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Chair

Mr. Bob Zimmer

Standing Committee on Access to Information, Privacy and Ethics

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• (1530)

[English]

The Chair (Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC)): I will bring to order meeting number 149 of the Standing Committee on Access to Information, Privacy and Ethics. Pursuant to Standing Order 81(4), we are studying the main estimates 2019-20, vote 1 under the Office of the Commissioner of Lobbying, vote 1 under the Office of the Conflict of Interest and Ethics Commissioner, vote 1 under the Office of the Senate Ethics Officer, and votes 1, 5, 10 and 15 under the Offices of the Information and Privacy Commissioners of Canada, as referred to the committee on Thursday, April 11, 2019.

Today we have with us, from the Office of the Information Commissioner of Canada, Caroline Maynard, Information Commissioner of Canada; France Labine, deputy commissioner, corporate services, strategic planning and transformation services; and Layla Michaud, deputy commissioner, investigations and governance.

We will start off with you, Commissioner, for 10 minutes.

[Translation]

Ms. Caroline Maynard (Information Commissioner of Canada, Office of the Information Commissioner of Canada): Thank you, Mr. Chair and committee members. I am pleased to be here with you today.

As you said, Mr. Chair, I am joined by France Labine and Layla Michaud.

[English]

I now have 15 months under my belt as the new Information Commissioner, and at this point in my mandate, I see very positive signs of progress but also some challenges that lie ahead.

I am very grateful for the \$3 million in temporary funding announced for my office in budget 2019, which was sought to allow me to maintain the momentum of my complaint inventory reduction strategy. I will be devoting this money to hiring new investigators, just as I did with the \$2.9 million of temporary funding allocated in last year's budget.

[Translation]

This is the fourth consecutive year that my office is requesting and receiving temporary funding. Note that these requests for temporary funding were stopgap measures in anticipation of a more permanent solution. Improved funding is key to enhancing the OIC's capacity to fully and effectively fulfill its mandate.

My team makes the best use of every dollar we receive. We are reviewing and improving the investigation process. We use technology to innovate and speed up tasks and processes. We collaborate with institutions and requesters as much as possible with a view to completing investigations effectively and efficiently.

[English]

Our results speak for themselves. The number, the quality and the timeliness of completed investigations have dramatically improved. My team closed more than 2,600 complaints in 2018-19. This is 76% more than the previous year. It's a record for this organization. Two-thirds of these investigations resulted in requesters receiving more information and faster responses from the institution.

However, despite our best year ever, I foresee trouble on the horizon. I started the first year of my mandate with an inventory of approximately 3,500 files and I received more than 2,500 new complaints in 2018-19. This large number of new files meant that despite my team's excellent performance, I was barely able to make a dent in my inventory. At this rate it will take us decades to clear our backlog.

Simply put, my allocated resources of \$11.5 million in the main estimates and 93 approved full-time equivalents are stretched extremely thin by the enormous caseload, which has increased by 25% in the last six years. Without the additional funding I could have in the neighbourhood of 5,800 old and new complaints in the books this year.

• (1535)

[Translation]

On top of this, the proposed amendments to the Access to Information Act currently before Parliament will have operational and, therefore, financial impacts on my office—potentially significant ones.

At the time Bill C-58 was introduced, the then President of the Treasury Board stated that the government would also be increasing the Information Commissioner's resources by \$5.1 million over the next five years and \$1.7 million on an ongoing basis.

[English]

While this additional \$1.7 million will be very welcome should Bill C-58 be adopted, it will not be sufficient for my office to meet the requirements of the bill in its current form.

Looking ahead, operating year by year with temporary funding is both inefficient and unsustainable. This is my number one complaint. It does not allow me to plan for the medium or long term. Insufficient funding means that I am unable to maintain momentum in completing investigations and ensuring that Canadians' right of access to information is respected.

