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Chair

Mr. Blaine Calkins

Standing Committee on Access to Information, Privacy and Ethics

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● (0845)

[*English*]

The Chair (Mr. Blaine Calkins (Red Deer—Lacombe, CPC)): I call the meeting to order.

Good morning, everyone. It's 8:45 a.m., and this is my first opportunity to chair this meeting. I want to welcome everybody here.

For the first order of business, as committee members will see, we have the four commissioners at the table. Your subcommittee met a little over a week ago to determine a path forward, and part of that path forward was to meet with the four commissioners in our first committee meeting, to hear from them and to find a work plan going forward based on recommendations from them and discussions that we're going to have today.

Before we proceed, I need to have a motion from someone at the table that we adopt the first report of the subcommittee so that we can get to our witnesses.

Mr. Long so moves.

(Motion agreed to)

The Chair: It is unanimous. That is great news.

Welcome. At the table today, the Commissioner of Lobbying, Ms. Shepherd, is here. Mr. Therrien, who is the Privacy Commissioner, is here. The Conflict of Interest and Ethics Commissioner, Ms. Dawson, is here, and we have Suzanne Legault, who I believe has asked to go last.

As a Conservative I always go from the left to the right, so we'll go from my left toward the right, and things will get more interesting, I'm sure.

Ms. Shepherd, you have up to 10 minutes. We'll move in that direction, and then we'll go to the rounds of questioning.

[*Translation*]

Ms. Karen Shepherd (Commissioner of Lobbying, Office of the Commissioner of Lobbying): Good morning, Mr. Chair and members of the committee.

I am pleased to be here today to discuss the lobbying regime and what might be of interest for the committee to pursue during its mandate.

[*English*]

First let me congratulate you on being elected to the House and being named to serve on this committee.

[*Translation*]

Lobbying is a legitimate activity. As someone who has been involved in the making of public policy for many years, I know that exposure to a range of viewpoints is essential to effective policy making and better decision-making by governments. However, it is important that when lobbyists communicate with public office holders, it is done transparently and according to high ethical standards.

I was appointed Canada's first Commissioner of Lobbying in June 2009, for a term of seven years. As Commissioner of Lobbying, my role is to administer the Lobbying Act, which makes transparent lobbying activities, and to develop and enforce the Lobbyists' Code of Conduct, which sets out standards of behaviour for lobbyists. Together the act and the code ensure that Canadians can have confidence in the integrity of decisions taken by their government.

[*English*]

My mandate, as outlined in the act, is threefold: to maintain the registry of lobbyists, which contains and makes public the information disclosed by lobbyists; to develop and implement educational programs to foster public awareness of the requirements of the Lobbying Act and the Lobbyists' Code of Conduct; and, finally, to ensure compliance with the act and the code.

I am proud of my accomplishments that have enhanced transparency, clarified the expectations for lobbyists' behaviour, and demonstrated consequences of non-compliance. Let me highlight a few.

The Lobbyists' Code of Conduct has been strengthened. Processing times for registrations have been reduced from 20 days to an average of three. The search function of the registry has been improved. I have tabled 10 reports on investigation to Parliament, and referrals of alleged breaches of the Lobbying Act to the police from my office have resulted in the first conviction under the act. Charges have also been laid against three other individuals, and these cases remain before the courts.

The Lobbying Act contains a provision for a mandatory review by a parliamentary committee every five years. The last review conducted by this committee was completed in 2012. At that time I indicated to this committee that, in my view, many aspects of the act were working well. However, in my submission I made several recommendations to improve transparency of lobbying activities and provide for more effective deterrents against non-compliance.

The committee endorsed several of my recommendations in its final report, including the elimination of the "significant part of duties" registration threshold for organizations and corporations and the inclusion of powers to impose administrative monetary penalties.

The government's response supported many of the amendments recommended by the committee, but noted that further study was required on these areas. New legislation has not been introduced.

As we are now in 2016, it is almost time when another mandatory review of the legislation is required. I believe that the recommendations I made in 2012 are still valid and worthy of consideration. If enacted, they would serve to ensure transparency while providing the commissioner with the tools required to enforce the legislation more decisively. I would be happy to discuss these recommendations further and to participate in any further study.

Along with the Lobbying Act, the Lobbyists' Code of Conduct is an important tool that works to enhance public confidence in government decision-making. Following a two-year consultation process, a new Lobbyists' Code of Conduct came into force in December 2015.

The consultation process elicited 56 written stakeholder submissions, and I held 23 round tables with interested parties, such as lobbyists, public office holders, and academics.

I believe that the new code is stronger and clearer than the original code. It aligns more closely with the scope of the Lobbying Act. The act deals with the interactions between lobbyists and public office holders. Therefore, I removed all rules and references relating to the interactions between lobbyists and their clients from the code.

● (0850)

[*Translation*]

The new code also addresses the issue of conflict of interest in more detail. The code contains rules that help lobbyists avoid placing public office holders in a real or apparent conflict of interest, specifically when they share close relationships with public office holders, when they have engaged in political activities, and when it comes to the provision of gifts to public office holders.

[*English*]

When the code was published, I released guidance to help lobbyists understand how I will apply the rules relating to conflict of interest. The focus in my guidance is on lobbyists being self-reflective and asking themselves the following question: would an informed person, viewing the matter realistically and practically, and having thought the matter through, think that an action taken by a lobbyist has created a sense of obligation on the part of the public office holder, or a tension between the public office holder's private interests and the duty of the public office holder to serve the public interest?

Since the code came into force, the majority of questions from lobbyists have concerned their rules on conflict of interest.

Let me take this opportunity to state that clear conflict of interest rules for lobbyists are not about questioning the integrity of lobbyists, nor are they about about questioning the integrity of public office holders; rather, they are intended to assure Canadians that lobbying is conducted ethically and with the highest standards.

These changes reflect the increasing demand Canadians have for higher standards of public office holders, including parliamentarians and those lobbying them. I am pleased with the fact that the lobbyists are examining their actions in light of the new code and seeking advice from my office.

The Registry of Lobbyists is the primary tool for transparency of lobbying activities.

Earlier this month, I entered into an agreement with my colleague, the Privacy Commissioner, to have his office host both the Registry of Lobbyists and my website. The transfer took place successfully this past weekend. This new arrangement, with an independent agent of Parliament instead of a government department, is intended to provide me with more control over the operation and the development of the registry system. This new arrangement will make it easier to consider making priority system improvements.

Following the reductions announced in budget 2012, I deferred any significant development of the Registry of Lobbyists. This means that only maintenance and minor improvements have been made to the registry since 2013.

It is important to maintain a modern Registry of Lobbyists that keeps pace with technological development. As with any IT application, adequate investments to the registry have to be made to ensure the system remains user-friendly so that lobbyists can easily disclose their lobbying activities and Canadians can retrieve that information. Appropriate measures also have to be implemented to continually enhance data security and the long-term integrity of the system.

This government has indicated its commitment to ensuring that agents of Parliament are adequately funded. In this context, I welcome a discussion about funding levels for all my programs, including the Registry of Lobbyists.

● (0855)

[*Translation*]

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

[*English*]

The Chair: Thank you very much, Ms. Shepherd. We appreciate that.

