



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 030 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, December 4, 2014

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Chair

Mr. Pat Martin

Standing Committee on Access to Information, Privacy and Ethics

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• (1530)

[English]

The Chair (Mr. Pat Martin (Winnipeg Centre, NDP)): Good afternoon, ladies and gentlemen. We'll call the meeting to order. Welcome to the second committee meeting of this session of the Standing Committee on Access to Information, Privacy and Ethics.

We are very pleased today to welcome, from the Office of the Information Commissioner of Canada, the Information Commissioner herself, Suzanne Legault. Welcome, Madame Legault.

She has brought with her Layla Michaud, the director general of the corporate services branch.

We are together today to examine supplementary estimates (B), and by extension the general operating budget of the Office of the Information Commissioner.

I understand you have opening remarks, Madame Legault.

Ms. Suzanne Legault (Information Commissioner of Canada, Office of the Information Commissioner of Canada): Yes, I do, Mr. Chair.

The Chair: Then the floor is yours.

Ms. Suzanne Legault: First of all, Mr. Chair, I must say that I am very happy to see that all of you are here safe and sound.

The Chair: Thank you for that.

Ms. Suzanne Legault: With that, I think we can start with our regular business.

[Translation]

Good afternoon. Thank you for asking me to appear today. I am here with Layla Michaud, Chief Financial Officer and Director General of the Corporate Services Branch.

Mr. Chair, I would like to tell you briefly about the work my office has been doing to support transparency and accountability during my term as information commissioner. I am doubtful, however, that I can sustain this important contribution to Canadian democracy given the volume of work and the financial situation the office is currently facing.

As you know, the Access to Information Act establishes the Office of the Information Commissioner of Canada as the first level of independent review of government decisions about releasing information under the act. Requesters who are not satisfied with how institutions handled their access request have the right to complain to my office. And in turn, I have a legal obligation to investigate all complaints that fall under the act. The information

commissioner has no discretion when it comes to investigations. The office must investigate all complaints.

Because of the work of my office, Canadians often receive more information than institutions were originally willing to release. I also help requesters get information more quickly. After the Lac-Mégantic tragedy, for example, I was able to secure much earlier releases of information than Transport Canada had originally proposed.

• (1535)

[English]

Since 2009-10, I have looked at all my investigative and business processes to identify efficiencies. I significantly improved how my team handles complaints. As a result, we have closed more than 10,000 complaints since I have become commissioner. This is the volume of work that rests with the OIC. Most of these complaints were resolved without the need to resort to the Federal Court, which is the second level of review under the act. For the remaining unresolved cases, my legal team has litigated these matters before the courts with the consent of complainants.

Over the years, I have also made recommendations to the President of the Treasury Board on various ways to advance accountability and transparency. I am very pleased that most of these recommendations over the years have been implemented by the government.

Through the last four years, I also found better ways to carry out crucial financial and governance functions. I did internal reallocations to provide maximum support to investigations.

I have been able to achieve these accomplishments as my budget was decreasing. The reality now is that I have 11% less money to do the work than I did when I started. Then, last fiscal year, we faced a 30% increase in the number of complaints, which has brought the organization to a crisis point. Despite our closing 10% more files again last year than in the previous year, the inventory of complaints grew by 16%. That was the first such increase since I have been commissioner or interim commissioner for the last five years.

In addition to having an investigative team stretched to the limit, I have no financial flexibility to augment my investigative capacity, or to set aside for contingencies. My budget is so tight that last year I lapsed \$37,000 at the end of the year. Therefore, I have no money to respond to unforeseen circumstances. For instance, if one of the servers breaks down at the OIC, I will not be able to replace it. There is not enough money.

This is the situation that we are facing now. Obviously, I will have to take action.

[Translation]

The situation will simply get worse, Mr. Chair, since both the number of complaints and the financial pressures will continue to grow.

Unless my budget is increased, I have only one option going into the next fiscal year to keep within my appropriations: to cut the program.

This is not a decision I take lightly. My independent oversight role is crucial to the access to information system, which is itself the foundation of transparency and accountability.

The government has identified these as priorities. The work I and my office do is crucial to its being able to meet them.

[English]

But as the workload grows, the gap between when I receive files in the office and when they can be assigned to investigators is increasing. The resulting delays are already jeopardizing the right to access. Requesters will have to wait even longer to get information. This, in turn, will delay their rights to pursue their matters through the Federal Court, if they wish to do so, since they must wait until the investigation of the OIC is completed before exercising their right to go to court.

For instance, Mr. Chairman, at this time the delay between receiving a file and assigning a file varies between six and seven months, so this will increase even more. Such developments are the last thing I want to see for Canadians, who have a right to timely access to government information. I have raised the red flag about this financial situation at every available opportunity. I have also pursued every option available to me to preserve my budget and ensure the integrity of the program. This includes making requests for funding through the 2014, and most recently, the 2015 budget process, so far without success.

In conclusion, let me say that I believe our actions at the OIC during my time as commissioner clearly demonstrate what I have always believed, that effective management of public funds is of paramount importance. I have told committee members in the past that I would have very difficult decisions to make to keep within appropriations, deliver on my mandate, and maintain excellence in governance. I have certainly had to make these decisions.

As I said in my last departmental performance report, which was recently tabled in Parliament, without additional funding, I will no longer be able to carry out my mandate responsibly and ensure the full respect of Canadian' rights to access to information.

• (1540)

[Translation]

If no resources are forthcoming, as a responsible steward of public funds, I will need to make cuts to the program to ensure my office continues to operate with the appropriations granted.

Rest assured: I will back away from the fiscal cliff rather than go over the edge. But, as I do, Canadians' quasi-constitutional right of access will be increasingly denied.

Mr. Chair, I would be pleased to answer any questions you may have.

[English]

The Chair: Thank you very much, Madame Legault, for a very sobering presentation.

We'll go immediately to questions, beginning with seven-minute rounds and the official opposition. For the NDP, we have Charmaine Borg.

[Translation]

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

Ms. Legault, thank you for taking the time to speak to the committee today.

You described a rather disturbing situation. As commissioner, you serve a vital function, ensuring that Canadians' right of access is duly respected.

You said that your office experienced a 30% jump in complaints in 2013-14 and that your budget is 9% smaller than it was in 2009. I think you said that you now had 11% less money than you did at the beginning of your term, despite a greater number of complaints.

As you pointed out, that is a major problem and you may have to make cuts to the program.

What do we do about it? What will the repercussions on your office be? Will Canadians' right of access be jeopardized as a result?

Ms. Suzanne Legault: Yes, absolutely. As I said in my opening statement, this is obviously my problem, as the information commissioner, but it also affects the rights of Canadians. It is not my job or position at stake but, rather, the rights of Canadians.

As a steward of public funds, I have already made cuts throughout the office, given our financial situation. I have already reallocated funding and achieved efficiencies in the area of investigations. Of course, we are committed to continually improving our office's efficiency, but any investigation-related improvements I am now able to make would be what I would call marginal. They would not enable us to process the 2,200 complaints currently in our inventory, in addition to the 1,600 to 2,000 new complaints we receive every year. That is where things stand.

As the person running the organization, I have done everything I can. The situation is now in the hands of parliamentarians and the government. At the end of the day, you are my bosses, and I'm telling you that, no matter what steps I take, the volume of work is so high that we can no longer respond to Canadians' requests.

Ms. Charmaine Borg: Thank you.

You called us your bosses, but our bosses are the Canadians we represent. Therefore, we certainly need to make sure that we protect their right of access to information and that you have the budget you need to respond to the ever-increasing number of complaints.

If I understood you correctly, you have just \$37,000, or 0.2% of your budget, left to work with until the end of the fiscal year.

Have you approached the government about the importance of rectifying the office's financial situation and, if applicable, made a formal submission to Treasury Board?

Ms. Suzanne Legault: Tab 2 of the documents I handed out provides a history of the funding requests we have submitted to the government over the past few years.

A few years ago, officers of Parliament were under the authority of the advisory panel on the funding of officers of Parliament. In 2010, we requested emergency funding to address a specific case. The government then implemented cost containment measures.

When the officers of Parliament were asked for recommendations under the deficit reduction action plan, we advised Minister Nicholson that we could not absorb a budget cut. We, nevertheless, saw our funding decrease by 5%. In real terms, that is now equivalent to 6% of our budget. That was a larger reduction than what we had recommended to our minister. As far as I know, we are the only officers of Parliament who experienced that.

Then, last year, we were forced to relocate, and the government made us pay for the move. We made a Treasury Board submission outlining our financial situation, and we pointed out that we could not afford to pay for the office's move. So Treasury Board recommended that we finance the relocation with a loan, repayable over 15 years. Repayment of that loan further reduces our budget by 2%.

For the past two years, we have submitted our budget requests to the Minister of Justice, who is responsible for our office, in order to receive funding under the federal budget and be able to make a submission to Treasury Board. My colleague spoke with the people at the Treasury Board Secretariat to find out what funding mechanism we could use to make a request, as an officer of Parliament. I believe Ms. Michaud was even in contact with them this week, via email.

We were prepared to make a submission to Treasury Board but were told to direct our request to the Minister of Justice and to go through the estimates process. That is what we did. If the government tells us it will consider a Treasury Board submission, obviously, we will make one. It's ready to go, in fact.

• (1545)

Ms. Charmaine Borg: I have 30 seconds left.

I was going to ask you about the open government action plan and the fact that it lacks an important component, measures to modernize the Access to Information Act.

I don't have much time remaining, but could you comment on the fact that the plan is missing such important measures?

Ms. Suzanne Legault: As I have said publicly in two letters to the President of the Treasury Board, I strongly support the open government initiative. In the beginning, I was one of its strongest supporters. So I'm very glad to see that the government is putting it in place.