I can assure you that I will continue to use my current resources to the greatest effect. I will also continue to take every step I can to find efficiencies in my operations, but frankly, there is only so much that reviewing processes and streamlining can achieve. This is why it is a priority for me this year to secure adequate permanent resources that will account for all the work my office has to carry out under the act.

[*Translation*]

With more ongoing resources, I could increase the size of my investigation team permanently, to not only complete more investigations each year but also get moving on new ones more quickly.

Permanent funding would also be required to allow me to operationalize the amendments to the act and to ensure as smooth a transition as possible.

These are the results I would like to achieve for Canadians.

Thank you for the opportunity to appear before you today.

I would be pleased to take your questions.

[*English*]

The Chair: Thank you, Commissioner.

Mr. Erskine-Smith, you have seven minutes.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks very much.

It is incredible in some ways that Bill C-58 is still not law, but you probably feel that more than we do. What number would you be looking at on an ongoing basis to fulfill the needs of your office? What is that magic number?

Ms. Caroline Maynard: We have 3,500 old complaints right now in the backlog and in the inventory.

Mr. Nathaniel Erskine-Smith: Let's just bracket that for the time being. On an ongoing basis, how much does your office need annually to function?

Ms. Caroline Maynard: Right now, with the \$3 million extra that we have, we are floating just equally with what we have coming in and what we are finishing. I'm receiving about 2,500 complaints a year and this year we closed 2,600.

Mr. Nathaniel Erskine-Smith: That's with the \$11.5 million from the main—

Ms. Caroline Maynard: Plus \$3 million.

Mr. Nathaniel Erskine-Smith: —with a top-up of \$3 million. You're looking at \$14.5 million just to get by. You said it was a 25% increase over six years. Has that stabilized or is it a continuing trajectory?

Ms. Caroline Maynard: It keeps going up. From 2014 to date, we started with 1,700 complaints a year, and now we're at about 2,400 to 2,500 a year.

Mr. Nathaniel Erskine-Smith: If there was a one-time injection of funds to say, "Let's clear out that backlog"—3,400 would be left, I guess, after this year—how much money is required to clear out that backlog?

Ms. Caroline Maynard: It's very difficult to know. My office calculated we would need approximately \$9 million in one year to hire all the investigators necessary to get rid of the backlog. Even if we were to do that, the institutions would not be able to absorb the extra workload.

We need a continuous amount of money coming in for at least five years, so we can work on our backlog, work on new files, but we also need more resources for the institutions to be able to respond to us. We can't do these investigations by ourselves. We need the institutions to be able to respond to both new requests and complaints.

Mr. Nathaniel Erskine-Smith: At what point does a file enter into the backlog, as it were? Is it after one year?

• (1540)

Ms. Caroline Maynard: It's just at the end of the year.

Mr. Nathaniel Erskine-Smith: That's what I mean. When we talk about 3,500 that are in the backlog, you've cleared out 2,600. If I commence a file today, and if a year from today it's not closed, does it enter the backlog?

Ms. Caroline Maynard: Yes, it would be in my inventory when I start the year.

Mr. Nathaniel Erskine-Smith: There are 3,500 files that are over a year old. What's the oldest file?

Ms. Caroline Maynard: The oldest is 2007.

Mr. Nathaniel Erskine-Smith: Wow, 2007. Is that because it's a very complex file?

Ms. Caroline Maynard: It's a very complex file, yes.

Mr. Nathaniel Erskine-Smith: When you look at the 3,400 files that remain, is there a sense that there are very complex ones that would take up the bulk of time?

Ms. Caroline Maynard: We have 500 cases, and we have less than that now. I think we reduced it to 300 that are previous to 2015. Am I correct?

Ms. Layla Michaud (Deputy Commissioner, Investigations and Governance, Office of the Information Commissioner of Canada): Yes.

Ms. Caroline Maynard: That was my priority this year. I wanted to get rid of all the old files previous to 2015. The problem with those cases is that most of them are special delegations, national security cases, consultations with other countries, provinces, etc. There's a lot of complexity to these files or they're humongous. Sometimes we have to talk to different institutions and get third party information. The quick and easy ones are done within a year. The backlog gets bigger and larger with older files.