Mr. Therrien, I think I referred to you inappropriately as the Information Commissioner; you're the Privacy Commissioner, sir, and you have up to 10 minutes, please.

[*Translation*]

Mr. Daniel Therrien (Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada): Good morning, Mr. Chair and members of the committee.

I am delighted to appear before you today to introduce the work of my office and share with you our priorities for the coming years.

The mission of the Office of the Privacy Commissioner of Canada is to protect and promote the privacy rights of individuals. To that end, my office is responsible for overseeing compliance with the Privacy Act, which covers federal institutions, and the Personal Information Protection and Electronic Documents Act—or PIPEDA—Canada's federal, private sector privacy law.

PIPEDA does not apply in provinces that have enacted substantially similar legislation, except in relation to federal works, undertakings and businesses, or interprovincial transfers of personal information.

We have a strong collaborative relationship with provincial privacy commissioners. My office protects privacy rights by, for example, investigating complaints, conducting audits and pursuing court action. Our goal, within the limits of our ombudsman role, namely to make recommendations and not binding orders, is to ensure that departments and organizations comply with their legal obligations and that the rights of individuals in relations to the collection, use and disclosure of their personal information are respected.

We also promote privacy rights by, for example, publishing our own research and funding independent research into privacy issues, engaging in public education and stakeholder outreach activities and by publishing relevant material on our website, including tips and guidance.

I will now discuss our strategic privacy priorities.

The fast-paced evolution of the digital world, which many characterize as a fourth industrial revolution, is having a profound impact on privacy. Technologies such as always-on smartphones, geospatial tools, wearable computing, cloud computing, “big data”—advanced analytics—genetic profiling and the Internet of Things, raise significant, novel and highly complex privacy issues regarding collection, use and disclosure of personal information.

New technologies bring many benefits for individuals and economic growth for society. But they also raise important risks, such as government and corporate surveillance, and potentially the loss of personal control and autonomy.

In this complex, new environment, modernization of our privacy framework and the pressing need for greater transparency around how technology is used is critical to maintaining citizens' trust in government and the digital economy.

Last year, after wide-ranging consultations with various stakeholders, we established four strategic privacy priorities to help achieve the ultimate goal of helping Canadians exercise greater control over their personal information. These priorities, which will guide our work for the next few years, are as follows.

I will begin with the economics of personal information. With this priority, we aim to enhance the privacy protection and trust of individuals so they can participate in the digital economy with confidence. One of our first key actions will be starting an exercise to examine the consent model and identify ways to enhance users' control.

This spring, we will produce a discussion paper outlining challenges with the current model. We will then consult stakeholders on potential solutions, ranging from enhanced notices and information to consumers, technological solutions, greater self-regulation and accountability by organizations, to enhanced government regulation.

● (0900)

We should be able to suggest solutions some time in 2017, apply those that are within our jurisdiction immediately, and recommend legislative amendments, if necessary.

[*English*]

Our second priority is government surveillance. Under government surveillance, our ultimate goal is to contribute to the adoption and implementation of laws and other measures that demonstrably protect both national security and privacy. Our initial work, already under way, is to carry out a review of how the information-sharing provisions of the Anti-terrorism Act of 2015 are being implemented. The results of our survey should provide, we hope, a more concrete basis on which to assess the legislation and make any further recommendations regarding possible amendments. We will publish our initial findings in a report to Parliament later this year.

We also plan to be active on the issue of warrantless access by law enforcement to the personal information of citizens held by private sector organizations. Last June we provided input into Industry Canada's transparency guidelines, which established standards for transparency and accountability reports from companies that share personal information with law enforcement. Rules that encourage private sector reporting are a good start, but greater transparency from the public sector is just as important. It is, after all, the public sector that is seeking and receiving the personal information of Internet users for law enforcement purposes. We have therefore asked that federal institutions begin issuing their own transparency reports. Frankly, we find it unfortunate that they have not yet followed in the footsteps of their corporate partners.

Our third priority is reputation and privacy. On reputation and privacy, we want to help create an environment in which people can use the Internet to explore their interests and develop as individuals without fear that their digital trace will lead to unfair treatment. Under this priority, we will work to help enhance digital literacy among vulnerable populations, such as youth and seniors.

Last month we issued a discussion paper seeking stakeholder views on what practical technical policy or legal solutions should be considered to mitigate online reputational risks and how best to provide individuals with recourse when their online reputation is negatively affected by information that they themselves have posted or that others have posted about them.

Our fourth priority is the body as information. Here our goal is to promote respect for the privacy and integrity of the human body as the vessel of our most intimate personal information. In doing so, we will seek to learn more about the privacy implications of new technologies that collect information both about and from within our bodies. From there, we will work to inform both consumers and developers about the potential privacy risks of these technologies and how they can be mitigated.

On a final note, we are of course aware of the government's commitments to reform the Access to Information Act and its support for open government initiatives. While I support these initiatives, I would emphasize at the technical level how important it is that the Access to Information Act and the Privacy Act be seen as a "seamless code", as was characterized by the Supreme Court of Canada in a case in 2003. More fundamentally, privacy should be seen as an enabler of transparency and open government by providing individuals with access to their personal information held by federal institutions, but there is is also a legitimate limit to openness when there is a risk of personal information being revealed inappropriately.

For these reasons, the two statutes need to be considered together. I stand ready to provide you with solutions that would ensure that the Privacy Act is responsive to the realities of today's digital world.

Thank you for your attention. I would be glad to take your questions.

● (0905)

[*Translation*]

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

[*English*]

We will now move to Ms. Dawson. You have up to 10 minutes.

[*Translation*]

Ms. Mary Dawson (Conflict of Interest and Ethics Commissioner, Office of the Conflict of Interest and Ethics Commissioner): Mr. Chair and honourable members of the committee, I thank you for inviting me to appear before you today as the committee considers its future business. Given that the committee has a number of new members, I will begin by briefly reviewing my mandate and the activities of my office.

[*English*]

As Conflict of Interest and Ethics Commissioner, I administer two conflict of interest regimes: the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons. These two regimes seek to prevent conflicts from arising between the public duties of elected and appointed officials and their private interests.

The Conflict of Interest Act currently applies to over 2,100 public office holders. This number will likely increase significantly as the remaining ministerial staff positions are filled.

All public office holders are subject to the act's core set of conflict of interest and post-employment rules. More than half of those covered by the act are subject only to these general rules. This group is made up primarily of part-time members of federal boards, commissions, and tribunals, as well as some part-time ministerial staff.

Over 800 public office holders are currently designated as reporting public office holders. Reporting public office holders include ministers, parliamentary secretaries, ministerial staff, and all full-time Governor in Council appointees such as deputy ministers, heads of crown corporations, and members of federal boards. They are subject not only to the act's general rules but also to its reporting and public disclosure provisions, as well as prohibitions against outside activities and holding controlled assets.

The act also sets out a few additional requirements for reporting public office holders who are ministers or parliamentary secretaries.

My approach in administering the act is based primarily on prevention. My staff and I provide public office holders with confidential advice on specific matters. We seek opportunities to educate them about the act's requirements as individuals or as groups; we review their confidential reports related to their assets, liabilities, and activities; and we maintain a system of public disclosure.