As I see it, the most crucial part of the exercise, the cornerstone, really, is the modernization of the Access to Information Act.

[*English*]

The Chair: We'll have to leave it at that, Madame Legault. Thank you very much.

We have the first speaker for the Conservatives, Mr. Erin O'Toole. Welcome to the committee, Mr. O'Toole.

Mr. Erin O'Toole (Durham, CPC): Thank you, Mr. Chair, and thank you very much, Madame Legault and Madame Michaud, for appearing today.

I have the good fortune to be substituting today and to have an officer of Parliament on a subject I've often had some questions about myself from my past life as a lawyer, so this would be good opportunity for me.

I would like to thank you. It's clear you've been very diligent with the budget, very close to estimates, and not lapsing much; and closing 10% more is impressive.

Your concern about the volume of work leads to a number of questions to help me get an understanding. The 30% jump you're seeing in cases are unresolved access requests from the 27 institutions of government. Is that a fair way of describing it?

Ms. Suzanne Legault: They are complaints. About 250 institutions are covered by the act. The year before last, which is the last year for which we have statistics, the government received 55,000 or so requests across the system. That was about a 27% increase from the previous year. This was completely unprecedented across the system; it's not just my office.

I can say as well, sir, that it was not related to any issue, any specific departments or trends that we could see. It's the same thing in our complaints. Usually if there's a big jump, there's a topic, there's an institution, something happens, or there's a big surge. That year there was nothing like that, no trends whatsoever. It was an across-the-board huge increase, and the main increase came from members of the public.

The only thing I can surmise from what I see in the data is that there is clearly a heightened awareness in the members of the public about their right of access. I can't see any other trends.

•(1550)

Mr. Erin O'Toole: So the 30% jump is consistent with general increases for access to information requests across government.

Ms. Suzanne Legault: Yes.

Mr. Erin O'Toole: Who, by and large, are the requesters? Certainly, when I was a lawyer, ATI requests could be part of regulatory preparation for large companies. They could be part of a litigation process. Certainly the media are well known for some of their ATI requests that find their way into newspaper articles. Is there a breakdown on how many are commercial in origin versus a citizen inquiry?

Ms. Suzanne Legault: There is. There are Treasury Board statistics. As I said, that year when we had the big jump the majority was from the public.

I have them here. The public was first, and business was second. Out of the 55,000 requests you had that year, 22,000 or so were from members of the public and 21,000 from private sector businesses. That's a very broad category, sir. It's very difficult to know where they came from. It's not a very precise statistic.

Mr. Erin O'Toole: Is media part of that business category or is that a separate category?

Ms. Suzanne Legault: It could be. Media is a separate category. Media was 8,300 that year.

Mr. Erin O'Toole: For my own knowledge, for one of those 21,000 business inquiries, how much is the cost to a business of a general ATI request to a department?

Ms. Suzanne Legault: How much did it cost the business or how much did it cost the government?

Mr. Erin O'Toole: I'm sure you pay a fee when you're putting in an ATI request. What is that fee?

Ms. Suzanne Legault: The general fee is five dollars, and then there are other fees that can be charged.

Mr. Erin O'Toole: I know the Access to Information Act is from the nineties, I believe. Do you know if that five-dollar fee has changed under your term or before it?

Ms. Suzanne Legault: No, I think five dollars has remained a constant since 1983.

Mr. Erin O'Toole: That's interesting.

Do other countries bifurcate their ATI process, such that they charge, say, a nominal fee for public applicants and they charge a different higher fee for commercial entities?

Ms. Suzanne Legault: It varies from country to country. I certainly have not studied that in depth for today. I know it varies in the U.S. For instance, there are some groups for which fees are waived. In Canada, as well, there is discretion to waive fees. In the U.K. I believe there is a difference in fees. In Ontario, there are higher fees. It really varies from jurisdiction to jurisdiction.

The recommendation, in terms of international norms, is to charge no fees, but that really varies across the board. From provinces to countries, there are very different models everywhere.

I'm a strong advocate of having no initial fees simply because—and we don't charge them in our office—I consider that it costs more

to charge the fees than to actually get the revenues from the fees. The fees that are assessed sometimes generate complaints as well. I find that it's not efficient in the system to charge the fees. The government is not recouping its money and charging fees delays access and generates complaints. I just don't find it very efficient.

Mr. Erin O'Toole: We know the five-dollar charge for the request has not changed since the 1980s. How much has the cost of processing the request changed since the 1980s? Do you have that number or an approximate...?

Ms. Suzanne Legault: There is also in the Treasury Board statistics an analysis of that. They do have the average cost per request. During the period of 1983 to 1992, the average cost was \$1,000; from 1993 to 2002, around \$980; and from 2002 to 2012, \$1,300. That came down last year. It's a little bit less, it seems. Those are the average costs per request.

•(1555)

Mr. Erin O'Toole: For the periods during which you say there was a \$1,000 threshold, and then a small drop down, and then a pop back up, would the drop have been probably attributable to the computerization and the sort of standardization of the request process, and now is the added cost due to the rising inflation costs of salaries and those sorts of things?

Ms. Suzanne Legault: I really couldn't tell you, sir. I really have no basis for any kind of analytics on that.

The Chair: That will have to wait until the next round, I'm afraid, to go any further. The seven minutes is up.

Thank you, Mr. O'Toole.

Then we go to the Liberals, the new vice-chair of the committee, Scott Simms.

You're up, Scottie.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): It's wonderful to be here.

Thanks, brother Chair.

I wanted to just talk about the concept of something I like to call "open by default". I guess when it comes to open by default, there comes a time when you have to update the technology to make it far more efficient. I remember calling into PCO for some information, and PCO telling me there was no machine-readable.... It was not possible to do, for whatever reason. But if you open this up, you modernize it, and it becomes far more adapted to the technology we have today, will that average cost go down considerably?

Ms. Suzanne Legault: Will the cost go down? I really couldn't tell you.

Mr. Scott Simms: You mentioned that \$1,300 is today's standard.

Ms. Suzanne Legault: That's been the average cost—

Mr. Scott Simms: That's the average cost.

Ms. Suzanne Legault: —for the last 10 years.

Mr. Scott Simms: Right.

You're saying you can't really tell if that would go down, but what would be the cost of that? What makes up the majority of that cost in, say, the average price at \$1,300?

Ms. Suzanne Legault: I really don't know. The average cost is probably related to the people who do the redactions on the documents.

Mr. Scott Simms: Would it be possible for you to have more powers to look at redactions in the near future? Is that something you would like to have?

Ms. Suzanne Legault: Under the act, I do have the right and the power to review all records and redactions except for records that are excluded as cabinet confidences.

Mr. Scott Simms: A great deal of redaction takes place outside of cabinet confidence, is that correct?

Ms. Suzanne Legault: A lot of redactions are applied to access requests, yes.

If you look at tab 4, the graph on page 2 of that tab basically looks at this indicator that I like to look at, which is how much information is disclosed per request. This is the proportion of all the requests where all the information is disclosed. The statistics go back to 1999. In that year, in 40% of all the requests, all of the information was disclosed. In 2012-13 we were at about 21% or 22%.

So when I look at the costs of processing a request, I do see, certainly, a correlation with the amount of time you have to spend making redactions. Applying exemptions to a record will take you more time, and therefore it will be more costly to process the request. But this is based on the same piece of legislation. This is how we have evolved in administering the Access to Information Act over the years.

Mr. Scott Simms: Just by way of information, I'm new here—

Ms. Suzanne Legault: Welcome.

Mr. Scott Simms: —when it comes to the redaction process, what do you do when you review it? What's the process for you personally when you review something that's been redacted and you have an issue with it?

Ms. Suzanne Legault: We see the redacted copy but we also see the unredacted copy, so we see what is behind the redaction. What you would get, as an access requester, is a copy with portions blacked out. You would see the number of the actual legal provision that is applied to that redaction. We get a clean copy, so to speak. We get a copy without redactions. Then we can determine whether or not we agree with that redaction, based on the words that have been redacted.

Mr. Scott Simms: Can you give me an idea of how often that happens these days? What is the trend?

Ms. Suzanne Legault: Well, we receive complaints. We have essentially three large groups of complaints. We have complaints where people complain that their access request is not responded to in time, which we call more of an administrative complaint. About half of the complaints that come in are about redactions. Of those, in about half we find that the redactions have not been properly applied. The third group is complaints about missing records.

● (1600)

Mr. Scott Simms: Is there a graph to illustrate that you've handled more complaints about redactions over the years? Can you give me a trend on that?

Ms. Suzanne Legault: Yes, I guess we could give you a trend in terms of the proportion of refusals versus administrative requests. It's usually about 40% of administrative requests, and the rest is other types of complaints.

Year over year, since I've been here, it has fluctuated a little bit. It's a bit high now in terms of administrative complaints, at 38%, but it's really fairly consistent.

Mr. Scott Simms: Do you think parliamentary review is necessary for what you do?

Ms. Suzanne Legault: Do you mean a parliamentary review of all the investigations?

Mr. Scott Simms: Of your job in general; a review of what you do.

Ms. Suzanne Legault: Of what I do? Well, yes, I consider that it's very important to be overseen by Parliament and by this committee.

Mr. Scott Simms: Have you asked for that in the past?

Ms. Suzanne Legault: Well, we are here. There is a standing committee reviewing the work of my office on a regular basis.

Mr. Scott Simms: I told you I was new.

Voices: Oh, oh!

Ms. Suzanne Legault: I'm just not quite sure what you mean. Maybe I don't understand.

Mr. Scott Simms: It just seems to me, or it's my opinion, that the act is stuck in the 1980s. We've talked about fees and we've talked about other things. I just think that parliamentary review is necessary to go through all of this.