Mr. Nathaniel Erskine-Smith: Is there no way to triage to say, "These are really complex ones that are going to take a large amount of time, but with an additional set of resources, we can really tackle them?"

Ms. Caroline Maynard: That's the plan. We're going to be attacking the backlog with a special team starting this year. We also have an early intervention team we just put in place last year, and it is doing the new cases as they come in. Hopefully, we'll reduce half the backlog.

Mr. Nathaniel Erskine-Smith: In terms of going forward, it seems to me that not only would more resources for your office make things go more smoothly and resolve a lot of files, but addressing the culture of delay, which this committee learned a lot about in the course of our first study, would go a long way as well.

You've been on the job for 15 months. Your predecessor spoke a lot about the culture of delay. Have you experienced this culture as well?

Ms. Caroline Maynard: What we experienced in the eliminating of the fees is that requesters will often ask for larger volumes of documents. The institutions have not responded to those volumes as well as we were anticipating. Interestingly, the number of cases we have on delays and time limits is about 1,300 a year. What we're doing is negotiating with the institutions a date when the person would get their file.

We don't get that many complaints about time limits—not as many as I thought we would get—versus the numbers we see in the stats from Treasury Board. We realized that about 62% of the cases are done within 60 days of the request being received. That means there are about 27,000 to 30,000 cases that are over the 60 days, and what we see in my office are usually cases past 120.

I think people are pretty reasonable, and when they can negotiate a timeline that is reasonable for them because of the volume of their request, we don't see that many under 120 days, but over 120 days is usually when the requesters come to my office to make sure that it's received in a reasonable time.

Mr. Nathaniel Erskine-Smith: I had put forward amendments to Bill C-58, as had a number of my colleagues, and there was that one provision where the government was sort of taking a step backwards, from my understanding—it was a while ago now—but the Senate fixed that. Is that right?

Ms. Caroline Maynard: Yes.

Mr. Nathaniel Erskine-Smith: Okay. The Senate was able to do something that this House committee was unable to do, unfortunately.

Ms. Caroline Maynard: Do you mean proposed section 6?

Mr. Nathaniel Erskine-Smith: Yes. It was identical to what the House committee was asking for, if that's right. I'm not making that up. Is that right?

Ms. Caroline Maynard: Proposed section 6, which was asking for the subject matter, the timelines...?

Mr. Nathaniel Erskine-Smith: Yes.

Ms. Caroline Maynard: Yes. That disposition has been removed.

Mr. Nathaniel Erskine-Smith: Yes, we had put something forward, and then the Senate put something forward and they were able to get it through.

Okay. Thanks very much.

The Chair: Thank you, Mr. Erskine-Smith.

Next up for seven minutes, we have Mr. Kent.

Hon. Peter Kent (Thornhill, CPC): Thank you, Chair, and thank you, Commissioner, for visiting us again.

When Bill C-58 was originally tabled, your predecessor said that it failed to deliver on the government's promise of openness and accessibility and in fact said that it was “a regression of existing rights”. We know that it's in the Senate and there have been many amendments. How would you characterize the bill as it sits in the Senate today with those amendments?

Ms. Caroline Maynard: Actually, there have been about 30 amendments made.

• (1545)

Hon. Peter Kent: Yes.

Ms. Caroline Maynard: I would say that three-quarters of those amendments were requested by my office or by my predecessor. What I would say is that the current version of the act is definitely a better bill than what we have currently. The act right now is 35 years old, and what is being proposed in the amendments has made it better.

Hon. Peter Kent: Would that mean that your predecessor's characterization of Bill C-58 as “regressive” has been transformed by these amendments or is it still...?

Ms. Caroline Maynard: I think her call for changes has been responded to.

Hon. Peter Kent: It has been met.

Ms. Caroline Maynard: Yes.