There are also several ways in which I can enforce the act. I can impose administrative monetary penalties for failures to meet certain reporting requirements, but only for designated public office holders. I can issue compliance orders to ensure public office holders meet their obligations in the future. I can initiate formal investigations, called examinations, of possible contraventions. Finally, I can issue public reports that set out my conclusions.

This committee has oversight responsibility for my office and reviews its annual spending estimates as well as matters related to my annual reports under the Conflict of Interest Act. I've appeared before the committee a number of times since becoming Conflict of Interest and Ethics Commissioner in 2007 to testify about my budgetary submissions for the main estimates and, in the early years of my mandate, to speak about my annual reports under the act.

I also contributed to the committee's five-year review of the Conflict of Interest Act. Section 67 of the act sets out a requirement for a comprehensive review of the act's provisions and operations to be taken within five years after its coming into force. Unlike the members' code, which indicates a provision for a review every five years, the act provides only for this one-time review. The committee began its review in January 2013. I was invited to provide a written submission and appeared before the committee twice, in February and March of 2013, to discuss my recommendations.

I made over 70 recommendations; in fact, I think it was closer to 100. Some of them addressed broad thematic areas that I considered to be priorities.

● (0910)

These include broadening the scope of conflict of interest to extend to entities rather than limiting it to persons. The lawyers among you will know what that's all about; it's because "persons" includes corporations, but not things like partnerships and associations, and "entities" is what's used in the members' code, as a matter of fact.

Other priorities are increasing transparency around gifts and other advantages, strengthening the act's post-employment provisions, and narrowing the overly broad prohibition on engaging in outside activities. There I'm actually trying to pull back on some of the rules and to narrow the overly broad prohibition on holding controlled assets.

Another recommendation was to include some disclosures and reporting obligations for public office holders. Unlike reporting public office holders, the regular public office holders don't currently have any reporting obligations.

Other recommendations are addressing misinformation related to investigative work and adding administrative monetary penalties for breaches of the act's substantive provisions.

The committee completed its review in February 2014 and issued a report containing 16 recommendations that were fairly narrow in scope and of a largely technical nature. Two of my recommendations were retained by the committee, although a number of my recommendations were mentioned in the body of the report.

I note that the report was not unanimous. It was accompanied by two dissenting opinions, and they were strong dissenting opinions that expressed strong objections.

Many of the committee's recommendations were new to me, and I did not have an opportunity to comment on them. One example is the recommendation that proposes changing the definition of public office holder to include members of organizations that collectively bargain with the Government of Canada. Such an amendment would exponentially increase the number of public office holders covered by my act and would completely change the nature of my office. It might well also create an overlap—in fact, it would—with certain existing regimes, such as the public service values and ethics regime.

The government responded to the committee's report in June 2014 by expressing its support for the committee's recommendations. However, no amendments to the Conflict of Interest Act have been proposed as a result of the five-year review. Because this is a new parliament, this might be an opportune time, if the committee wishes, to revisit that review or undertake a new one. I would hope that you would consider my original recommendations should you do so, and I would be pleased to provide any input requested.

[*Translation*]

Mr. Chair, in closing, I wish to assure the committee that I am available to provide any information that it may require about any matters related to my office and to the Conflict of Interest Act. I look forward to a productive relationship between the committee and my office going forward.

Thank you for your time. I will now be happy to answer any questions you may have.

● (0915)

[*English*]

The Chair: Thank you, Madame Dawson.

We now move to our last witness, the Information Commissioner, Madame Legault.

[*Translation*]

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

I am delighted to be here and to meet all of you, for the first time in most cases, except for the chair of the committee.

[*English*]

Mr. Chair, I thank you for this opportunity to assist the committee in setting its priorities for this session. The Access to Information Act provides Canadian citizens, permanent residents, individuals, and corporations who are present in Canada with the right to access government information, subject to certain limitations.

The Information Commissioner conducts confidential investigations into complaints about institutions' handling of access to information requests.

[*Translation*]

The Supreme Court of Canada has held that the purpose of access legislation is to facilitate democracy by helping ensure that citizens have the information they need to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry.

The Access to Information Act is over 30 years old. Over the act's three decades of existence, technology, the administration of government and Canadian society have been transformed in many regards. And yet, despite these changes, the act remains largely in its original form.

When the act became law, information was mostly paper-based. When we began working, most of us had binders and files in which we stored our documents at the end of the day. We always knew where everything was. Most of us even had a secretary who filed information for us and found it when we needed it. As we know, the situation has changed profoundly.

The sheer volume of electronic data and the speed and methods of transmission have challenged government's ability to collect, store, manage and share information with the public.

[*English*]

As stated in the Speech from the Throne, the government is committed to being “open and transparent”, a government that builds and fosters trust that Canadians have in public institutions. A key component of an effective and open government is a modern access to information law that maximizes disclosure of government information in electronic and non-static formats. This influx of information to the public increases accountability and facilitates collaboration between government and the citizenry about how best to deliver programs and services.

Mr. Chair, I am very cognizant of the fact that the government and this committee have much work to accomplish. In this context, a clear focus on results will be a key to success. With this in mind, my recommendation to the committee is to give priority to the modernization of the Access to Information Act. This priority, as stated, is consistent with the Speech from the Throne and the Prime Minister's mandate letters to the president of the Treasury Board, the Minister of Justice, and the Minister of Democratic Institutions.

You have before you my special report, entitled "Striking the Right Balance for Transparency", tabled in Parliament last year. The report contains a comprehensive set of recommendations to modernize the act to deal with the current realities and expectations of Canadians. These include extending the coverage of the act, increasing timeliness, maximizing disclosure in line with a culture of openness by default, strengthening oversight, and adding consequences for non-compliance.

[*Translation*]

In formulating the recommendations contained in the report, I have looked at international, provincial and territorial legislation, annual reports and model laws; I have reviewed all reform proposals made by former commissioners and all studies of the act. The recommendations are also based on my own experience, after completing over 10,000 cases during my mandate. The report—and this is my suggestion—could be a starting point for your review of the act.

In closing, I would like to thank the committee for the opportunity to present what I strongly believe should be the committee's priority in relation to openness and transparency. Please be assured of my commitment to assist the committee as it moves forward on its agenda. I will be pleased to answer your questions.

● (0920)

[*English*]

The Chair: Thank you very much, Madame Legault.

We will now proceed to the first rounds of questioning.

Based on the statutes that we've adopted at this committee, the Liberal party will go first, for seven minutes.

We begin with Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks very much, and thank you all for your presentations.

My first question is to the Privacy Commissioner, and it's related to encryption, the recent decision in the United States in the debate with Apple, and this notion of balancing security and the privacy of consumers.

Does the Privacy Commissioner have any thoughts as to how we might strike that balance and what we ought to be looking to with respect to the issue of encryption?

Mr. Daniel Therrien: You're starting with an easy question.

Some hon. members: Oh, oh!

Mr. Daniel Therrien: Of course, I would start this with the need to balance security and privacy. Privacy here would be in the form of safeguards, in technological terms, to protect the personal information of individuals on the Internet, and these safeguards rely, to an important degree, on encryption.

First of all, the debate that has been happening in the past few days involving the Apple company and the U.S. government is in the context of U.S. legislation, and there may be some differences between U.S. and Canadian legislation. However, the debate is not a U.S. debate; it is a universal debate, and it absolutely has extreme relevance in Canada.