Ms. Suzanne Legault: What I consider to be probably the most progressive access to information law in Canada is subject to a five-year parliamentary review. That's the law in British Columbia. I think that is actually a very good process.

There was an initial parliamentary review when the act was passed in 1983, but there was only one in-depth parliamentary review done in the course of the last 30 years. There is no specific provision in the act for a mandatory parliamentary review of the act.

Mr. Scott Simms: Do you think every five years is good?

The Chair: You are out of time, Scott.

Ms. Suzanne Legault: I think it would be an excellent idea.

The Chair: Thank you, Mr. Simms.

Next, then, we'll go back to the Conservatives and Erin O'Toole.

You're like my leader in question period. You're taking all the spots.

Mr. Erin O'Toole: But not as entertaining.

The Chair: Oh surely.... Well, the day's not over.

Voices: Oh, oh!

Mr. Erin O'Toole: Thank you, Mr. Chair.

I'm going to continue along the line that I was on, Ms. Legault, because I do find it interesting to review this from my first round. Of the 55,000 requests of all departments—I know they're going up and then what trickles up to you in terms of complaints goes up accordingly—29,300 were commercial in origin, or media/business, and that represents about 53% of overall requests.

If you look at the pure costs to government... I don't think anyone here disputes the need for this process, certainly, and we appreciate the work done by your office to increase your closure rate. But it was a \$995 cost in 1983, and a \$1,295 cost in 2012, representing a cost of \$71 million to government. This is an important cost, but I think funding could be found for not just your office but for getting rid of this backlog. I notice that your graph at tab 3 has you projecting this 30% rate to essentially continue until 2018, so we're going to be essentially in hundreds of millions of dollars of cost and we're still charging the five dollars that was the 1983 price. Even the Bank of Canada's own inflation calculator says that should now be a \$10 and \$65 charge.

Here's where I'm going. Would it not be smart for Canada to follow some other jurisdictions that have bifurcated this into a low-cost ATI option for citizens and a somewhat higher one, not full cost recovery, not \$1,295...? But for a telecommunications company preparing for the CRTC, at a five-dollar rate they can throw out as many ATI requests as possible—and I've seen this—whether or not some of them are even germane to their filing, because there's such an inconsequential cost for business, yet government absorbs all the work.

Would you be in favour of a two-tier process whereby we keep the price low, maybe the \$10 and \$65, and gear the citizen request to inflation but have a significant, higher fee for commercial requests?

•(1605)

Ms. Suzanne Legault: You would find it very hard-pressed to hear me say that I am actually in favour of an increase in fees. I really don't think it is judicious. I really don't. I find that fees generate delays for requesters. They generate extra costs for the government, because they lead to complaints. I actually have a case in court now related to fees.

I think these are almost red herrings, sir. I think it is definitely something that the government can study, and it can look at the different models. We would be more than happy to present information that we can find and gather in terms of various fee schedules and fee structures in other jurisdictions. It would be our pleasure to submit that to the committee.

I remain unconvinced that it is judicious to do that.

Mr. Erin O'Toole: In a merger and acquisition, where information and knowledge is valuable, I think you would agree with me that there is a commercial value to some of this information for the corporate applicants, correct? There is value.

Ms. Suzanne Legault: Yes.

Mr. Erin O'Toole: If we could address the volume, and the volume of work that your report cited, by charging enough not to make it a barrier but to make the purely commercial applicants think twice about just littering the landscape with requests, which is easy for them to do but costs \$1,200 to \$1,300 per small request, it would

be not just a small supplement to allow an added budget for your office. It would actually make the private sector whittle down to the information they truly need and would allow the system to be faster and better for regular citizens.

Ms. Suzanne Legault: Well, I would be more than happy to consider these matters. I think it is probably based on the premise that is perhaps not quite accurate because the requesters, be they journalists or commercial requesters, are actually requesting public sector information. They're not requesting information from a private entity. They're requesting government information, which is public sector information. At the same time, it's odd because we are putting forward open government and open government by default. The government signed the G8. If you look at the G8 on open data, the principle that the government has agreed to is to have free information through open data, yet we're saying we have to have a scaling fee schedule for access requests.

I think we have to look at this in an integrated way. This is what I've recommended to the President of the Treasury Board because, on the one hand, we can't say we want open government, open government by default, and open data that is free of charge and released quickly in a timely manner to anyone who requests it, but on the other hand, if you make an access request, we're going to charge you money on the scaling fee. We're going to have to assess you as a requester even though, under the principles of the act, we're not supposed to question the reasons why you're asking for the information, we're not supposed to ask for the motive for which you request the information, and we're not supposed to ask for your identity when you're requesting information.

Going through a sliding scale of fees actually raises all of these other issues about the right of access.

•(1610)

Mr. Erin O'Toole: Would it be fair to say that Canadians would view an application or a request from a citizen and a corporate entity—it could be a numbered company—differently? Do you think Canadians would see those as different in the context of open and transparent government?

The Chair: Give a very brief answer, please, Madame Legault.

Ms. Suzanne Legault: I'm not sure. I can tell you that, as Information Commissioner, I really think we should think consistently in an integrated manner about open data, open government by default, which includes access to information. We should have one principle that applies across the board, and make it simple. Simplicity actually generates efficiencies, in my view.

The Chair: Okay, I think that concludes your time. Thank you, Mr. O'Toole.

That's the end of our first round of questioning, the seven-minute rounds. We switch now to five-minute rounds.

First up will be Mathieu Ravnignat, for the NDP.

Mr. Mathieu Ravignat (Pontiac, NDP): Thank you, Mr. Chair.

Thank you, Madame Legault, for being here.

I would tend to agree. I think Canadians would find it pretty bizarre that something that they're supporting with their taxes, something that is theirs, which is public information, needs to be wrestled out of the government with high fees or fees that may be unreasonable.

Not too long ago, the Conservative government did announce that it might consider or would consider making cabinet confidence subject to review of the Information Commissioner. Has that happened?

Ms. Suzanne Legault: No.

Mr. Mathieu Ravignat: On the cabinet confidence redacting, are you even allowed to study the issue?

Ms. Suzanne Legault: Yes. People can complain to our office. With cabinet confidences, the only thing we see is a schedule, a description of the records. We don't have the ability to review the records.

Mr. Mathieu Ravignat: Is it possible to determine if those cabinet confidence redactions have increased in number in the last couple of years?

Ms. Suzanne Legault: I would have to get back to you on the number of complaints for cabinet confidences. I can give you statistics on that. The government has changed its process in the summer of 2013 in terms of how it's processing the requests for the identified cabinet confidences. This is something we're following very closely, but we don't have enough data yet to see any trends.

Mr. Mathieu Ravignat: Well, I would definitely be interested to know. I'd also be interested to know how much the \$1,300 per request is actually due to cabinet confidence redaction, in some of the costs. But I understand you probably can't answer that question right now.

Another thing that they promised was to ensure that all exemptions from the disclosure of government information are justified only on the basis of the harm or injury that would result from disclosure, not blanket exemption rules. Has that also happened?

Ms. Suzanne Legault: No.

Mr. Mathieu Ravignat: In your opinion, would that be ideal?

Ms. Suzanne Legault: In most instances, that test is certainly what's considered to be the best in terms of international norms. There are certain circumstances where that's not appropriate, but they're much more limited than what we have now.

Mr. Mathieu Ravignat: Right now we are dealing with a system that has blanket exemption rules.

Ms. Suzanne Legault: We're dealing with a system that is actually supposed to be based on open government by default.

Mr. Mathieu Ravignat: And it is not.

Ms. Suzanne Legault: I looked at the *Hansard* for 1982-83, when our current legislation was put forward, and it was put forward on the basis of open government. Open government is a 30-year-old concept.

Mr. Mathieu Ravignat: You know that there are organizations out there that are judging our access to information system. We've been harshly judged. We're now 56th out of 95 countries. We're behind Honduras, Belize, Colombia, Russia, Malta, Montenegro, and Nigeria. That's very troubling. I think we have a proud history of democracy in this country. This is deeply concerning.

Can you tell me very shortly what the main contributing factor is in that failing grade?

Ms. Suzanne Legault: In the failing grade in the evaluation by the Centre for Law and Democracy, one area where we're losing points is the scope of coverage. We have a list of institutions that are covered, as opposed to having a principled approach in terms of what institutions should be covered. For instance, Parliament is not covered; parliamentary administration is not covered.

That is something that we see in newer pieces of legislation.

• (1615)

Mr. Mathieu Ravignat: Great, thank you.

There's another thing that is really troubling to me, and I think it's troubling to Canadians as well. You actually reported on this, and that was political interference in the access to information system, particularly at PWGSC. I'd read it; I certainly hope it's not a trend. I hope you have the power and the resources to track this kind of interference.

Are you confident that with the law as it exists right now, you can actually prevent this kind of interference in the future?

Ms. Suzanne Legault: The Public Works investigations were extremely arduous. We were able to make very firm conclusions because there were documentary records. I think those investigations created a significant education across the system.

I don't see complaints about political interference very often. We haven't seen or concluded in any other complaint that had happened. When we have people who complain or have allegations that this is occurring, we have very extensive investigative powers. I think the act is well constructed in that respect.

The Chair: Thank you, Madame Legault.

Next, believe it or not, is Erin O'Toole again, on behalf of the PMO.

Welcome again, Erin.

Mr. Erin O'Toole: No. My time is done, Mr. Chair.

An hon. member: Mr. Komarnicki is—

Mr. Erin O'Toole: On behalf of his constituents....

The Chair: Oh, I see. That's the very point I was about to make.

Mr. Komarnicki, welcome.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you, Chair.

