to the last part of our previous discussion. You said you requested that companies that provide personal information on a voluntary basis submit a transparency report. Have you received any responses? I know some telecommunications companies already do that. Have you received any positive responses so far?

Could you also tell me whether you have asked the government to do the same? For instance, the government would be more transparent when requesting personal information from companies.

• (1720)

Mr. Daniel Therrien: As far as private businesses go, we have held some consultations with telecommunications companies. I would say that the overall response has been rather positive. Most of the companies are willing to release that information, within certain parameters, of course. I think there is some room for improvement in that sense.

As for requiring government departments to do the same, as I explained in my opening remarks, I intend to ask departments to follow the same rules, in alignment with my office's priorities. Of course, departments and state police forces ultimately receive that information. It would be at least as important for departments to also be transparent, just like private sector companies are.

I plan on asking government departments to do the same.

Ms. Charmaine Borg: That's great. We are looking forward to it. I think Canadians are also looking forward to seeing a bit more transparency around requests for sharing personal information.

In response to Mr. Simms' questions, budgetary constraints were briefly discussed. Your office will eventually have to deal with the implementation of Bill C-51. There is also Bill S-4, whereby your

advisory role with companies will increase. Under the legislation, companies are also asked to report privacy breaches to you.

I understand that you are not asking for additional resources today, but that you will eventually. What are your concerns should you fail to obtain more resources?

Mr. Daniel Therrien: When the budget remains the same and we are given new responsibilities, such as those we will have to assume in the coming months under Bills S-4 and C-51, a choice clearly must be made. My concern is that we will have to do less in other areas.

I have a specific example. If we were to prioritize monitoring the implementation of Bill C-51 by carrying out investigations and providing government departments with advice, we would have fewer employees available to provide similar advice on immigration, border control and other issues. Some government initiatives would receive less attention because we would have to prioritize Bill C-51.

I would like to be able to do both, as both are important. We will try to do our best with the resources we have and given our new responsibilities. It is certainly possible that we might neglect some other obligations in practice, so we would have to request additional resources to manage to do both.

Ms. Charmaine Borg: Thank you.

Regarding budgetary problems, Ms. Shepherd, you also said that you have lost 8% of your budget since 2011, if my information is correct. You explained that it was becoming difficult to balance your activities. Can you tell us more about that?

Ms. Karen Shepherd: Our budget was cut by 5%, not 8%. To continue to deliver on my mandate, I have placed the registry in maintenance mode, but, as I said, that situation is not sustainable in the long term. So I am trying to see what I can do to ensure the system's long-term sustainability.

• (1725)

The Chair: Thank you, Ms. Borg. You are out of time. I have to use the remaining five minutes to call the votes we have been discussing over the past two hours.

I thank the witnesses for being here. They can stay for their votes if they wish. If not, they are free to leave.

I will call the votes now.

OFFICE OF THE CONFLICT OF INTEREST AND ETHICS COMMISSIONER

Vote 1—Program expenditures.....\$6,178,280

(Vote 1 agreed to)

[*English*]

OFFICES OF THE INFORMATION AND PRIVACY COMMISSIONERS OF CANADA

Vote 1—Office of the Information Commissioner of Canada - Program expenditures.....\$9,927,361

Vote 5—Office of the Privacy Commissioner of Canada - Program expenditures.....\$21,908,457

(Votes 1 and 5 agreed to on division)

[*Translation*]

OFFICE OF THE COMMISSIONER OF LOBBYING

Vote 1—Program expenditures.....\$4,026,414

(Vote 1 agreed to on division)

SENATE ETHICS OFFICER

Vote 1—Program expenditures..... \$1,059,500

(Vote 1 agreed to on division)

The Chair: Shall the chair report to the House?

Some hon. members: Agreed.

The Chair: The chair will report to the House at the earliest opportunity.

This concludes our 37th meeting. I thank the committee members for being here and for their excellent questions. I also want to thank the witnesses who came to testify.

The meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>