One important factor to keep in mind, other than the general balance between security and privacy, is that companies ought to be amenable to law—to warrants, to court decisions. Companies are governed by law. That's one important factor. However, the law needs to bear in mind the realities of technology, and I think that's where the dilemma lies.

Law can dictate to companies to act in a certain way and provide information to government and law enforcement. The difficult issue here is that if the law were to do this, what impact would that have in terms of technological capacities? If you break encryption or somehow create an exception to the protection provided by encryption technology, what impact does that have outside of the case in which the information might be sought, and does it undermine protection for the population generally?

It's a complicated issue. There are legal issues, but the technological issues are at least as important.

Mr. Nathaniel Erskine-Smith: Then perhaps it's an issue for us to study in this committee.

To the Information Commissioner, thank you very much for this report and the 85 recommendations. There have been many reports with respect to reforming access to information. There's been some conflict as to how we might reform cabinet confidence, in terms of those recommendations over the years.

I wonder if you could speak to the issue of cabinet confidence and how we might look to reform access to information on that issue in particular.

Ms. Suzanne Legault: We deal with that aspect in the report.

One key issue with cabinet confidence is that there is no independent oversight. It's been the recommendation of all information commissioners in the last 30 years that they be subject to what we call a mandatory exemption, which would mean that if it is considered to be a cabinet confidence and it's not disclosed, there be independent oversight by the information commissioner. That's the first aspect: at least there should be independent oversight.

In the report we also recommend limiting the scope of the definition of cabinet confidence. The way it's drafted currently in the act is actually a catch-all provision that allows anything to be a cabinet confidence if you want it to be, and that's a big problem. It should be limited to the interest that we're trying to protect, which is really the cabinet deliberations, and to protect the responsibility and accountability of ministers at the table so that the conversation can happen in a safe space. The definition as it stands now is way too broad.

These are two key issues with cabinet confidences.

● (0925)

Mr. Nathaniel Erskine-Smith: Thanks very much.

I'll come back to the Privacy Commissioner. You mentioned the information-sharing provisions under what was Bill C-51. Now that those provisions are in place, do we have any sense of the scope of information that has already been shared? Is there any way of maintaining accountability in that regime?

Mr. Daniel Therrien: We're actually reviewing this issue as we speak.

In January I sent letters to federal departments to ask them specifically, in concrete terms, how often they are using the new legislation, and in what context and for what kind of information, etc. We have yet to receive an answer from a number of departments, but we are reviewing this question specifically. We're doing that under the authority that we have under section 37 of the Privacy Act, which allows us to conduct reviews to ensure that collection activities are lawful and are consistent with the Privacy Act.

Mr. Nathaniel Erskine-Smith: You mentioned that you had received some responses back, but they were not complete responses.

Mr. Daniel Therrien: That's simply because they are still within the time frame that we gave them to answer.

Mr. Nathaniel Erskine-Smith: That's fair enough.

Mr. Daniel Therrien: In part we're trying to determine the legality of the practices of departments, but more importantly we want to obtain this concrete information to inform both parliamentarians and the public about how this legislation is applied so that we can have a more informed public debate on these issues.

Mr. Nathaniel Erskine-Smith: Thanks very much.

The Chair: You have about half a minute left.

Mr. Nathaniel Erskine-Smith: My last question is on the right to be forgotten, so it is also for the Privacy Commissioner. The EU has looked at this issue, as have other jurisdictions, and I wonder if we've turned our thoughts here in Canada to the right to be forgotten.

Mr. Daniel Therrien: We issued a discussion paper in January on reputation and privacy generally. It is broader than the right to be forgotten, but it includes the right to be forgotten. We have sought the views of stakeholders, academics, experts, and the public regarding the issue, and we are examining the issue.

Mr. Nathaniel Erskine-Smith: Thanks so much.

The Chair: Thank you very much.

Now we'll move to the Conservatives. Mr. Jeneroux, you have seven minutes.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you very much for being here, guys. That was a good overview, especially for us members who are new not just to the committee but to the House of Commons. I think I speak on behalf of my colleagues on both sides of the table when I say that.

I want to get a sense of something from both the Commissioner of Lobbying and the commissioner of access to information, privacy and ethics. Can you help me and those of us who are new to the process to understand what steps you go through when you determine a conflict of interest? This doesn't necessarily mean that there has been a breach of the act, but what steps do you and your office start the process with so that you can then determine whether there has or hasn't been a conflict of interest?

Ms. Mary Dawson: You said “access to information”, but I think you meant conflict of interest.

Mr. Matt Jeneroux: Sorry, it's all new.

Ms. Mary Dawson: Basically there are rules set out in both the act and the code as to when you may be in a conflict of interest, so of course the first thing is to see whether any of those particular provisions applies. Basically I must follow the wording of the code or the act in applying it. I generally have a pretty good framework within which to make that decision.

There are a few provisions in my act that talk about improperly doing something or other. That's the one area where I do have some flexibility in determining what's improper. Usually in trying to determine that, the first thing I look at is whether there are rules somewhere else—rules that are not in my act—that are not being followed. In such a case, I would inevitably find that improper, and then I would look at, in the odd case, general sorts of understandings of people as to what is just unacceptable. As I say, I'm guided largely by the wording of the act or the code.

One area, for example, that includes the word “improper“ is on post-employment activities. Certainly if something was not proper when someone was a member, the likelihood is that it will not be proper when they're in a post-employment situation.

Maybe that gives you a little bit of a sense of it.

● (0930)

Mr. Matt Jeneroux: Sure.

Ms. Karen Shepherd: There's nothing in the Lobbying Act in terms of conflict of interest, but there is in the Lobbyists' Code of Conduct. As I was saying in my opening remarks, the reason it's in the code and was in the previous code as well since 1997 is to assure Canadians of the integrity of the decisions being made by the government.

There are a number of ways that a public office holder could be placed in a conflict of interest. This is why I've specifically broken them out in the rules in terms of whether preferential access is being given because of the relationship of the lobbyist to the public office holder.

There is the issue of gifts. For example, is a gift being given by a lobbyist to a public office holder whom they are lobbying, or will lobby, a gift that the public office holder cannot accept? As my colleague was saying, one thing I would be looking at is whether an individual can or cannot receive a gift.

Political activities is also an area that has been broken out, following a court case in 2009. If that's of interest to the committee, I can share the details with you, but basically it involves the notion of it being not a real conflict of interest but only an apparent conflict.

There is that tension that exists between the private interests of a political office-holder and their duty to serve the public interest. That standard test, as I mentioned, is what I and my investigators would use to determine whether a conflict of interest had been created.

Mr. Matt Jeneroux: Thank you. That helps. I'm getting the sense that you both work in the overarching theme of preventing this type of thing.

You even mentioned that the rule can be somewhere else, and not necessarily in the act. When there are official government mandate letters, those would be considered other rules out there. I would guess that we could possibly refer to them as something like that. The government mandate letters that a number of ministers have received address this issue. They say that ministers must avoid the perception of conflict of interest. It's right there in their mandate letters.

Here's where I'm going in trying to understand this. A few instances have already been brought up in the House, and a few instances were brought up in the media. I'm curious about your current involvement in these examples and whether you see at this point in time that there's a perceived conflict of interest. I could get into the details of those cases if you like. If this is enough information for you, I can leave it at that.

