



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 079 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Wednesday, May 8, 2013

—
Chair

Mr. Pierre-Luc Dusseault

Standing Committee on Access to Information, Privacy and Ethics

Wednesday, May 8, 2013

•(1605)

[Translation]

The Chair (Mr. Pierre-Luc Dusseault (Sherbrooke, NDP)): We will begin. As we are running a bit late, we will move ahead quickly.

This is the 79th meeting of the Standing Committee on Access to Information, Privacy and Ethics. Today, we are welcoming Ms. Legault, Information Commissioner of Canada, who will talk to us about main estimates 2013-14, and more specifically about vote 40 under JUSTICE. She will make a 10-minute presentation. Afterwards, we will be able to ask questions.

I call vote 40 under JUSTICE. I yield the floor to Ms. Legault.

You have 10 minutes.

[English]

Ms. Suzanne Legault (Information Commissioner of Canada, Office of the Information Commissioner of Canada): Good afternoon, Mr. Chair and members of the committee.

I'm accompanied today by Layla Michaud, who is my director general of corporate services and the office's chief financial officer.

I will briefly review my office's achievements, our priorities for the next year, and some of the challenges we face.

Overall, I must say that I'm very proud of the incredible work being done by my very dedicated staff.

In 2013-14, we will have \$10.5 million available to carry out our work. An added \$2.6 million was provided to my office to cover the costs of relocating our offices next fall. We must repay this increase in appropriations over 15 years. In the 2014-15 fiscal year, our budget will be just under \$10 million, which includes a \$500,000 reduction as a result of the deficit reduction action plan. By the end of 2014-15, we will have fully implemented the budget 2012 cuts and the cost containment measures, which in total will amount to 8% of our budget.

For 2013-14, 77% of our financial resources have been allocated to our program and 23% to our corporate services. In terms of our human resources, I have 93 full-time equivalents on staff, down from 106 at this time last year. Of the 93, 70 work for the program and 23 for corporate services.

[Translation]

As you know, over the last four years, I have made significant changes to streamline our entire operations. I think the results are very positive.

On the program side, we have resolved 7,300 complaints since April 2009, including some of our oldest and most complex cases that had accumulated over the years. For a fourth year in a row, we have completed more files than we received during the year. Our median turnaround time is now 215 days and, more importantly, 86 days from the day cases are assigned to an investigator. I have strengthened our legal capacity to assist with formal investigations and litigations. That helped reduce our outsourcing costs for legal expertise.

In internal services, we are completing our information management and information technologies strategy, which we began four years ago. In the past year, I have also outsourced all our human resources activities to Shared Services Canada.

[English]

As you have seen from my report on plans and priorities, I have set ambitious performance targets for our program, and our internal services will be facing a challenging year in 2013-14.

That being said, my focus remains on the realization of the key results area of my strategic plan, which will be in its third and final year. I will hence, in this fiscal year, renew this strategic direction for the following three years, to lead the OIC through to the end of my mandate in 2017.

On developing a leading access to information regime, my focus in the next fiscal year will be to complete our three systemic investigations: into consultations, interference with the access to information process, and on text-based messaging. I also plan to complete the investigation I launched recently in response to the environmental law clinic complaint.

To coincide with the 30th anniversary of the Access to Information Act, and building on 30 years of experience at the OIC, we will issue recommendations for modernizing the act by way of a special report to Parliament in the fall of 2013.

•(1610)

[*Translation*]

We will continue to strive to provide exemplary services to Canadians. As you saw in our report on plans and priorities, I have a dedicated team, with difficult targets. Those targets are to complete 85% of the administrative complaints within 90 days and 75% of priority or early resolution complaints within six months. My goal is to leave, at the end of my term, a manageable and up-to-date inventory of cases to my successor.

As part of our work in this regard, we will target the complaints in our inventory that deal with special delegations—national security, the Canadian Broadcasting Corporation and the Canada Revenue Agency. We will also continue to work towards the resolution of the oldest complaints in our inventory and to closely follow the progress of our investigations.