Hon. Peter Kent: You are satisfied with Bill C-58 as—

Ms. Caroline Maynard: The act still needs to be reviewed, and I'm really happy that one of the amendments is that there's going to be a mandatory review in a year and, after that, every five years, because as everybody knows, we haven't been consulted for Bill C-58. That's one of the issues. A lot of those amendments came after the fact.

I'm really hoping that in the next year we will have the consultations that were necessary and that the examples we have through our investigations will be used to better the act. Especially, I think, some of the exemptions and the exclusions that have not been touched by Bill C-58 need to be looked at with our new digital world and what Canadians are requesting. I'm really looking forward to that process coming up if it's that.

Hon. Peter Kent: Do I take from this that you would urge the senators to get that legislation back to the House as soon as possible and that the House accept it in its full amended form?

Ms. Caroline Maynard: I'm really hoping that Bill C-58 will be passed, yes, before....

Hon. Peter Kent: Okay. Thanks.

Coming now to the better delivery of services across departments and agencies, could you give us your best performers in the 15 months since you took office and the worst performers in terms of improvements and responsiveness?

Ms. Caroline Maynard: Well, the....

Hon. Peter Kent: There must be a worst performer. I suspect we know which it is.

Ms. Caroline Maynard: The problem is that it's difficult to talk about this. I can only report in my annual report. In terms of numbers, we have issues with some institutions every year. The RCMP is having a really hard time getting resources. IRCC is doing very well. It gets 55,000 requests a year, and they're pretty good, actually, in responding to those requests. We had good collaboration this year with Canada Post. We had old files with them, and we were able to find strategies to close them and to get the information to the requesters.

Hon. Peter Kent: A large part of the RCMP's backlog was that many of the requests were actually made by force members trying to get their own personal data. Has that contradiction of...?

Ms. Caroline Maynard: I'm told that's one issue. They were asking their own members to go through the access requests to obtain their personal information. That has been fixed.

Hon. Peter Kent: Okay.

I'm sure that you're aware of the Global Television access to information request to the RCMP regarding the Prime Minister's illegal vacation, and the RCMP response two years later. Is that a case you would flag and investigate?

Ms. Caroline Maynard: I can't comment on whether or not we had a complaint on this issue, but I can tell you that anything we see in the news, we follow. If there's a reason to start a systemic investigation, we think about it.

Hon. Peter Kent: Is it fair to say that across departments, across agencies, privacy is often an excuse offered to justify delays where there may be sensitivities or reasons to not respond promptly?

Ms. Caroline Maynard: By privacy, do you mean section 19, personal information?

Hon. Peter Kent: Yes.

Ms. Caroline Maynard: This is the most used exemption of all the requests we see—40% of our complaints deal with section 19, personal information.

Hon. Peter Kent: Do you think that the staff at these departments and agencies need to be better informed as to what the limits of using that exemption might be?

Ms. Caroline Maynard: One of my priorities this year is to issue more guidance and positions. When we find examples where the section has not been used appropriately, we are going to start publishing more of those decisions. Hopefully, Bill C-58, which will allow me to publish decisions as they are decided instead of waiting for a special report or an annual report, is going to be a big plus. We definitely see some cases where we can help institutions better understand their obligations.

• (1550)

Hon. Peter Kent: Thank you.

The Chair: Thank you, Mr. Kent.

Ms. Hardcastle.

Ms. Cheryl Hardcastle (Windsor—Tecumseh, NDP): Thank you very much for being here.

Picking up from where my colleague, Mr. Kent, left off in respect of the coaching you're doing, what about the solicitor-client privilege issue with the Department of Justice, section 13? Is that an area you're looking at trying to review, reinforce, or repair? Is that an area you see needs attention, or is that just...?

Ms. Caroline Maynard: Section 23 is the section on solicitor-client privilege. It's a discretionary exemption. I think some of our most important work has to do with what factors are to be considered when we use discretion and how we review those cases. Often the discretion is well applied, but we have factors that are encouraging access versus other institutions that prefer more privacy or secrecy. On solicitor-client privilege, I can tell you that the case law is not helping us in giving access. The cases that deal with section 23 are unanimous: It's a privilege and it has to be protected.