Seing the perplexed look on your face, Mary, I would be happy to go into the details.

Ms. Mary Dawson: Let me say that most of the provisions in my act envisage a perception one way or another, but not all of them. If the mandate letters talk about perceptions, that may be a slightly broader set of rules than my act or my code might cover. However, as I said, most of the rules whereby there could be a perception aspect are framed in one place or another.

The other thing I observe is that there is an accountability guideline that the Prime Minister has put out. In many instances, that accountability guideline also goes beyond the rules of the Conflict of Interest Act. It's a serious thing to find somebody to have contravened the Conflict of Interest Act, so I don't go out of my way to make up things that aren't at least envisaged to some extent.

When I speak of the accountability guideline, I'm reminded that it's another area where I could find an impropriety. If a section used the word “improper”, I would base myself on that.

I don't know if that answers your question.

● (0935)

Mr. Matt Jeneroux: We're getting there.

The Chair: That answers your questions for now, Mr. Jeneroux.

Mr. Matt Jeneroux: Does it?

The Chair: Your time is up. Seven minutes goes by fast.

Mr. Blaikie, you have seven minutes.

Mr. Daniel Blaikie (Elmwood—Transcona, NDP): Thank you very much.

I'll start by thanking everyone for coming out today.

In terms of questions, I wanted to ask the Privacy Commissioner some questions around warrantless access, which you've said you're currently looking into. I'm curious. Could you give us a sense of the kind of information, if any, for which warrantless access would be appropriate? Is there certain information about people's personal details that you think you can't really reconcile warrantless access with, and for which it would be appropriate to be consulting someone about the appropriateness of obtaining that information?

Mr. Daniel Therrien: Thank you for this question.

In my remarks I spoke to transparency, which is one issue, and to what extent companies and government should disclose to the public, in broad statistical terms, how often there is a sharing of information between companies and government for law enforcement purposes.

Now you're asking the substantive question of what ought to be shared by telecommunication providers, for the most part, and law enforcement. The first place to look at on this issue, of course, is what the Supreme Court said in 2014 in the case of Spencer. In that case, the court set out excellent guidelines. In terms of companies sharing information with law enforcement, it set out that the principle is the principle of warrants. These communications should as a rule be authorized by a court, on the principle that courts are well placed to balance the interests of the police in getting that information and the interests of individuals in having their privacy protected.

The court did outline three very narrow exceptions to the rule. One in particular has to do with emergency situations. If the police are investigating a crime that is about to be committed and they need personal information, that is one exception to the warrant rule. However, the rule is clearly warrants, with very narrow exceptions.

Mr. Daniel Blaikie: If that is the rule, could you speak to the question as the government looks to reforming the Anti-terrorism Act? Is additional review capability sufficient, or does there really need to be oversight in the form of an agency that would be monitoring the activity of police in real time instead of investigating after the fact?

Mr. Daniel Therrien: There's a lot in your question.

In general terms, in order to have effective protection for human rights and privacy, you need two things: oversight and review.

Oversight by Parliament will be debated according to what we see in the mandate letter. That would be an improvement over the current system.

It is also necessary that there be what I will refer to as administrative review. The review would be conducted by bodies such as SIRC, the commissioner for the Communications Security Establishment, etc. You need oversight and review, both parliamentary and administrative. This is one set of protections.

It's also necessary to have clear, substantive, legal rules as to how national security or law enforcement is to collect information. For instance, there was a question about when warrantless access is permissible by law. Normally warrants are required, except for very defined circumstances. I think you need both oversight and review, parliamentary and administrative, but it is equally important to have substantive legal rules that create the right balance between security and human rights.

● (0940)

Mr. Daniel Blaikie: Thank you.

My next question is for the Information Commissioner.

There has been a lot of talk recently, and I understand there are some examples from B.C. of a senior staffer triple-deleting their emails at the end of the day. It has given rise to the question of a duty to document.

Could you give us a sense of what would be adequate or how far that duty goes? What would the workload look like, or what are people being asked to document if they're working in government?

Ms. Suzanne Legault: This is also a recommendation in the report.

We've had the triple-delete incident in B.C., but before that there were the gas plant emails in Ontario. We also conducted a special investigation into the use of PIN-to-PIN communications in the federal government. There's documented evidence that there is information that should be preserved and be accessible to Canadians for accountability purposes that is either being destroyed or is not being created.

This is a key issue. It's particularly easy in the context of new technology, and that's part of the challenge that we have to deal with. In my view, the duty to document does not provide more cumbersome obligations to the government and to public servants than they already have, because they already have an obligation to document their decisions and their key actions and to preserve the information that needs to be preserved. That obligation exists in policy.

I put that into the report, but also my colleagues across Canada also did a joint resolution on that issue. We need a proper legal duty to document, so we need to heighten the level of the obligation from a policy obligation to a legal obligation. My colleagues and I are recommending to also have proper consequences for non-compliance with issues. This would apply to people who go into a meeting and don't take notes or to people who say not to document this information or to PIN them so that there is no lasting record. This is now becoming a way of conducting business in governments, and it needs to be addressed properly in a modern piece of access to information legislation.

The Chair: Thank you.

That's the fastest seven minutes of your life, I'm sure, Mr. Blaikie.

We'll now go to Mr. Saini for seven minutes.

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you all for coming today.

Especially being a new MP, I really appreciated the briefing on understanding the guidelines of each of your responsibilities.

Madam Legault, after reviewing your report on modernizing access to information, I was struck by one thing that I wanted to get your viewpoint on. You mentioned in your report that there currently aren't any requirements to report any unauthorized destruction or loss of information. To me it seems quite shocking.

What do you see as the consequences of leaving this part of it unchecked?

Ms. Suzanne Legault: This particular recommendation came to light because it has happened in my office that an institution came to us and said, “We will no longer be able to respond to access to information requests for the coming several months because we have had a massive technology incident.” We were grateful to have this information, because we were aware of what was going on. If we had complaints come in, we knew what had happened in the institution. It wasn't something the institution had control over. It was a security breach, and they had to shut down their computers, in simple terms.

That led us to realize that in some instances institutions have unauthorized destruction of records or data, and there's no obligation to report that to anyone. If there is a privacy breach, it is reported to the Privacy Commissioner, but if there is a non-authorized loss of data, there's no obligation anywhere to report it. That struck us as a gap in this day and age, with all of our information essentially stored in the digital world.

Mr. Raj Saini: What specific measures do you think should be in place to prevent that or to accommodate this situation?

● (0945)

Ms. Suzanne Legault: There are measures that are in place within each government institution, IM and IT procedures, and everyone has to abide by these measures. It's a challenge for all organizations. It's a challenge when we have consolidation of email and when we have small institutions having difficulty funding and having oversight and control over their IM and IT.

There are also a lot of challenges across the federal government in terms of information management and IT management. I think the Auditor General's report of Shared Services Canada shed some light on some of these difficulties. It's something that exists at the federal level and it's something that needs to be addressed. We cannot have access to information without having proper information management practices, and proper information management practices in 2016 have to be supported by the proper IT management. That means proper funding, proper training, proper controls, and proper obligations to report when something amiss occurs.