I'll just follow up with some questions, if I might. You mentioned that the 30% increase was in large measure with respect to heightened awareness. Does that apply to both categories, the public category and the commercial category, or are there differences?

Ms. Suzanne Legault: This is my own perspective on this increase because it was the first time in about 10 years that there were more members of the public making requests. It was a real change in the system. It was a real shift that we saw that year, and it was really significant. We hadn't seen that before. It was members of the public, so that was unusual.

Mr. Ed Komarnicki: I notice that you've hosted an annual meeting of federal-provincial-territorial access to information and privacy commissioners.

Is that trend similar in the provinces as well—the 30% increase?

Ms. Suzanne Legault: It's interesting you ask that because I did ask my colleagues this week for another purpose, and it isn't a trend across the provinces. There was one province that had an increase, but nothing along the lines of what we've seen at the federal level. I didn't see any similar pattern.

Mr. Ed Komarnicki: How does the five-dollar charge compare to the provincial charges for access to information?

Ms. Suzanne Legault: If you want to have a more detailed analysis I think it would be best if we provided something to you in writing because I'm not comfortable giving you a big picture—

Mr. Ed Komarnicki: You don't know whether five dollars is common across the country?

Ms. Suzanne Legault: I think five dollars is low compared to other jurisdictions, certainly when compared to Ontario.

Mr. Ed Komarnicki: How does the five dollars compare internationally, beyond the provinces in Canada?

Ms. Suzanne Legault: It's low internationally.

Mr. Ed Komarnicki: So if it's low and you like simplicity and you don't like scaling would it not make sense to increase it?

Ms. Suzanne Legault: I think I've already said what I thought about increasing it. Other countries don't charge anything. There are other huge countries that don't charge anything, like India.

Mr. Ed Komarnicki: If you accept the fact there is a difference between the public applying for access to information and a commercial enterprise or corporation or somebody who has a vested interest who would gain something out of the response, would you agree there is a difference in the type of request?

Ms. Suzanne Legault: No, I don't. As I said before I really don't because the act is constructed such that the identity of the requester and the reasons for the request are to remain personal and anonymous. Once you start having a sliding scale you have to get into the details. That means your cost per request.... If I receive a request—

• (1620)

Mr. Ed Komarnicki: I wasn't talking about a sliding scale, just keeping it simple by an increase to bring it more in line with inflation and other factors, as my learned colleague indicated. Notwithstanding the cost to produce the request, it would make some good sense.

Ms. Suzanne Legault: It is, sir, obviously the prerogative of the government to decide to increase the fees to make an access request.

Mr. Ed Komarnicki: I noticed in your opening comments you mentioned you were able to identify efficiency and some significant

improvements in how you do your work. Can you indicate what that might be?

My follow-up question is whether in that conference you had over two days you picked up any best practices that might add to that.

Ms. Suzanne Legault: Over the years we've streamlined our operations. We do our administrative files separately from our more complex files. I follow the very complex files.

We do the administrative files in a very streamlined fashion. We have a group of people who just deal with those files; before they were all mixed up among all the investigators. Now we bring in people and train them to deal with the simpler files and then they go to the more complex files. We have a better review process than what was in place before in terms of the managers and the assistant commissioner. We recently put in place a mediation process where we're trying to resolve the files informally very quickly.

The intake, the early resolution, the mediation, the more streamlined refusal process are all occurring in other jurisdictions with my colleagues as well. So yes, we do exchange a variety of techniques for investigations but you have to realize that at the federal level our files are very different from those at the provincial level. In my inventory close to 20% are national security files. We don't see that at the provincial level.

The Chair: Thank you, Madame Legault. Thank you, Mr. Komarnicki.

We'll move back to the NDP. Charmaine Borg, you have five minutes, please.

[*Translation*]

Ms. Charmaine Borg: Thank you.

You said the concept of open government is 30 years old, according to your *Hansard* review. And we have a government that is always pledging to be open. That's a good thing, but what really matters is following through on that pledge, taking action and putting measures in place.

In an ideal world, the government would be open and information would automatically be accessible.

Do you think the number of complaints your office receives will go down? According to my calculations, it will, but I'd like to hear your thoughts on that.

Ms. Suzanne Legault: Yes. The theory is that enhancing the application of open government principles and increasing proactive disclosures will lead to fewer access to information requests and complaints. That is why, in Tab 5, I outlined the types of data requested within the open government context, on the one hand, and the types of data sought through ATI requests, on the other hand.

For instance, there are 200,000 pieces of geospatial data, as shown on page 1. We also have what are called open data. The last page shows the type of data people ask for through ATI requests. As you can see, the subject of the requests varies. As for whether the number of certain ATI requests will decrease as a result of data being made accessible, the answer is probably yes. In the 1990s and 2000s, numerous proactive disclosures were made with regard to travel, especially travel expenses. Then, people requested the supporting documents for the information that had been made public.

The open government initiative has been in effect for two years now. And yet we are seeing quite an increase in the number of requests and complaints. At the moment, then, the trend is not towards fewer requests but, rather, more. We'll have to see.

•(1625)

Ms. Charmaine Borg: Looking at the table makes me wonder whether we are making the right data available. It might be a good idea to examine the types of complaints and requests Canadians are making and then select other types of data that should be made available online.

Geospatial data are useful, yes, but I think the pendulum may have swung too far in that direction.

Ms. Suzanne Legault: I think we need to look at the types of information people are asking for through ATI requests. Some are seeking information that concerns them personally, and others are looking for information pertaining to security agencies. As I've already pointed out, we receive a lot of complaints. Half of the requests involve Citizenship and Immigration Canada. In addition, a good number of complaints relate to the Canada Border Services Agency. People want information on their border crossings so they can establish that they were residents of Canada and, as such, access certain benefits.

I can't see the government ever making that information available online, proactively. That would surprise me.

Ms. Charmaine Borg: Do I have any time remaining?

[English]

The Chair: You have one minute left, Ms. Charmaine.

[Translation]

Ms. Charmaine Borg: Very well. Thank you. Now I'm going to switch topics.

We talked about the urgent need to amend the act, since it is 32 years old. You have often said—and correct me if I am putting words in your mouth—that we could end up with a broken system in need of fixing.

Aside from modernizing the act, what basic steps do we need to take to correct the deficiencies and fix our flawed system?

Ms. Suzanne Legault: Actually, I am quite optimistic. I am really happy with the open government initiative and the directive on open government recently implemented by the government. Under this directive, the government has made a commitment to foster a culture of open government by default. That is the first time I have seen a government make such a strong commitment to a change in culture. That is the foundation, that is what paves the way for an open government.

Then there is the need to modernize the Access to Information Act. Its implementation hinges on adequate resources and open data. Those are crucial elements for a change in culture.

Just this week, I gave a speech on the importance of changing the culture, which the government has committed to doing.

[English]

The Chair: Thank you very much, Madame Legault.

Next, we have Joan Crockatt, for the Conservatives. Welcome to the committee, Joan.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you very much, and thank you very much to Suzanne Legault and Layla Michaud for being here with us today.

I appreciate your passion for information, especially having come from the newspaper business, where we rely a lot on access to information to get our information. It is something that I've been quite familiar with. Because I came from the newspaper business, I just want to draw a bit of an analogy, because the world has changed very dramatically for newspapers. If we take 1983 as a benchmark, we, in newspapers, used to consider that all the information was free and in the public domain. I don't know if you have a subscription to a newspaper now. Do you? I'm wondering if now you pay for articles that you want that are in past newspapers.

Ms. Suzanne Legault: Personally, no, I don't.

Ms. Joan Crockatt: Okay, so why do you not pay for them?

Ms. Suzanne Legault: Do you mean newspaper articles?

Ms. Joan Crockatt: Yes.

Ms. Suzanne Legault: It hasn't occurred to me that I needed to do that. Maybe if I wanted an article, I would pay for it. I don't know. I just haven't personally done that.

•(1630)

Ms. Joan Crockatt: I just wanted to put the premise to you that a lot of people are going to the government now for information that they might previously have received through their newspapers; it's information that might have been printed in the past. I'm wondering if you might agree with this.

Ms. Suzanne Legault: I don't see all the 55,000 requests, so I really can't comment on that. From what I do see in the complaints files, it's not that type of information. It isn't.

Ms. Joan Crockatt: I think you testified that the number of access to information requests you've had has gone up by 30%. I just wanted to draw your attention to tab 4 here with regard to the requests that have been received by your office. I see some interesting ones here. While your overall access requests have gone up by 30%, the requests involving Industry Canada, which as you know is a business department, have gone up by 50.6%; the requests from Finance, 65.5%; the requests from Natural Resources Canada, 114%. I'm wondering if that might lead you to conclude that a lot of the requests that are coming in are requests from businesses, from for-profit enterprises that may be utilizing this information for profit.

Ms. Suzanne Legault: I really don't know. I think that we would have to go back to the departments, because these statistics are all collected from the government. These are the government's statistics. They're not my statistics. I look at them because I like to analyze the health of the system that way, and it gives me an understanding of what's going on.

Beyond going behind all of these numbers, we would have to go back to the annual reports of these institutions. If you want us to do that, we'd be more than happy to go back and look at those annual reports for those four or five departments, and I can send the information to the committee. We'd gladly do that.

Ms. Joan Crockatt: It seems to me that if you are in such dire financial straits as you have painted to us at the beginning, and I do sense your passion for freedom of information, I have to wonder why you haven't considered the fact that this access to information department was set up as an organization that was going to be in a partial cost recovery model, and that has been eroded over time. Has it not?

Ms. Suzanne Legault: I am not aware that the five dollars was ever meant to be a cost recovery mechanism. I am not aware that that was ever the motivation for that.