What we're trying to do is to find lines with the current minister and his staff between what they consider pure solicitor-client privilege versus training manuals versus policies. Sometimes we have legal counsels involved in policy drafting, but these aren't legal opinions. We have a lot of examples. Definitely, these types of examples are the cases I want to use in the future to provide guidance on where my office is positioning itself with respect to those sections.

Ms. Cheryl Hardcastle: Okay. Thank you very much for that.

Going back to the issue of the backlog and the need for stable, predictable funding to be able to put forward a game plan, there was some initiative that was taken with the online pilot project. Maybe you can tell us a little about some of the opportunities there or what you learned from it, and the financial impact that it has on your resources.

Ms. Caroline Maynard: In December 2018, the online complaint form was launched. It's being used. It's a good tool and 85% of our complaints are now being done electronically, which is really helping us do our work. One issue with it is that it's a protected A system, so complainants are unable to upload documents that would be protected B, with personal information. We are working now on enhancing that system so that we don't have to wait for the mail that accompanies the complaint form because what we gain now we are losing in waiting for the information to come by mail or through protected emails.

We're working on the system. We've also taken other steps to improve our system, and I think that's why we did so well this year in closing 2,600 cases. We reduced the size of our teams. We involved legal counsel in files right away. We are collaborating with institutions. When I say that, I know that people are scrunching because I'm investigating them, but we are meeting with the DMs, the ADMs and the leadership of every institution to show them what they are protecting, and it's very impressive to see the reaction of institutions when they are actually notified about what they are trying to protect, or the redaction.

Sometimes, I see that the communication between the ATIP office, the OPI and the leaders is not the same. We have great collaboration at the top and great collaboration at the office. Sometimes it's the middle management that is afraid of letting go of information. We are trying to get them to talk to each other and have the leader really explain their vision of access, and the openness and transparency of their institution.

We're making a lot of progress in that way, meeting those institutions personally and even meeting the executive committees. I've been to many committees, but it's working.

• (1555)

Ms. Cheryl Hardcastle: Are there recommendations with that? How are you envisioning the financial impact? Should new dollars be invested in that area? Another area would be the security aspect and the technical security online. What are you doing moving forward?

Ms. Caroline Maynard: We need to invest in training, staffing and resources. Some of the institutions that I'm talking to have the financial resources, but they can't find anybody. Consultants are very expensive. That's one of the reasons I want permanent funding. I'm hiring consultants on a year-to-year basis, but after March 31, I have to let them go. Their files are not finished. I have to reassign them to new people. I have to start a new contract process and then find new consultants. All the institutions are stealing trained staff from each other. We really need to invest in that area, not just money-wise but resource-wise.

The Chair: Thank you.

Next up, for seven minutes, we have Mr. Picard.

[*Translation*]

Mr. Michel Picard (Montarville, Lib.): Thank you, Mr. Chair.

Good afternoon, everyone.

We will try to do something to optimize your requests, to see how we might improve the situation.

First, you talked about a more permanent type of measure to meet your needs. What type of permanent measure were you thinking of? What might a permanent measure look like considering that you are seeing the number of complaints increase every year? In that context, would this permanent measure still fall short of your needs?

Ms. Caroline Maynard: We have to go through the Treasury Board application process just like any other institution. Ideally, even a provision in the Access to Information Act would allow me to come back here to committee to request additional funding, depending on the needs of that year. The Chief Electoral Officer and Mr. Dion, the Conflict of Interest and Ethics Commissioner, have such a provision in the legislation that governs them.

Personally, I think the best process for an officer of Parliament would be to have a special committee that receives requests for funding. That would help in meeting deadlines that can vary from year to year. Should the percentage increase, the financial response would be immediate and specific to the year.

Mr. Michel Picard: Do you believe that your financial needs essentially or even totally have to do with human resources?