In addition, we will keep seeking ways to be an exceptional workplace. To that end, we will roll out a comprehensive talent management program, a new human resources plan, as well as a code of values and ethics, with excellence in all aspects of our work as our goal.

Our internal services will be responsible for the relocation of our office in the fall, the completion of our information management and information technologies strategy, and for exploring further the opportunities for shared services with other agents of Parliament.

[*English*]

Mr. Chair, one of the fundamental principles underpinning access to information is having an independent oversight of government decisions on disclosure. The Access to Information Act explicitly prescribes that the Information Commissioner “shall receive and investigate”—it’s a positive legal obligation, which leaves me no discretion—the complaints of individuals who believe that their rights under the act have not been respected.

Even though I was able to decrease my inventory of complaints by close to 29% in the last four years, I still have about 2,000 files in my inventory at this time. At the same time, we are receiving more administrative complaints. We are up by 38% in the last fiscal year. In the last month alone, in April 2013, my office registered 277 complaints. The additional efficiencies I can now make will remain marginal.

When I appeared last year on the 2012-13 main estimates, I did not know whether my office’s budget would be cut. In a letter to the Minister of Justice at the time, I wrote:

The overall conclusions of my review indicate that any reductions to the Office’s existing funding envelope will potentially have significant adverse impacts on program results, including eroding the significant progress made over the last two years in reducing the inventory of longstanding cases and our ability to deal with the demands of our current inventory.

Hence, if you ask me today the question whether my budget is enough to accomplish my mandate, my answer is no.

In the coming months I will continue, however, to work to improve our performance to meet our ambitious targets, but I will also—and I feel I must—be seeking additional funds to ensure that the Office of the Information Commissioner can meet its obligations

under the act. Frankly, Mr. Chair, I think if I did not do that, I would be acting irresponsibly.

With that, Mr. Chair, my colleague and I are here to answer your questions.

[*Translation*]

The Chair: Thank you very much for being here.

Without further ado, Mr. Angus, you may go ahead. You have five minutes for your questions.

[*English*]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Madam Commissioner. I’m very pleased to have you before us. I’m glad of your bluntness about the fact that your office is not being given the resources it needs. We see that this government has a terrible record of openness with the Canadian public.

I’m looking at some departments that you have tried to deal with: Natural Resources gets an F, with a refusal rate of 22%; CIDA, an F; Canadian Heritage, an F, with a refusal rate of 40.8%; Environment Canada, an F, with a refusal rate of 36.9%; Foreign Affairs, given a special red alert. It seems to me that these are the hot-button ministries that are being used politically by the government; they seem to be the most secretive.

What is it that is stopping you and Canadians from getting the information they need from these departments?

•(1615)

Ms. Suzanne Legault: Mr. Chair, one thing is very clear. When one looks at access to information overall, we really have about 20 or 30 departmental institutions that receive in excess of about 100 requests per year. Those are the departments where everyone should focus in terms of performance under the Access to Information Act.

Citizenship and Immigration Canada receives close to 50% of all access requests in Canada at the federal level year over year, and that means the performance of Citizenship and Immigration Canada is very important. That department, generally speaking, has been performing very well. After that you have other institutions, like the Canada Revenue Agency, which receives about 5% of overall requests but generates about 30% of the complaints to my office.

You have to look at each institution. If you ask me where the focus of the government should be and where the focus of this committee could be, it’s really in these top institutions that generate the most requests, the most complaints, and follow their performance through their annual reports which they have to table in Parliament. They are supposed to incorporate my report card recommendations and their action plan regarding that into their annual report to Parliament. I’ve recommended that. The Treasury Board Secretariat has accepted this recommendation, and it will now be part of a mandatory reporting to Parliament.

Between my office, the government, Treasury Board Secretariat, and this committee, there should be better scrutiny on the performance of these institutions.

Mr. Charlie Angus: There are departments that have previously had poor marks and have improved and others that are somewhere in the middle. It seems to me, though, that we have this cluster of almost defiance, of trying to keep the public in the dark.