Ms. Joan Crockatt: What do you think the motivation for that was?

Ms. Suzanne Legault: What I hear in the system is that this is to prevent having frivolous and vexatious requesters.

Ms. Joan Crockatt: Would it not make sense that we would still want to have that fee under that rationale, so that you might be prevented from having frivolous requests coming to you?

Ms. Suzanne Legault: I don't think putting discipline in the legislation is an appropriate mechanism. The federal Access to Information Act is one of the few pieces of legislation that actually contains no discipline regarding the number of requests that a requester can make at one time to a department or whether the requests can be considered frivolous or vexatious. Most other pieces of legislation have that. I don't think the fee is an appropriate mechanism for that.

That's my perspective when I look at how the system is working. If we were to put a cost recovery mechanism in place for access requests, what would be the fee? Would it be \$10, \$15, \$20, \$25, \$100, \$200, or \$300? Is there a fee for a complaint? How do you assess whether a corporation has...? Is it a large corporation or a small or medium-sized corporation making the request? Is it an independent journalist making a request? Is it a journalist from a big media organization?

Ms. Joan Crockatt: If I can just—

The Chair: I'm afraid I'm going to have to interrupt both of you. You're well over time, Madam Crockatt. Thank you very much.

Thank you, Madame Legault.

Next we'll go to Mathieu Ravignat for the NDP.

Mr. Mathieu Ravignat: On the open government plan, you've said—and I'll quote you so that it's fair—

...I remain of the view that the current commitments in your Plan will not achieve the stated objectives of the Government to effect a fundamental change in

government culture, one that will drive the release of federal information and foster transparency, accountability and citizen engagement.

It's like a contradiction of the positive attitude you had when you were speaking to Madame Borg. With such a damning statement, what gives you any confidence that this is going to be successful?

• (1635)

Ms. Suzanne Legault: Well, I am confident. I think there is a public statement on behalf of the government that this is their stated objective. My recommendations are that the way the action plan is currently drafted, I just don't think it's going to be sufficient to actually achieve that objective. This is mainly because we want to have open government by default but we're going to open government by default by proactively disclosing what's considered to be eligible information for proactive disclosure.

Mr. Mathieu Ravignat: Maybe it is. I just don't share your positive outlook. A lot of comments have come out, but when the government recently announced some of the open government stuff, there was more about what was missing than what was in it. The government rejected comments from your office. It rejected public consultations, experts, and even your own advisory panels regarding the need to update the Access to Information Act.

Michael Geist said that the consultation process was a farce, that basically decisions were made in advance of it. Do you agree with his assessment?

Ms. Suzanne Legault: I agree with what I stated in my letter, that I think the commitments are not sufficiently ambitious and they're missing the mark in terms of modernizing the Access to Information Act.

You will not have a proper open government by default if your access to information exemptions and the scope of those exemptions are so broad that nothing is going to get disclosed. At this time—and I have said this as well—the access act actually works as a shield to the disclosure of information as opposed to a lever for disclosing information. That's why that missing piece is crucial.

Mr. Mathieu Ravignat: One way of making sure that it is actually about the release of information would be to oblige public officials to recreate records necessary to document their actions. You could also provide a general public interest override for all exemptions. Are we headed in that direction?

Ms. Suzanne Legault: In January, I am going to present a very broad set of recommendations for amending the act, and those things that you mentioned amongst other things are going to be in there, but there is no recommendation to increase fees.

Mr. Mathieu Ravignat: Well, I commend you for the inclusion. I think that's pretty fundamental.

For journalism in this country, particularly investigative journalism, but journalism with some strong information, it's not an exaggeration that access to information is a fundamental tool that they use in order to keep us all accountable.

I don't know how many times I've heard from journalists frustrated at the length of delays in the timeliness of information. The timeliness of information is essential to the functioning of our democracy, because a hot-button topic can suddenly disappear from the news cycle, and if you don't get that information in a timely fashion, it doesn't work. So there's a direct relationship with the fundamental health of our democracy. How have journalists approached your office and what is your sense of where they are on these issues?

The Chair: You have 30 seconds, if you don't mind, Madame Legault.

Ms. Suzanne Legault: Thirty seconds...? Okay.

Journalists are very frustrated. The act lacks discipline in terms of timeliness. I am in Federal Court of Appeal with the 1,110-day extension. The first level of the Federal Court judged that I could not determine whether that was reasonable or not, and this is compounded by the fact that, at this time given the resource level, there is a seven-month delay in my office before I can investigate a case. Once I do assign it, the median turnaround time is 90 days or less, so it's not because we're not efficient, it's because we don't have the people to do the investigations.

• (1640)

The Chair: Thank you, Mr. Ravignat.

Thank you, Madame Legault.

We'll go back to the Conservatives, this time LaVar Payne.

I'm sorry I missed you last time around, Mr. Payne.

Mr. LaVar Payne (Medicine Hat, CPC): No problem, Mr. Chair. Thank you for the opportunity.

Thank you for attending here today.

We were looking at your website and we looked at your early intake resolution unit and certainly we've talked a bit about your backlog today. I'm wondering if you could tell us when that early intake unit started and how you started addressing that backlog. How old was the backlog and how is this early intake unit working now?

Ms. Suzanne Legault: The early intake unit works really well. Tab 3 looks at the progression of the inventory. When I first became interim Information Commissioner, I walked into an office that had 2,500 cases in its inventory, and every year we've managed to come down with that inventory. We had a decrease in the inventory. That means we closed more than we received every year except for the past year where we had the 30% jump.

So as far as I'm concerned, we have gained efficiencies all the time and we were making really good progress in terms of diminishing the inventory, and the intake is a really good success. We've just now added a mediation component to it, and that is generating some good results as well. What we're trying to do there is really trying to see, with the complainant in the institution right away when the complaint comes in, whether they're really getting what they're really looking for and whether they can circumscribe their request, their complaint, and whether we can resolve the matter more quickly with the institution, and that's working really well too.

So the intake works very well, but at this point in terms of efficiencies, we just did a whole mapping exercise. We're constantly looking to make things better, but the efficiencies I can gain now are marginal. I'm not going to close 2,000 complaints more. I may close 100 more. I may close 30 more, but I'm not going to be able to close the 2,200 that have accumulated again.

Mr. LaVar Payne: Okay. So obviously you've made some progress there. I guess one of the other things is this. When you're getting these complaints, could you explain how they are, first of all, brought to your office and how you determine whether they're fair? Is there specific criteria in place for those requests in order to make sure that they are fair?

Ms. Suzanne Legault: I don't determine whether they are fair; I determine whether they fall within the jurisdiction of the law because there is a positive legal obligation. One of the things that I am going to recommend in the act is that there be discretion for the commissioner in terms of investigating or not. At this time, there is no discretion whatsoever. If it falls within the mandate, I have to investigate it, and the mandate is described very broadly as any matter having to do with requesting records or obtaining records from a government institution. The jurisdiction is spelled very broadly, and once it fits into that, I have to investigate.

Mr. LaVar Payne: Okay. So if you have some cases that are not deemed needed for investigation, what happens to those cases?

Ms. Suzanne Legault: We just advise the complainants.

Mr. LaVar Payne: Okay.

Ms. Suzanne Legault: We don't open those files. We just deal with those on the phone. We don't actually even—we should.... But we consider those enquiries.

Mr. LaVar Payne: Okay.

Do you have any idea of the number of those cases that were determined to be enquiries?

Ms. Suzanne Legault: Just enquiries? No, we don't track those.

Mr. LaVar Payne: Oh, you don't track them?

Ms. Suzanne Legault: No.

Mr. LaVar Payne: Okay.

Ms. Suzanne Legault: We have one person who takes those enquiries.

Mr. LaVar Payne: Okay.

I was also looking at the terms of the five-dollar fee. I understand that you need a Visa card, a Mastercard, or something like that in order to start the application process. I also noted that, in order to be able to instigate one of these, you need to be a Canadian citizen, permanent resident, or corporation. So how do you determine that, because you talked about privacy and so on?

Ms. Suzanne Legault: That's done at the departmental level because the access requests go to the departments. When people complain to us, they've already made a request, the department has already established they fit into that, and we get the complaint. We then get the file number from the institution, and we work on that basis. We work with file numbers with the institutions.

•(1645)

The Chair: I'm afraid, Mr. Payne, that concludes your five minutes. It goes quickly, I know. I'm sure you had lots more.

We're going back to the Liberal Party and Mr. Ted Hsu.

Welcome, Mr. Hsu.

Mr. Ted Hsu (Kingston and the Islands, Lib.): Thank you, Mr. Chair.

My first question, Madame Legault, is about the delays in your office because of the lack of officers with top secret security clearance. I believe you only have one officer with that designation now. Is that correct? My second question is this. Do you feel that having more officers with top secret clearance would be an effective way to reduce delays in responding to complaints?

Ms. Suzanne Legault: The answer is yes. However, I did request.... Those investigators who are allowed to see certain files under certain provisions of the act dealing with international affairs and national security have to have a special delegation. I sent a letter to the Treasury Board president last year, asking him to increase the number of people in my office who are allowed to do these investigations because he has the authority to do that under the act, and he did. They were increased from eight to twelve.

I would rather have 20 to do that, but I don't even have people to put in that slot because I can't have everybody doing these types of investigations. At this time I have fewer than 10 top secret files.

Mr. Ted Hsu: Okay.

Ms. Suzanne Legault: I have top secret, so has the assistant commissioner, and at least one investigator, so we're managing those files.

Mr. Ted Hsu: Okay, thank you.

Do you believe your office should have the power to compel the release of records, and also to establish a timeline for the release of records? Do you think that authority would enable you to do your job more thoroughly, or do you think your office can fulfill your mandate without that power?