Ms. Caroline Maynard: Yes. The only thing I currently need is more staff.

Mr. Michel Picard: How could additional resources help you meet current demand when there are problems within agencies that have to respond to you and do not have the resources to do so?

You mentioned the RCMP and other institutions that need resources. The permanent solution lies not just in your agency, but in providing all departments with the necessary teams to have ongoing interaction.

Ms. Caroline Maynard: Yes.

Mr. Michel Picard: As far as processing time is concerned, we were all surprised to hear that there is a file that has been lingering since 2007.

Depending on the nature of the investigations you conduct, isn't there a mechanism like the Jordan principle where after five years everything is annulled? That might be advantageous or disadvantageous for you, which might explain why we can't do it.

Ms. Caroline Maynard: No, the Access to Information Act currently does not allow us to stop an investigation. We have to see the investigation through for every complaint until we have addressed every aspect of the complaint.

However, if Bill C-58 passes, that will give me the authority to stop investigations into frivolous complaints or complaints from people with ill will. For the same reasons, the institutions will have the right to refuse to respond to a request.

Mr. Michel Picard: Would you be able to do so based only on criteria established by the act?

• (1600)

Ms. Caroline Maynard: Yes.

Mr. Michel Picard: Could other criteria be added?

Ms. Caroline Maynard: No, this will be based only on what is already set out in the act and will apply to new requests only.

All the files currently being processed will be subject to the current act. I will be able to use the new provisions on new requests to help us better process the complaints.

[*English*]

Mr. Michel Picard: I see flashes. Is that my age?

The Chair: I don't see them continuing. We'll let you know.

[*Translation*]

Mr. Michel Picard: I would like to come back to what you said about responding electronically. Are the requests made electronically or are the responses provided electronically?

Ms. Caroline Maynard: People wanting to file a complaint with the commissioner can now do so online. The complaints form is available on our website.

Mr. Michel Picard: That makes the process easier and may increase the number of complaints as a result.

Ms. Caroline Maynard: Yes, the number of complaints has increased, but in fact, not as a result of putting the form online. The number of complaints has increased since people started requesting a lot more information.

The number of complaints about institutions has increased by 225% in six years. We now have 100,000 requests for access to information within the government. I receive 2,500 complaints a year. You get an idea of roughly what the percentages are.

Canadians understand and are more aware of their right to access information. They are curious. There is also a risk of more proactive disclosure. Often people do not stop there. They want to read the underlying documents. There is no doubt that the more requests there are, the more complaints there will be.

Mr. Michel Picard: In other sectors, including the private sector, when it comes to taxation for example, automated systems are used to answer frequently asked questions.

Are such mechanisms being considered or applicable in your case?

Ms. Caroline Maynard: I would say no for now.

Mr. Michel Picard: It is not being considered or it is not applicable?

Ms. Caroline Maynard: It is not applicable.

To me the biggest problem right now, as far as the government is concerned, is information management. We are living in a digital age and the people in the government or the institutions are making decisions through email. There are a lot of email exchanges and that takes the most time to sort through.

There may be a request for information on a decision that was made. Out of the 500 emails that were submitted, only three might be relevant because the person who wrote the emails does not sort them properly or does not manage information well.

We end up with huge digital files containing emails that do not really relate to the complainants' requests.

Mr. Michel Picard: If the agency responding to you submitted a hundred or so emails and sorted the email themselves, wouldn't that have an impact on the responsibility for deciding what is relevant?

Ms. Caroline Maynard: It is everyone's responsibility and the law does not allow us to erase the company's information. The current problem is that no one sorts or cleans up the information.

Decisions should not be made through email either. Decisions should be made with the help of documents, as they are in the case of financial expenses, where there is real decision-making that includes signatures and authorities who conduct audits. That type of information is easy to obtain.

However, when we are talking about internal policies and directives, or major discussions within an institution, we realize there are a lot of things that should not be there.

Mr. Michel Picard: Okay.

Thank you.