I know it's not your position to talk about a political strategy on the part of the government, but I'm looking at key departments that pretty much have an F in terms of their national reputation, in terms of how they politicize themselves. I am looking at CIDA with an F, Canadian Heritage with an F, Environment Canada with an F, and Natural Resources with an F.

Seeing that other departments have been improving, what is happening at these departments that are putting up stone walls? Are they complying with you? Are they working with you? Or is this an attitude of thinking they're above the Canadian people?

Ms. Suzanne Legault: I would say that each department that is in the top-tier group has its own reality—for different reasons. When I look at the last results of the report cards, in 2010-11 we had three institutions that had Fs. At that time we had a significant improvement in performance of the top-tier institutions. I was really quite pleased with that, and that's what I reported in last year's annual report.

This year's annual report, for instance, will be different because what I have seen seems to indicate a deterioration in performance. Now, I haven't done a report card this year. What I have seen, for instance, is that the RCMP, which was in the top tier in terms of complaints, has now moved up significantly, to number two. They've had a significant increase in administrative complaints. They're obviously not managing their workload. This year, CIDA seems to be having issues as well. With Parks Canada as well I've noticed issues.

I don't have a full diagnostic for you at this point because the statistics for government departments are essentially a year late, but what I'm seeing this past fiscal year is that there seems to be a deterioration in the system.

[Translation]

The Chair: Thank you.

Mr. Angus, your time is up.

I yield the floor to Ms. Davidson.

You have five minutes.

[English]

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Mr. Chair.

Thanks, Commissioner and Ms. Michaud, for being back with us again today.

We're going to have a shortened time with you, so I'll get right to my question.

I'm sure you've been following what this committee does, and you probably know that Bill C-461 has been introduced in Parliament and referred to this committee after second reading. That bill amends the current exclusion for the CBC.

I know we've talked about this before. Can you please tell us a little more about your views on the current exclusion under the act?

● (1620)

Ms. Suzanne Legault: Mr. Chair, honourable member, we are preparing a written submission that we would like to present to this committee when the discussion starts on Bill C-461. We will put in there essentially the history of what has happened in terms of the current provisions in the legislation since it came into effect in 2007.

We will explain in there as well what happened really in the court cases, because the court cases were not about the substance of that provision; they were really about the fact... CBC was arguing that because it was an exclusion, I did not have the right to review the records that were the subject of the complaints. That's why we ended in court.

So in all that period of time, from 2007 to February 2011, or perhaps it's November 2011—anyway, it's in 2011—I was not able to see any of the records related to these investigations. Subsequent to the Federal Court of Appeal, we were able to start collecting the records and to start doing the investigations.

What we will present to you will have an explanation of the differences between an exclusion and an exemption, and the different types of exemptions, not only in relation to the analysis for disclosure but also in relation to the powers of the commissioner when you have an exclusion or an exemption.

The other thing I will be able to provide to the committee is the fact that since 2007, we have looked at close to 1,200 cases in relation to CBC. We have 200 remaining. Out of all of those cases, no case has dealt with journalistic sources. I think that's an important fact to know when we consider possible amendments to the act and possible additions of exclusions.

My personal view as Information Commissioner, after something like six years now at the OIC, as assistant commissioner, as interim, and as commissioner, is that I do not support exclusions to the application of the act as a matter of principle. I really profoundly believe there should be independent review of government decisions on disclosure. That doesn't mean the information gets disclosed. We can still decide and recommend that the information should remain protected, as we do many times in terms of personal information or national security matters.

National security matters are the subject of a discretionary exemption under the act. There has not been any issue with the OIC's review and investigations and recommendations in relation to national security matters. I do not believe there should be a different perspective on documents that are located in the CBC. Journalistic source privilege is something that is protected in law as it is.

So this—not so briefly—is sort of my initial perspective on that. We are planning to provide a written document to the committee that will go through all of this information, because I think it's actually quite complex.

Mrs. Patricia Davidson: Thank you very much. I look forward to that.

Is my time up, Mr. Chair?

[Translation]

The Chair: You have 20 seconds left.

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

[English]

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

Welcome back, Commissioner.

You mentioned in a previous question that 30% of your complaints come from CRA. What are the others—the top three? If CRA is 30%, what are the percentages for the other top ones?