Mr. Raj Saini: In another part of your report you recommended that institutions ought to be required to proactively publish data clearly deemed to be in the public interest. Can you give some examples of that kind of information and how it should be determined that it is clearly in the public interest?

Ms. Suzanne Legault: That is good question. This is something I spoke about in 2009 before this committee, believe it or not, when we first started to discuss open government. What I had researched at the time was based on what was going on in other jurisdictions, such as in the U.S. and the UK and Australia, which were at the forefront of open government. They talked about high-value data sets and high-value sets of information.

Each federal institution has its own stakeholders. Everyone has stakeholders that have a specific interest in some information in that institution. My office is a good example. We're a small office. We have a limited mandate, but we kept having requests for information for the data on our complaint investigations statistics. We can only publish this data once a year in our annual report, but we produced the data on complaint investigations internally for my own benefit on a need-to-know basis. We started disclosing the data proactively on a monthly basis because we had a demand for it.

Each institution should deal with its own stakeholders and see what information is of value to stakeholders, because its not going to be the same for all government information for all government institutions. We have obligations for official languages and for accessibility when we publish something proactively. It's onerous for federal institutions. It costs money to proactively publish something. We have to choose, and we have to choose that with our stakeholders and with Canadians.

Mr. Raj Saini: Do I have some time?

The Chair: You still have a minute and a half.

Mr. Raj Saini: There were two things each one of you spoke about in your commentary at the beginning of this session. One was the hope that for each of your offices or each of your capacities, there would be an overview. You mentioned many times that the five-year time frame was up. The second thing that you mentioned was about budgetary constraints that you felt.

I know this is a pretty open and general question—everybody likes more money—but I just wanted to know whether you feel, in your mandate, that a lack of increase in your budget is affecting your capacity to provide the information that you feel is required by Canadians. As well, will the extra you received go toward hiring more people, having more investigative abilities, having more auditing abilities? Where do you see a budgetary increase affecting how you do your work?

The Chair: I think that's for all four. You have about 10 seconds each, if you don't mind.

Ms. Karen Shepherd: Well, let me just say right now, because I do talk about budgets, that as I've said in a previous version of this committee, I'm running a lean organization. I have 28 staff, and thanks to them I've been able to operate and make appropriate trade-offs in terms of how much I invest each year.

I mentioned that when I was cut, I wasn't able to invest in the registration system, which is a key operation in my office. I'm now going to be, as one of the priorities this year, investing in it, but again it's a trade-off.

At this time, I'm not asking for more funds, but if I had them I would be able to do more. For example, I have one legal counsel and one communications person, so I'm very limited as to what I can do. However, I have great support staff, who are very professional and support each other. We have backups on some of these things.

More money would allow me to invest more in the registration system. We've heard about technology from my colleagues as well today, and I'm looking at where I can do more. For example, having an app to make it easier for lobbyists to put something into their BlackBerry after a meeting that would automatically go into the registration system would, I think, be great for compliance.

That's a quick summary.

● (0950)

The Chair: We have to go now. What I would suggest to each of you as commissioners is that if you want, you can submit something if you don't have an opportunity to finish answering that question. The Liberals have some more time to ask that question, but right now we have to move to the Conservatives. If you wouldn't mind submitting something in writing to the committee if that doesn't come up, we'll make sure we have the answer to that question.

Mr. Kelly, we start the five-minute rounds.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thanks, Mr. Chair.

Over the past couple of weeks, the appearance of conflict of interest or connections between some ministers and staff or family has been raised in the House.

This is one example, and it is a question for Mary Dawson, please. It's in respect to questions about Agriculture Minister MacAulay's chief of staff, Mary Jean McFall. An article in *i*Politics on February 3 quotes the minister as saying that the Ethics Commissioner is evaluating things and that it takes time.

How long does it usually take for your office to provide advice or opinions regarding potential conflicts of interest by senior staffers and officials?

Ms. Mary Dawson: Usually it doesn't take too long. The fact is that we're still in the opening stages of a new Parliament, so the staff, for example, are newcomers. They're still being appointed, so it depends on.... I'm not quite sure, but in that particular instance, the staffer was one who was fairly recently appointed.

It does not take us very long. We're partly at the mercy of the person who's involved, because they have to make themselves available, but when they make themselves available—and most of them do, in a very timely way—we sit down and assess their holdings and their activities and various things that need to be looked at. Once they have been looked at, some of the information we get is not made public and some is, because there's a distinction between what they have to report and what has to be made public.

Certainly the norm in virtually all cases is that by the time 120 days have gone by, there's something up on the website indicating what steps have been taken. Very often in cases like this, there would be conflict of interest screens and various disclosures.

If we say that we are looking at it, we're looking at it, but it's not a long period of time; it would be a matter of weeks, depending how complex the file was.

Mr. Pat Kelly: Okay. This article was about three weeks ago.

This then gets into the question that my colleague was raising. The mandate letters that many ministers received addressed the appearance of conflict of interest—not merely true conflict of interest, but the appearance of it. It suggests that some Canadians may view that as having two bars, one being set by the Prime Minister, and one being set in legislation.

I guess I'm still not sure which bar your office may look at. Do you strictly look at the legislative bar, or are these mandate letters that tell the minister that they must avoid the appearance of conflict of interest part of how you analyze the file?

Ms. Mary Dawson: I follow the wording of the act or the code when I determine what the bar is, and, as I indicated earlier, sometimes the bar in the letters and in the accountability guide is higher.

I frequently give what I call hard advice and soft advice to people. I'll say "Look, you're not contravening the act if you do whatever, but it may look like you're contravening the act, so consider whether you want to take the risk. You know, the *Globe and Mail* test."

Basically, the conflict screens are meant to address these issues, and maybe I should explain a little about how the conflict of interest screens work.

We set up a mechanism whereby anything that looks like a matter that might be a conflict is received by an assistant or a deputy minister or somebody else it's going through, and it's stopped. If somehow something makes its way through, if something slips through by accident, there is the mechanism of recusal. That's not only within the department; it could be in any of their activities, because somebody's managing their work schedule. There are two levels of dealing with these kinds of issues.

However, just because somebody has an interest in something that may appear to be a conflict, if they have adequate screens to stop them from having that problem, that's what happens.

● (0955)

The Chair: Okay, thank you.

That's the end of that round.

We now move to Mr. Massé, please, from the Liberals, for five minutes.

[*Translation*]

Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.): Thank you, Mr. Chair.

My question is for the Information Commissioner.

In your annual report, you say that 2014-2015 was the most difficult year of your mandate. I would like you to tell us about the difficulties you encountered. In addition, what progress have you seen over the past year?

Ms. Suzanne Legault: I feel 2014-2015 was a deplorable year in the history of access to information in Canada, simply because the previous government produced a bill which retroactively cancelled the application of the Access to Information Act. It is quite a well-known issue. We discussed this issue and the data from the long gun registry, as well as the investigation we conducted with the Royal Canadian Mounted Police.

This was in my opinion unprecedented in the history of Canadian democracy. The issue is now before the Federal Court in two cases. We obtained a court order from that court to have the information that still existed seized and stored. In fact, this was the data from the Quebec registry.