Ms. Suzanne Legault: I think that generally speaking there is a real lack of discipline in the Access to Information Act in terms of timelines, and that also flows into the power of the commissioner to order the release of records.

I believe the commissioner should have the power to order the release of records, and we should have an order-making power model as we have in other jurisdictions in Canada. I think it works really well, and it really focuses the minds of institutions when they make representations as to whether or not information should be disclosed, so it's faster. The ombudsman's model works but it takes a lot more time.

Mr. Ted Hsu: Thank you.

With respect to the Access to Information Act, do you think the purpose section of the act should be modified so it includes having government information openly available to the public and accessible in machine-readable format, and that exceptions should be rare? Would you agree with that proposal to ensure that the government's information is open by default?

Ms. Suzanne Legault: In my opinion, that's the way the act is constructed. I hear what you're saying in terms of amending the purpose clause. Most people who want to amend the act want to amend the purpose clause.

I'm a lawyer. The purpose clause has been interpreted quite well by the courts in the last 30 years. I am somewhat leery of amending a purpose clause for that act. I would like to see the specific language. You may be referring to Bill C-613, and if that's the case then I think it will perhaps be more appropriate to comment specifically on that piece of legislation, if that's what you're referring to.

Mr. Ted Hsu: Okay.

I understand also that the Access to Information Act maybe has not been updated significantly in many years, and I wonder what you think about the idea of a parliamentary review of the Access to Information Act every five years, given that technology changes and how government operates changes. Would you agree with that recommendation?

Ms. Suzanne Legault: I am definitely in favour as long as it starts this year and not five years from now, and then continues after that.

Mr. Ted Hsu: I think that sounds like a good idea.

•(1650)

The Chair: Only seconds, Mr. Hsu, so briefly, please....

Mr. Ted Hsu: Oh, my goodness.

I once submitted an access to information request to find out what instructions the minister gave to a department because I believe, as a member of Parliament, I cannot criticize civil servants. I can only criticize the minister. Do you think that instructions by ministers to departments should be more public so that we know the chain of accountability?

The Chair: Very briefly, please, Madame Legault....

Ms. Suzanne Legault: We would have to see which record it would be and what exemptions had to be applied to those instructions. In principle, should they be disclosable, should they be subject to the act? Yes. Should they be subject to exemptions for personal information, for solicitor-client privilege, or other things like that? Yes as well.

The Chair: We'll have to leave it at that, then. Thank you very much, Mr. Hsu.

Next we'll go to the Conservatives and Mr. Boughen for five minutes, please.

Mr. Ray Boughen (Palliser, CPC): Thank you, Chair, and thanks to the resource people for spending the afternoon with us. We certainly are learning different things about your operation.

When I looked at the highlights of your financial part, which is on page 2 of your handout, the differential there is \$3.3 million. You talked earlier in the afternoon about having to do with less. Can you share with us how we ended up with \$3.3 million less in funds? This is in this handout here.

Ms. Suzanne Legault: Which one is that?

Mr. Ray Boughen: It says, “Prepared for the House of Commons Standing Committee on Access to Information, Privacy and Ethics”.

Ms. Suzanne Legault: I'm not sure that's my document.

Mr. Ray Boughen: Your name's on the front of it here.

Ms. Suzanne Legault: Let me see.

The Chair: I can say that Madame Legault doesn't have the briefing note that was provided to committee members, but it looks like she's getting it now, Mr. Boughen.

Mr. Ray Boughen: I'm sorry, Chair.

Ms. Suzanne Legault: This document was prepared by the Library of Parliament. I have that document now.

Mr. Ray Boughen: I'm kind of curious how that all came about.

Ms. Suzanne Legault: The difference between last year and this year, sir, happened because we had a \$2.6 million loan to move our offices. We were lent the money to move our offices. We were booted out of our location and we had to move, so we were loaned \$2.6 million to move. It cost us \$2.6 million, and we have to repay it. That's costing us an extra percentage, a reduction in our budget, because we have to repay it.

Mr. Ray Boughen: So the \$2.6 million ended up as \$3.3 million due to interest on an outstanding loan? Yes or no?

Ms. Layla Michaud (Director General, Corporate Services Branch, Office of the Information Commissioner of Canada): There's \$2.6 million for the move, but as well we are the end of a five-year IM-IT strategy, so there's almost \$300,000 there as well.

As well, we began last year to repay the cost of our move, so there's \$170,000 there. So we're close to the \$3.3 million, and then there's some pay list shortfall, or salary-type resources, that were transferred to us, but we have to pay for others and so on. So that's mainly what it is.

Mr. Ray Boughen: Okay.

I was interested in your discussion about how you refer back to a client without an address, without a name. Does the client get a number, and the number matches the number with you folks? Can you help us understand how that transition happens?

Ms. Suzanne Legault: We try to protect the identity of the complainant as much as possible. Obviously, we have to function, we have to send them letters. But within our correspondence with the institution, within our institution, we mostly function by file number. So the institution has a file number and we have as well, so in the end when we do write—for instance, if we can't resolve a file, we have to write to the minister, and I'm writing to the minister through all these steps—we're only referring to a file number. The people in the institution who are being asked to review the representations, they don't know the identity of the complainant.

That's how it works, and it's all in our data management system for our files. But yes, of course we do have the name of the complainant eventually and we do write to them, and some of them want us to write to them by email now, and so on, so we abide by that. But we try to put these measures in place to protect identities.

• (1655)

Mr. Ray Boughen: Thanks, Mr. Chair.

The Chair: Mr. Boughen, you have about 45 seconds left if one of your colleagues wants to use it up.

Mr. Ray Boughen: I think the two questions I had have been answered.

The Chair: Very good. Thank you very much.

Then we'll move to another round, also with the Conservatives, Mr. Erin O'Toole.

Mr. Erin O'Toole: Thank you very much, Mr. Chair.

It's been a very interesting process for me, particularly, as I said at the beginning, because I did see, when I was working in law in Toronto, the commercial value of information.

I have a few questions following something you said to my colleague, Ms. Crockatt. You suggested, to the best of your knowledge—because you weren't commissioner in 1983—that the five-dollar fee was not really a cost recovery but was more of a nuisance barrier in that anybody applying has to actually think about it. Is that an approach other countries use, a bare-bones barrier so that it's just...?

We see people on Twitter tweeting all day, just one click of a mouse button. I think there has to be some sort of reasonable ground between open, accessible government and having, at the click of a mouse, bureaucrats being charged with gaining information with the cost of almost \$1,300 inherent in each request. What would you say that nuisance amount should be?

Ms. Suzanne Legault: Let me ask you this question, because I'm not quite sure how to answer your question, as you have gathered by now. What's the nuisance cost of publishing a dataset? What's the nuisance cost for the government to produce a dataset and to publish it proactively under the open data system? There is a cost for the government to do that. There is a cost to proactively disclosing travel and hospitality records. There is a cost to disclosing anything on a government website. Why is that different from releasing records through access to information?

In a way, you could look at it as a cost-saving measure because the government is actually not disclosing everything it produces. It produces some things proactively because it considers them to have value. They're open datasets, so geospatial data. It produces other information publicly such as annual reports and departmental reports because it considers that they have value for transparency and accountability.

What's different? If citizens—actually 55,000 citizens out of our entire population; it's actually a low number—want to have access to other pieces of information, why is there a nuisance threshold for that information when the Supreme Court of Canada has determined it's a quasi-constitutional right of Canadians? That's the real question, sir.

Mr. Erin O'Toole: I have to correct you, Madame. There are not 55,000 citizens. There are 55,000 requests, and we've established that almost 30,000 are not citizens; they're corporate entities.

It's good to see my NDP friends here supporting corporate Canada in their access to records. My vision to address what is clearing a rising need and your office's very good handling of it would, I think, fill your coffers. It's a system broken into three parts. One part would be a zero charge for any access by citizens to any document pertaining to them or their life. The second part would be a more nominal charge of \$25 or \$30 for citizens' requests for items not pertaining to their direct life. If they're interested in fisheries and they want to see that, then they should have that access. It would still be a nominal charge, but it would be certainly a lot more than the 1983 amount of five dollars.

The third threshold would be for commercial entities that are clearly potentially commercializing the information. A five-dollar nuisance threshold to billion-dollar companies, I would say, is not a nuisance threshold. It's not even tokenism. A \$200 charge to a telecommunications giant or an oil company, I think, is reasonable for a corporate entity.

The reason I'm pursuing this line of questioning is that I think it would result in what you'd like to see: more money, particularly if you were able to earmark some of that to your department, which I think we all agree is doing a good job.

What do you think of my three levels? I know you don't support them, but do any other countries use that? I know that the U.K. actually assessed how much time it would take to gather the information, charged on a fee threshold, and then charged a communication fee for the phone calls and stuff. Do other countries do it this way?

• (1700)

The Chair: I'm afraid Mr. O'Toole didn't leave you much time to answer, Madame Legault. We're over five minutes already, but given the depth of the question we'll give you a minute or so to answer.

Ms. Suzanne Legault: I think the best thing I can do is to provide the committee with some research, then that can be the basis for your consideration, whether I agree with it or not. At least it will be more factual for the committee to consider. I think that's the best thing to do: to actually do a bit of a benchmarking exercise and look at what's out there. You will find there is a variety of models. Again, I think we're making the system more complex that way.

Mr. Erin O'Toole: Well, then, I think your office should be given the time to provide a proper international overview.

I'm not on this committee normally, so could I be copied on the...?

Ms. Suzanne Legault: Certainly.

Mr. Erin O'Toole: Thank you very much.

The Chair: Thank you, Mr. O'Toole.

That concludes the second round of questioning, but there is an appetite still if you're willing to stay, Madame Legault. There's still interest on the part of committee members.