Ms. Suzanne Legault: The three main groups are really CBC, CRA, and anything having to do with special delegation. These are national security matters. Those three groups basically account for 50% or so of our inventory of cases. I do have a list somewhere here of how they're broken down in terms of institutions.

Essentially, over the last four years, about 18 institutions compose our inventory of complaints. It's fairly small if you consider the total number of institutions that are covered by the act. There's a top tier, really, of 20 institutions that generate the most requests, that generate the most complaints, and that have information holdings that obviously are of more interest to requesters.

• (1625)

Mr. Scott Andrews: When you look at the complaints—and CRA, for example, has 30% of your complaints—are you noticing the complaints that are coming in that are all similar? Are they similar in nature? Is it that a lot of these complaints in each one of these top departments are similar in nature? If you could get through that one hurdle with them, would their complaints go down? Is that a fair assessment?

Ms. Suzanne Legault: Again, it depends on the institutions. What we have seen now... There is an obligation now to disclose completed access to information request topics since January 2012. This was following our recommendation to TBS. We are beginning to analyze this information. What we see, for instance, is that there was an increase in requests related to the G-8 and G-20 at Public Safety. There was quite a lot of interest in CIDA, in terms of specific topics, and then you have other institutions where they have requesters who specialized in those departments or in those topical issues. Last month, in April, I did see a big chunk of requests that were on specific topics, but across various departments. It varies, but we do see the trends definitely.

Mr. Scott Andrews: For some of these bigger departments, like CRA, is there anything they can learn from the other departments? Would it be a useful idea to send in some of the representatives from the other departments who do very well at clearing off these requests?

Ms. Suzanne Legault: Yes, I think there are best practices, but in those institutions that have a lot of requests and a lot of complaints, we find that they're very different. Citizenship and Immigration Canada gets a lot of requests from lawyers who are representing people who want to have information about their immigration status or refugee status, and a lot of the time their requests are fairly small, in terms of number of pages, and the exemptions that are being applied are very much the same, like personal information.

If you look at CRA, it's a different dynamic. They have some requesters who make a large number of requests to them, and they have a very high volume of pages—over a million pages in the last year.

So their realities are different. We try to work with them, depending on their different realities. In terms of CRA, we have regular meetings. I have met with the head of CRA, the new person at the head of the agency, to make sure there's a commitment. We're trying to convince them to look at any ways they can reduce the number of requests by proactive disclosure. I know this is something that they said they were going to look at. They have a specific reality in terms of tax assessments and parallel litigation, so it's a different type of environment.

Mr. Scott Andrews: Does CRA acknowledge that they have a problem?

Ms. Suzanne Legault: They have a lot of requests. I think they are committed to their work. We have an excellent relationship with the Canada Revenue Agency and all of the access professionals there. We have lists of priorities that we work with them on. To manage their requests, they have increased their component of access professionals threefold in the last few years.

CRA is an institution that has a large volume of requests, a large volume of complaints, some specific large-volume complainants as well, and they are very collaborative with our office.

[Translation]

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

That's all the time we have for our discussion with you, Madam Commissioner. Thank you for joining us.

I will now follow the proper procedure for voting.

[English]

Shall vote 40 under Justice, less the amount voted in interim supply, carry?

JUSTICE

Offices of the Information and Privacy Commissioners of Canada

Vote 40—Program expenditures.....\$13,171,028

(Vote 40 agreed to)

The Chair: Shall vote 15 under Parliament, less the amount voted in interim supply, carry?

PARLIAMENT

Office of the Conflict of Interest and Ethics Commissioner

Vote 15—Program expenditures.....\$6,234,980

(Vote 15 agreed to)

The Chair: Shall the chair report votes 40 and 45 under Justice, votes 15 and 20 under Parliament, and vote 45 under Treasury Board, less the amount voted in interim supply, to the House?

Some hon. members: Agreed.

•(1630)

[*Translation*]

The Chair: That concludes today's meeting.

Commissioner, thank you once again for joining us. We look forward to seeing you again.

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>