We also have proceedings ongoing before the Superior Court of Ontario on a constitutional issue, which is that the law contravenes the rule of law in Canadian democracy, and freedom of expression under section 2(*b*) of the charter.

Both matters are ongoing. The Federal Court case was adjourned *sine die* until the Superior Court hands down its decision. Proceedings at the Superior Court have been temporarily stayed at the request of the current government. We are waiting to see what the government is going to do regarding that file.

So that was the most difficult year particularly because of that file. In my opinion this represented a total negation of Canadians' rights to access information. It is a black stain in the history of access to information in Canada.

Mr. Rémi Massé: Thank you.

[*English*]

The Chair: You still have two minutes, Mr. Massé, if you want.

Mr. Rémi Massé: I'm fine. That covered what I was looking for.

The Chair: Is there anybody else, then?

Go ahead, Mr. Bratina.

Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.): Thank you, Mr. Chair.

Under the Investment Canada Act, agreements are made with foreign companies, parts of which are confidential in the sense of being proprietary business information.

We have an instance now in which so-called secret parts of that act —which I believe are really confidential parts, as opposed to secrets —are being asked for. In fact, a judge has ruled that the information could be released. The government is not moving ahead with the release of that information, based, I assume, on the notion that the judge may not have the right or that there is still the possibility of signatories to the confidential agreement challenging the release of the public information.

Are these kinds of agreements all vetted through the Privacy Commissioner or someone else in his office when there is an Investment Canada Act agreement or other federal agreements with private or confidential parts in them?

● (1000)

Mr. Daniel Therrien: Not in every case.

I think the way this would come up under the Privacy Act is if someone were to make a request for access to information about himself or herself that would involve that agreement. Then we would have to look at whether access should be given. Also, one of the provisions we would look at deals with protecting confidentiality of certain commercial practices, so this is not a clear-cut case.

There are provisions in our act as well as in the Access to Information Act that try to balance right of access with protection of commercial interests. Madame Legault may wish to add to that.

Mr. Bob Bratina: If I may—

The Chair: Mr. Bratina, I'll have to come back to you. Your five minutes are up.

Mr. Bob Bratina: Oh, I'm sorry. Thank you.

The Chair: You're on the list coming up, so keep your train of thought going.

We go to Mr. Jeneroux now, for five minutes, and then we'll go back to the Liberals.

Mr. Matt Jeneroux: Great.

It seems as though their five minutes last a lot longer than our five minutes, but anyway....

Getting back to some of my earlier questions, I would like to maybe get a bit more clarity from the lobbying commissioner.

You mentioned preferential access and what that looks like. I think you mentioned in the code you published that you view the matter of having that access realistically and practically.

Where I'm coming from is that yesterday in the House there was mention of the Minister of Justice having a spouse as a registered lobbyist. I'm curious as to how you view preferential access. If you're sitting down at a dinner table every night, there's a bit of preferential access. What kinds of steps do you take, so we're clear on this side about what that means?

Ms. Karen Shepherd: In the guidance I've provided to lobbyists, preferential access occurs when they share a relationship. For example, I've defined “friend” and “family member”. It's also if there are financial dealings.

In terms of “friend”, it's where there is a close personal bond of affection that goes beyond simple association. To be clear, it's not part of the lobbyist's broad social or business circle. For a “family member”, it's immediate family members—spouses, children, and parents of both—and the financial interest.

In terms of making sure, in doing my outreach activities I've been making very clear to lobbyists that it's out there. I also do outreach activities with public office holders, in terms of talking about what the obligations and requirements of the lobbyists are.

Mr. Matt Jeneroux: Do you then work with the conflict of interest commissioner? Do you touch base on any of this at all? Is it completely separate?

Ms. Karen Shepherd: During my two-year consultation process, I did hear from public office holders. Before publicizing the guidance, I showed it to my colleague. In terms of the “friend” definition, it is actually based on a definition that was used by my colleague in another report that she had done.

Mr. Matt Jeneroux: Then a spouse wanting to be a registered lobbyist would go to you, obviously, because that falls within the Lobbying Act, but the member would talk to the Conflict of Interest Commissioner, who would then determine whether or not there is a conflict of interest. Are you solely looking at the lobbyist without, then, any of the perceived preferential access that you mentioned earlier?

I'm trying to draw the connection here.

● (1005)

Ms. Karen Shepherd: I think the way you said it is correct: the lobbyist would be coming to me to determine whether he or she is in breach of the code or to get good guidance—as I was saying, a number of people are doing that—and the member would be going to my colleague, I assume, to determine whether the relationship is problematic for the member.

Mr. Matt Jeneroux: Would the member then report back to you?

Ms. Karen Shepherd: The member would not have to report to me. The guidance I'm giving to the lobbyist is clear: if you have a relationship in which there might be seen to be a sense of obligation, you should not be lobbying that particular individual. If the individual is a minister, you should not be lobbying that minister and/or his or her staff.

Mr. Matt Jeneroux: Even though the minister is part of a larger cabinet, and...?

Ms. Karen Shepherd: The overall precept that's in rule six is that the lobbyist should always ask himself or herself if the sense of obligation or the preferential access would exist if the lobbyist were to call someone else.

To be clear, lobbying is a legitimate activity. It's not to stop someone from lobbying.

Mr. Matt Jeneroux: So don't call your wife. Okay.

Ms. Mary Dawson: I should mention that quite often the public office holder will come in with their spouse or the other implicated person so that they both understand what our rules are. That's not uncommon at all.

Mr. Matt Jeneroux: Thank you.

The Chair: That ends that round.

Our last five-minute question goes to Mr. Saini of the Liberals.

Mr. Raj Saini: Madame Legault, I would like to pick up on my honourable colleague's comments in the last round of questioning.

In your report you wrote that 2014-15 was an *annus horribilis*—those are my words, but that is what I think you meant—and you said there was a continued refusal to properly fund the office and that it had led to an increase in the background of complaints.

I may be paraphrasing what you said, but you said that this was a concerted effort to deny Canadians the right to know. My question under what you've written, which is somewhat strong language, is this: do you believe that this was something done politically to diminish your ability to provide Canadians with answers? Could you just elaborate on that, please?

Ms. Suzanne Legault: It was very clear in all of our requests for funding that the office simply could not—and it still cannot—manage its workload. When I started as Information Commissioner, we had 2,500 files in inventory. We managed to bring that down to about 1,700 files after three years, and then budget cuts started. As we speak, we now have more than 3,000 files in inventory, and it keeps going up. It takes close to a year before we can actually assign an investigation file to an investigator.

This is in the context of a fundamental democratic right. This is what the Supreme Court of Canada has stated. I don't make these rules; I'm just here to administer the complaints function, which is part and parcel of Canadians' democratic right to hold their governments to account. In a situation in which the funding of the office continuously was cut....

As well, it was very well known to the government that this was the situation. I tried every possible avenue open to me to secure additional funding, which was refused. Hopefully this situation will be corrected so that we can properly investigate cases in a timely manner.

Mr. Raj Saini: Why do you think it was refused?

Ms. Suzanne Legault: I don't know. I'm not privy to these discussions and these decisions.

Mr. Raj Saini: The next question I have is for Ms. Dawson.