We'll begin a third round, and that begins with the NDP, Charmaine Borg.

[Translation]

Ms. Charmaine Borg: Thank you.

Now I'd like to come back to the budget issue.

In your opening statement, you said that if your office's financial circumstances did not improve in the immediate future, you would have to make program cuts.

What programs would be subject to cuts if your finances did not improve immediately?

Ms. Suzanne Legault: My only program is the investigations program.

I will not be able to function without additional resources, as I have only \$37,000 remaining in my budget. If a server goes down, for instance, I will have to close up shop, and that isn't a solution.

I need a contingency fund of about \$400,000 to \$500,000, which would cover 7 or 8 investigator positions. I would not have to lay off any staff since a number of employees are going on maternity leave or retiring. I just won't replace them, but that will have an impact, as the chart shows.

I think that would be catastrophic. I can no longer ask my employees to stretch themselves even thinner. That is what I have done for years, and they are now stretched to the limit. We will continue to do our job under these conditions, but it will mean more and more delays. If delays are too long, it means the investigative process is no longer valid, in which case, I would no longer be delivering on my mandate.

Ms. Charmaine Borg: Thank you.

My colleague, Mr. Ravignat, asked you a question about political interference, and you gave a specific answer.

I'd like to look at the bigger picture. Do you think a culture of silence and a refusal to respond on the part of some departments could be viewed as political interference?

Ms. Suzanne Legault: It is a matter of culture. My feeling is that the Access to Information Act is not consistently implemented in accordance with the act's underlying principles, which necessarily dictate openness. Exemptions from disclosure must be interpreted in a limited and case-specific way. That is how the act was developed and drafted.

Is that how the act is being implemented? Having examined 10,000 or so complaints, we feel that, when a department receives an ATI request, it first tries to apply all the possible exemptions and then releases the information that remains. To date, only a small number of people complain about the information they receive. I nevertheless believe that a lot of people are not satisfied with the information they get but do not complain.

What's more, I wonder why we are even called upon to intervene in many of the cases we handle.

• (1705)

Ms. Charmaine Borg: Thank you.

I have one last question for you, and a short answer will do.

We talked about the fact that the Centre for Law and Democracy ranked Canada 56th out of 95 countries in its study.

Where do you think Canada ranks?

Ms. Suzanne Legault: It's hard to give a short answer to that.

Canada's legislative framework is 30 years old. One hundred and one countries now have access to information legislation. It is considered third-generation legislation. All we have to do is follow British Columbia's lead; its legislation is much more progressive. A modernizing of the act is overdue.

Although it is true that countries like India have better legislation than we do, not every level of government—municipal, provincial and federal—is subject to its implementation.

Canada is still a modern democracy. It's important to compare not just legislation, but also its implementation. It would be wonderful to have a robust piece of legislation, because that is what Canadians deserve.

[English]

The Chair: I'm afraid your time is up, Madame Borg. That is five minutes.

It's the Conservatives' turn next, with Ed Komarnicki

Mr. Ed Komarnicki: Thank you, Chair.

I want to follow up on some of the questions that my colleagues have posed.

Am I to understand that if a request comes in that's within the mandate, as you say, as broad as it is, then you pursue the request? You don't look at whether or not it's reasonable or whether or not it's frivolous.

Ms. Suzanne Legault: No. We look at the complaints, not the requests, but even for departments there is no frivolous or vexatious.... There is no discipline at all around perhaps improper behaviour by requesters.

We get complaints, and seriously, sir, I must say that in all of the files that have come into the office since I've been there, there was only one instance where it would have been appropriate to have a frivolous and vexatious component in the act.

Also, in the other jurisdictions, when they do have it, it is not something that is used very often, but it has been. It could be that just having it in their legislation acts as a deterrent. It's difficult to measure a negative. It's not something that my colleagues see often, but they are satisfied that there is something like that in their law.

Mr. Ed Komarnicki: So on the complaints side, you're able to see it, and then on the request side, of course, you don't know, because if they haven't complained, they would just go through. From the study you've done of other jurisdictions, you say that there is a provision to

deal at least with the requests being frivolous in terms of whether or not they're responded to, and that's not in this legislation.

Ms. Suzanne Legault: No, and it's mostly when it's something that develops over a pattern. In order to have something frivolous and vexatious, there are some criteria in law to actually make something frivolous and vexatious.

Mr. Ed Komarnicki: If there are numerous requests made numerous times on related subject matters, and that's costing \$900 and \$1,200, at some point you might say that this needs to stop. Is that right?

Ms. Suzanne Legault: It is along those lines. The legal test in various jurisdictions is along those lines. These are some of the criteria that have to be found before something is deemed to be frivolous and vexatious under access law.

Mr. Ed Komarnicki: Of course, outside of whether it's vexatious or not, the question of whether it's reasonable or not is not part of the legislation either.

Ms. Suzanne Legault: No, and I think, sir, that it would be very difficult to enter into that kind of analysis, because what is reasonable for you may not be reasonable for somebody else. The perspective of the requester, if we're not to judge their motives or look at their identity, is difficult to assess in any circumstance.

Mr. Ed Komarnicki: So ultimately when we're looking at the numbers and the increase in the requests, there really is no way of knowing exactly whether any of them are frivolous or not, because we're not in that place.

When you did the consultations with respect to your new strategic plan, you did public consultations, I would assume. Or did you not do that? What did you undertake in terms of consultations or talking to stakeholders or others in developing your plan?

• (1710)

Ms. Suzanne Legault: Very frankly, sir, very little. I actually have no money to travel very much, nor can I go around the country meeting stakeholders and things like that, so I do very informal meetings. We are just in the process of developing our strategic planning exercise, and we have very little ability to actually do any kind of consultation. It's very, very minimal.

Mr. Ed Komarnicki: Are you saying that you're coming up with a new strategic plan without doing what you think are necessary consultations with members of the public or stakeholders?

Ms. Suzanne Legault: I do what I can afford, actually. In terms of a strategic plan, I do have one mandate. It's very simple. But, yes, we do consult. We are planning to consult with the coordinators, for instance, because we meet with them regularly, all of the people who actually administer the access requests that come into the departments. They're one of our key stakeholders because they're across government institutions, so we'll consult with those folks. We actually meet with them regularly, particularly the top 25 institutions. We meet with that group regularly, about every third month or so, so that we get a sense of what's going on in the government. In terms of access complainants, it's very informal what kind of consultation we have, and we haven't done anything in that respect. No, I do not plan to go meet stakeholders across the country. There is just no way I can do that.

The Chair: Mr. Komarnicki, your five minutes are up. Thank you very much.

We're going back to the Liberal Party, Ted Hsu.

Mr. Ted Hsu: Thank you.

[*Translation*]

Ms. Legault, in an increasingly digital world, the government does not respond to members' written questions electronically.

I'm quite fond of analyzing figures in order to sift out the pertinent information. Do you think the government should have to respond to members' written questions electronically?

Ms. Suzanne Legault: I think it would be consistent with the open government initiative if the information existed in electronic form.

Mr. Ted Hsu: Very good.

[*English*]

I just want to follow up on some of the questions here.

When one submits an access to information request, one writes a cheque made out to the Receiver General. Is it fair to say that the money never comes directly to the Information Commissioner?

Ms. Suzanne Legault: No, it doesn't come to us.

Mr. Ted Hsu: So it's not so obvious that, if you charge various things here and there, your funding would increase, that if the government charged a different fee schedule that your office would actually see that money?

Ms. Suzanne Legault: Well, to be consistent with everything I have said today, I certainly do not support having a direct correlation between increasing the fees and funding the Office of the Information Commissioner of Canada. I don't think these two are related, and they should not be related.

Mr. Ted Hsu: Okay, thank you.

I understand that your office is not allowed to review any access to information complaints regarding redactions that are deemed to be cabinet confidences. Is that a hindrance to you in terms of fulfilling your mandate?

Ms. Suzanne Legault: That answer is, it's correct. I cannot review cabinet confidences. Do I believe that it's a hindrance to independent oversight of government decisions on disclosure of information? Yes.

Mr. Ted Hsu: Thank you.

Are there any other methods that your office would like to implement that Parliament could assist you with to reduce delays in reviewing redactions?

Ms. Suzanne Legault: Well, we are in the process of finalizing our recommendations that we will table in Parliament, which will be extremely comprehensive because we have done a very extensive review of international jurisdictions and national norms. We will table that in January when the House resumes, and it will be very comprehensive.

• (1715)

Mr. Ted Hsu: Perhaps I can ask the question in a different way.

If your budget were not increased—and we've heard about the pressures on your budget—what might you have to cut in terms of services to Canadians?

Ms. Suzanne Legault: I provide one service. I do investigations on complaints from people who are not satisfied with the government decisions on disclosure. What will happen is this. I now have a delay of about six to seven months, and that delay, before I can assign a file to an investigator, will increase because the number of investigators will decrease.

Mr. Ted Hsu: Okay, thank you.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Hsu, very good.

We'll go back to the Conservatives and Joan Crockatt again.

You have five minutes, please, Joan.

Ms. Joan Crockatt: Thank you very much.

This has been quite interesting. Thank you so much for your patience and for giving us your perspectives on these things.

I wanted to go back again to the fee recovery issue because I think we are just starting to explore that side of the equation. I wanted to ask you if there is anything that you have come across in the act that specifically says the purpose of the fee when it was originally instituted was for a nuisance fee as opposed to cost recovery, or is that your personal interpretation of that?

Ms. Suzanne Legault: It's what people say in the system. It's what coordinators will say. It's what people say in the system. It's not what I believe, and it's not in the act, and it's not appropriate. It shouldn't be considered to be that at all, but that's what—

Ms. Joan Crockatt: That is in your opinion, though, right?