[English]

The Chair: By the way, that was just a quorum call. That's why the bells went off briefly. It looks like it's fine now.

Next up is Monsieur Gourde for five minutes.

[Translation]

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Mr. Chair.

You mentioned 100,000 access to information requests. Every year, 2,500 complaints wind up on your desk. That means 2.5% of requesters are dissatisfied with the response they received, for whatever reason, whether it's the response time or something else. So when you launch an investigation in response to a complaint, it takes a long time.

When people file these complaints, are they aware of the cost involved in a single complaint? Maybe they think it costs around \$150 or \$200, but it could actually be between \$4,000 and \$5,000, or even \$6,000 and \$7,000, depending on the complaint. It's not like people are chipping in, either. This is a free service.

● (1605)

Ms. Caroline Maynard: There's no cost to them.

Mr. Jacques Gourde: Are people generally satisfied with the responses they get from you, or do they say they would have liked to know more?

Maybe 25% or 30% of them end up happy, while the rest feel that the responses they got don't help them move their case forward.

Do you have any data on that subject?

Ms. Caroline Maynard: Most of the people we deal with are satisfied with the office's services.

Of course, no one is ever happy with the turnaround times. But, as you say, the office is here to uphold access to information and ensure compliance with the act. In many cases, we're able to resolve the complaint just by explaining to people what we have in front of us. We can see the access to information files. When the complaint reaches us, we request the file, and nothing is redacted in the documents, so we can see exactly what was taken out and what was disclosed to the person. Often, people realize that the exemption was applied properly, or that it's a legal opinion, and they're satisfied. Essentially, people are looking for an opinion from someone who's outside the institution in question. They trust our investigators to tell them what's going on. We're able to resolve quite a lot of files that way.

However, there will always be people who aren't so satisfied because they want more. They think they should get everything, but unfortunately for some, and fortunately for others, I'm bound by the act. As it stands, the act sets out the exemptions and exclusions, and my job is to make sure that its provisions are applied properly.

Mr. Jacques Gourde: Are there any Canadians who use the findings from your investigations as a basis for suing the government in other areas, or in an area where they feel they've been wronged?

Ms. Caroline Maynard: I'm not aware of any such cases.

There are cases that end up in court after the documents are disclosed, of course, but I don't think that's based on my recommendations or my office's findings.

Mr. Jacques Gourde: When you receive a complaint, do you put it on the pile until its turn comes, or are the complaints classified by how fast you could deal with them? For example, do you put complaints that you could deal with quickly in one pile, and complaints that require specialist intervention in another, based on the nature of the complaints?

Ms. Caroline Maynard: That's sort of the system we've put in place. Right now, we have a triage team that looks at requests as they come in and figures out if we can resolve them.

I would say that it's much easier to resolve a case when the analyst from the institution has just finalized the file and the complainant knows exactly what they want. However, when we call someone about a file that's been in our hands for five years, sometimes it's not useful anymore. Sometimes the analyst who processed the request isn't with the institution anymore. It's old information that probably isn't relevant anymore.

That's why we try to deal with requests as fast as possible when we receive them. Naturally, with some complaints, we know as soon as we get them that they'll require a much more detailed formal investigation.

We do some triage. We've only been using this system for about six months.

Mr. Jacques Gourde: What's the ratio of permanent employees to external consultants? Is it 75-25, 80-20?

Ms. Caroline Maynard: Right now, of the 60 investigator positions, only five are held by external consultants.

Mr. Jacques Gourde: There are 60 investigator positions, out of 90 total. What are the remaining 30 positions?

Ms. Caroline Maynard: Those are staff from corporate services, communications and legal services.

Mr. Jacques Gourde: So every year, you would need an additional 25 full-time investigators to handle all the requests.

Ms. Caroline Maynard: That would be ideal. But if Parliament passes all the provisions concerning the act that appear in the bill currently under study, we would need much more than that. The Senate has suggested amendments we weren't aware of. That could have a big practical impact on us.

Mr. Jacques Gourde: Thank you.