We talk about perception. Just to give you a bit of background, I'm a pharmacist from a small community. Now that I'm politically involved, I'm much better known, but a lot of my patients are very influential members of the community. When I go to events I may see them, I may appear with them, and they ask me for a photograph. You mentioned the term “broad perception.” How do you navigate that sort of profile that you now have as a politician and the profile that you also had prior to entering politics?

I know judges, I know captains of industry, I know academia, and I know people who own their own companies as a politician now, but I knew them before, not only as their pharmacist, but also as a member of the community. As a politician, how do you navigate between the two? I think there's this issue of perception that's getting muddled. Can we provide some clarity on that, please?

● (1010)

Ms. Mary Dawson: The main question is whether there is something that you can do for them as a politician. If you're involved in a committee hearing on some piece of legislation or something that will affect them, you'd better be careful. If, in fact, there's nothing between you and them in the way of business, there is no problem. People will make out of instances of people taking pictures together all sorts of inferences but, if there's nothing at stake, it's not a problem. My test is whether there is a situation of conflict of interest.

There's also the issue of old-time friends. Of course it's logical that you won't drop all your old-time friends. On the other hand, it's probably wise to be careful about what you're doing in a period of a year or two around some kind of important decision that you have to make in your professional job.

It's really fairly easy to decide whether there's something there that you shouldn't be letting them influence you on.

The Chair: I think that's about it. That does it for five minutes. You've got a prescription for perception there, I think, Mr. Saini. That's good.

We now have the last three minutes. Go ahead, Mr. Blaikie.

[*Translation*]

Mr. Daniel Blaikie: Thank you, Mr. Chair.

I would like to briefly go back to the budget, particularly in the context of the situation at the Office of the Information Commissioner of Canada.

Ms. Legault, if the government changes laws on access, how do you think this will impact your office's capacity or resources to process all of the requests?

Ms. Suzanne Legault: We are currently asking for additional funds simply to eliminate the backlog. Such a backlog has important consequences. I was listening to my colleague talk about surveillance in connection with national security. The Office of the Information Commissioner is not in a position to process 400 files on national security. A monitoring system is in place, but it cannot be effective. I have the right to see the documents to know whether disclosure is appropriate or not, but I do not have the resources to do so. This problem is real and present.

If the government decides to propose legislative amendments to the Access to Information Act, we would then be in a position to determine the impact on the office's organization. Legislative measures granting the power to issue orders were proposed in the mandate letters. Such an amendment would have an impact on the organization and the structure of the Office of the Information Commissioner of Canada. We would then have to assess the situation.

We have already contacted our Ontario colleagues, who have the power to issue orders and whose office is of a similar size. We want to know how they are structured and how much money they spend. We are already doing that work.

We are also putting in place a code of procedure for investigations and institutions so as to clarify how files will be processed. This could easily be adapted to an order model.

We also intend to send some of our employees on arbitration courses to prepare for the transition. We are working in this way and if there are concrete legislative amendments, we will then do an assessment.

The funding we are requesting is temporary. Our purpose in requesting it is to eliminate the backlog.

● (1015)

[*English*]

The Chair: Thank you. That's three minutes.

At this time I'd like to ask a question from my prerogative as the chair.

Ms. Shepherd and Ms. Legault have been able to address the budget question that was asked earlier. I'd like to give Mr. Therrien and Ms. Dawson a few seconds each, if you don't mind, to advise this committee on the current situation when it comes to budgets for your offices.

We'll start with Ms. Dawson.

Ms. Mary Dawson: We have never had a big problem with our budget. We were generously given a budget when we started. We've gradually edged up so that we're spending almost the whole of our budget now, and we're not spendthrifts by any stretch. There probably will come a time in a year or two when we will ask for a bit more, but so far we have not had a problem.

The Chair: Thank you.

Mr. Therrien.

Mr. Daniel Therrien: We try to be as effective as possible with the resources that we have. I would mention two factors.

I mentioned in my remarks that the rapid evolution of technology is characterized by some as a fourth industrial revolution. A lot of companies and departments are collecting and sharing information with new technology, and they are developing new programs and new business models all the time. We have problems keeping up with this. That is point one.

Point two is that we've done some public opinion surveys on what Canadians think in terms of privacy protection. Consistently an extremely high proportion of people, 90% in the last poll, said they were very concerned about their privacy protection and their loss of control over their personal information. The vast majority of people are unaware of what to do to protect themselves and to protect their privacy. We're doing what we can, but we're having difficulty in keeping up with companies in particular, and we would like to do much more to help Canadians understand the reality of the new technologies so they can participate more confidently in the digital economy.

The Chair: Okay.

I have one last question for each of you, using my prerogative as chair.

As soon as this part of the meeting is done, we'll be discussing our future agenda. Each of you has outlined your priorities as to what the committee could be doing to assist you with your work. I'm going to ask each of you, if you don't mind—and if you're not comfortable, you don't have to answer—if you had a number one priority this committee could work on to assist you and your department, what would that number one priority be?

I'm going to let each of you think about it for a second, and then whoever wants to answer may do so. Don't feel obligated to answer if you don't want to.

Go ahead, Ms. Legault.

Ms. Suzanne Legault: That's easy, because I only presented one priority in my remarks, so I will reiterate it.

I think the time has come to modernize the Access to Information Act. It's a great opportunity, and by the way, 2016 is the international year of access to information. We are celebrating the 250th anniversary of the first freedom of information law in the world in Sweden. It's a great year, a great opportunity, and great timing, and we have done a lot of work collectively to propose proper recommendations for a reform.

The Chair: Okay, thank you.

Ms. Shepherd.

Ms. Karen Shepherd: I continue to believe that Canada has one of most robust models in the world when it comes to lobbying, but as I said in my opening remarks and during the review of the legislation, I think one of things that would help in terms of giving greater flexibility is a review of the administrative monetary penalties.

Right now the commissioner operates between educating and monitoring on the one hand to referrals to the RCMP involving fines and jail terms or reports to Parliament on the other hand. I think there could be some things in between to provide more of a continuum of appropriate sanctions for the alleged breach.

The Chair: Okay, thank you.

Mr. Therrien.

Mr. Daniel Therrien: A number of subjects have been mentioned today, such as encryption and so on. These are good subjects for you to look at, but I'll mention something that may be less obvious.

The Privacy Act also is antiquated. It dates from 1983, and technology obviously has changed a whole lot since 1983. This act is no longer able to deal with the realities of 2016. Over the years, the Office of the Privacy Commissioner has made a number of recommendations. They are available on our website to be looked at, and I would be happy to speak to you about reform of the Privacy Act.

● (1020)

The Chair: Thank you.

Ms. Dawson.

Ms. Mary Dawson: I listed five or six in my speaking notes that I thought were the major requests, but if I had to pick one of them, I would say enhancing reporting requirements. I would extend it to some extent to the public office holders, as opposed to just the reporting public office holders, and I would also establish some post-employment reporting requirements in that year where there are some rules.

The Chair: Thank you very much.

On behalf of my colleagues around the table, we thank each of you for taking time out of your busy schedules to come here. It is not common to have all four commissioners before this committee at the same time. This was a rare opportunity, and we look forward to a future opportunity when we can.

We wish you the best as you continue to do the great work you do on behalf of Canadians. We thank you very much for coming today.

We'll now go in camera to discuss committee business.

[*Proceedings continue in camera*]