Ms. Suzanne Legault: It's not my opinion that it is that. It's what people in the access to information system and what coordinators tell us. That's what they view it as. We have seen it in files. We have seen it before in documents. That's what people actually consider it to be.

Ms. Joan Crockatt: You've said it's not in the act. Is that correct?

Ms. Suzanne Legault: It's not in the act that it is the reason why a five-dollar fee is charged.

Ms. Joan Crockatt: Okay, I just want to shift you a little bit in the comfortable pew here just for a moment. You said that if a server breaks then you will have to close the shop. These sound like very dramatic decisions that you are thinking you are going to need to potentially take. In another instance you said, "Unless my budget is increased, I have only one option going into the next fiscal year to keep within my appropriations: to cut the program".

I just want to challenge you that maybe we have the solution here in plain sight, which we haven't perhaps included, and that's why I'm asking you to look at the other side of the equation. We all know that every department would like a lot of increases in funding and that it's always a balance in government between how much you can tax taxpayers and then you dole it out among health care transfers, old age security, and environmental protection. It isn't an unlimited pit and we have to make our case, and make our case strongly, and then provide some kind of a balance.

It does look to me like you have a garden growing outside your window right now and a lot of people, particularly in business, as you've testified before us today, are anxious to receive the information you have and right now are paying five dollars, and they are multimillion-dollar businesses, which, in every other facet of the world, including the world I came from in newspapers, they are paying for information, and a great deal, and as you've said, that five dollars, however you look at it, is a very small sum.

I'm wondering if I might encourage you to just look at that as a possible answer to your questions rather than this very difficult process of trying to think about this passion that you love, being the Information Commissioner, and wanting to make this information available and looking at having to make cuts. You can look at cuts, or you can grow your pie.

Ms. Suzanne Legault: Well, Madame, I think that if the government were to actually decide to increase fees to make access requests and use the funding of my office as an excuse for doing so, it would be extraordinary—

Ms. Joan Crockatt: I'm going to interrupt you because I don't think that's in any way what I've suggested here. I think we heard the testimony that the five-dollar fee was instituted in 1983. I can't think of a single service probably in this entire country that any of us use that hasn't changed in price.

We've said this isn't a cost recovery. It costs \$1,000 or something. This is a very small fee that's being assessed here.

• (1720)

Ms. Suzanne Legault: Then my question to you would be, do you need to charge \$10 for every geospatial dataset that has been published in the past year? Why give that for free and charge more money for Canadians who exercise their quasi-constitutional right? It is not supportable to me.

Ms. Joan Crockatt: I don't sense we're going to agree here. I just wanted to leave it with you, but I did want to leave you with kudos here. It is really worth all of us congratulating you. I've been looking at these percentages of requests closed within 30 days, and it really is very much to be commended. I see since 2005-06 you've gone from 59% of the requests closed within 30 days to 65% now, which is a 6% increase and I want to thank you very much for that.

Ms. Suzanne Legault: I think you should thank the government for that, because that's the performance of the government. It's not my performance.

[Translation]

As they say, give to Caesar what is Caesar's.

[English]

That was an improvement in the performance of the government in 2011-12.

An hon. member: [Inaudible—Editor]...the taxes.

The Chair: We want to stop that Caesar analogy right there, before it goes any further.

Voices: Oh, oh!

The Chair: That concludes another round of questioning.

I don't think I've ever been this far down the list before, so thank you, Madame Legault, for taking so many questions.

It's the NDP's turn, so you have five minutes, Mathieu Ravignat.

Mr. Mathieu Ravignat: Essentially what we're saying here, or what the other side is saying here, is that for something as fundamental as a quasi-constitutional right, we can't work in our budget the necessary resources for you to ensure a healthy democracy, and that somehow we're going to pick that up with user fees. It seems to me bizarre to have to pay for a quasi-constitutional right. But that's my comment. You've commented quite a bit on this issue.

I'm concerned about this letter that you've prepared in order to get more resources. There seems to be a lack of clarity as to where this letter has to go. Where does that lack of clarity come from?

Ms. Suzanne Legault: Since the panel on the funding and oversight of officers of Parliament has not been reinstated, there really has been not a very clear process for agents of Parliament to seek funding.

As I said before, as part of the deficit reduction action plan, my office was cut by 5% at that time, and—

Mr. Mathieu Ravignat: But you naturally assumed it would be the Treasury Board, right?

Ms. Suzanne Legault: It is, except we have received, in the last two years, a request from the Minister of Justice to submit our request for funding, and our request to be included in the budget exercise, and that's what we have done.

Mr. Mathieu Ravignat: That's kind of bizarre, because the President of the Treasury Board in the House basically said, "Well, we can't give her more funding because we haven't received her letter."

Ms. Suzanne Legault: Well—

Mr. Mathieu Ravignat: You would think the Treasury Board president would know that Justice is asking you for a submission.

Ms. Suzanne Legault: The only thing I can say, sir, is that, frankly, I don't care where I have to send the request. If somebody tells me there will be extra funding to the office, I will do whatever people in the government ask me to do—very gladly, very promptly, and in very much detail.

Mr. Mathieu Ravignat: I fundamentally agree, the NDP fundamentally agrees, and you know what? It's incredible, the financial situation you're in.

I'd like to move the following, Mr. Chair:

That the Committee send a report to the House recommending that it provide the Office of the Information Commissioner with sufficient emergency financial resources to allow for the fulfillment of the Office's mandate in this fiscal year and to ensure that an adequate level of funding is maintained in the next budget.

The Chair: You've made a motion on the floor, Mr. Ravignat. I'll just check to see that the motion is in order.

Okay, the motion is in order.

Is there any debate on the motion? We have very limited time, so I'll ask people to keep their debate concise, please.

• (1725)

Mr. Mathieu Ravnagat: I assume that I can speak to my motion?

The Chair: Yes.

Mr. Mathieu Ravnagat: I think we've heard quite enough about the challenges faced by the commissioner and by the office to fulfill the mandate of this very important agent of Parliament. This is a fundamental issue of our democracy, a fundamental issue of transparency.

I think it's time to stop playing with the puck and be serious about her role. She has about \$37,000 left. What does that mean? I think it's only fair for our committee to do its due diligence and do its job: recognize the seriousness of the witnessing we've had today and recommend that the government give some money to this important office.

The Chair: Thank you, Mr. Ravnagat.

Is there any further debate?

Mr. O'Toole.

Mr. Erin O'Toole: Thank you, Mr. Chair.

I would move a friendly amendment to the motion, because I think Mr. Ravnagat's motion is premature. I say that because Madame Legault has already undertaken to provide this committee with a fairly helpful and substantive overview of similar jurisdictions, and the cost structures of ATI requests in similar jurisdictions. I think all members of this committee today have probably found some of the information provided in the materials, the charts, and her testimony before this committee to be very interesting and compelling. Certainly there's a shared optimism that she's been able to get closure rates down. She's been handling the 30% increase, but we do see the 30% increase by departments, and for some of the commercial departments it's far higher than that, and for the security departments it's far higher than that.

I think to really see how this system could work best and whether the five-dollar level from 1983 is the appropriate barrier to what was described as the frivolous or nuisance requests that are potentially bogging down the system and adding to costs, I think the overview that Madame Legault will be undertaking for the committee, comparing our system and processing fees, and showing the charges and those sorts of things, is an important piece of information that, I think, all members would want to have.

My friendly amendment would be to defer Mr. Ravnagat's motion until after the undertaking from Madame Legault to this committee is fulfilled and committee members have had time to review it. His motion would become live at that time.

It's a friendly amendment.

The Chair: Actually, under the rules of the committee, there is no such thing as a friendly amendment. As we operate, we have a

motion on the floor, and it has to be dealt with. It's a formal amendment—

Mr. Erin O'Toole: My colleague may choose to agree to have more information in front of him, as per the undertaking. It's up to him.

The Chair: That's true.

Well, it's either an amendment or it isn't an amendment, Mr. O'Toole. There's nothing the chair can do with a friendly amendment. That's really between the two parties.

We have very little time if we want to put this to a vote. There are two other speakers on the motion itself, so unless you have a formal amendment—and then the debate will be on the amendment—we'll continue on the main motion.

Mr. Erin O'Toole: Well, if my friend's not willing to build in a friendly amendment to his, I would ask for a formal amendment, based on what Madame Legault might need in terms of time for the overview she is going to provide the committee. Then we can give maybe a week from the date she provides it to amend the motion.

The Chair: Okay, the debate will be on the amendment.

[*Inaudible—Editor*] be putting that in writing just so the clerk understands properly the amendment that you're putting forward. I understand generally that we will wait until the report comes from Madame Legault, and give it a week or two, and then deal with the matter.

Ms. Charmaine Borg: [*Inaudible—Editor*] of how to consider the motion, as far as I understand.

• (1730)

Mr. Erin O'Toole: Mr. Chair, do you anticipate needing a month or two to undertake the overview that we talked about?

The Chair: We're having a hard time interpreting things here or figuring this out. I don't know why it's so complicated.

Mr. Mathieu Ravnagat: On a point of order, Mr. Chair, there's due process. There's a motion on the floor.

Either there's an amendment or there's not. It's not the time to add elements of debate by questioning the witness.

The Chair: Let's not have any more chit-chat until we decide. We'd like to see the amendment in writing so that the clerk can put it into the amendment, and then the debate will be on the amendment.

We'll need unanimous consent to continue the meeting to conclude the debate on this amendment. Do we have the unanimous consent of the committee to extend the committee meeting by 15 minutes beyond its normal expiry time?

Some hon. members: No.

The Chair: The meeting is adjourned.

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