[English]

The Chair: Thank you, Monsieur Gourde.

Next up is Madame Fortier for five minutes.

[Translation]

Mrs. Mona Fortier (Ottawa—Vanier, Lib.): Thank you, Mr. Chair.

Welcome.

Thank you so much for your presentation. It's clear that you're putting in a lot of effort to deal with all these cases.

If you don't get more funding, what will the consequences be, apart from delays?

Ms. Caroline Maynard: It would hurt not only my office's credibility, but the government's credibility as well.

Access to information has become a quasi-constitutional right, because we want Canadians to have access to information so they can question certain institutional decisions and ultimately have confidence in the government when it makes decisions that affect them.

The longer people wait, the less able we will be to respond to their complaints. I can't give complainants an immediate answer as to whether the institution has correctly applied the provisions of the act and fulfilled its obligations or if, on the contrary, we believe they're entitled to more information. By the time their complaint gets processed, the information has lost its relevance. People need information when they request it. The longer they wait, the more it hurts the government's credibility and undermines public trust in the government.

•(1610)

Mrs. Mona Fortier: Thank you.

You said it's important to be able to train staff in other departments. What would training various resources involve?

Ms. Caroline Maynard: That's not part of my mandate. It's the government that should take on this project. But I would say that there are definitely needs in that respect. Several institutional coordinators carried out a study in collaboration with the Treasury Board. They looked at the possibility of professionalizing access to information analysts and creating an agency. I don't know what's happening with that project, but it certainly deserves funding.

This agency would provide training and create a pool of staff who could go work in different departments. The idea is that the departments could share this staff. When the rail accident happened, Transport Canada was inundated with access to information requests, but it didn't have the capacity to handle them all. In those kinds of situations, analysts could be deployed to the various institutions.

The end goal would be to have a central agency to help all institutions handle access to information requests. The agency could train and hire staff. I could contribute by providing guidelines and explaining our processes, to make everyone is on the same page.

Mrs. Mona Fortier: So you would explain how you operate within the limits of your mandate.

Ms. Caroline Maynard: That's right.

Mrs. Mona Fortier: Thank you.

I have another question about something that came up earlier.

If Bill C-58 passes, will you be able to halt certain investigations that are under way, or are you absolutely required to finish processing those cases one way or another? Once the bill passes, will the act give you that ability, or would there be some kind of grandfather clause preventing you from doing that?

Ms. Caroline Maynard: The new act will apply to new complaints only.

Mrs. Mona Fortier: You have to find a way to deal with the existing complaints one way or another.

Ms. Caroline Maynard: Yes.

Mrs. Mona Fortier: That's important to know.

I have no other questions. Thank you very much.

[*English*]

The Chair: Thank you.

I think I'll go to Mr. Erskine-Smith because he had one question, and then I'll go to Charlie to finish.

Mr. Nathaniel Erskine-Smith: I'm going to pass my time over to Frank, but before I do, I just want to...while we're all here and without going into camera just yet. Previously in December, we had a meeting when the lawyer for Ontario Proud had come before us. We obviously have been caught up with holding Facebook and Google accountable and large social media platforms, and rightly so, but I don't want to lose the thread entirely.

I would ask that you follow up. There were certain undertakings that I believe Mr. O'Connor gave to this committee. I ask that you, as chair, follow up in writing to ensure that Mr. O'Connor and Ontario Proud take our committee and those requests seriously, specifically whether an undertaking was made. I'd be interested in a request to understand the name of the undisclosed vendor. That's my interest.

The Chair: Is it the will of the committee to follow through with the request from Mr. Erskine-Smith?

Yes, we can do this.

Mr. Nathaniel Erskine-Smith: With that, I'll turn it over to Mr. Baylis.

The Chair: Go ahead, Frank. You have about a minute and a half left over from that time, and counting.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Okay, is it still the case that the IRCC is representing more than half of your requests?

• (1615)

[*Translation*]

Ms. Caroline Maynard: Sure.

[*English*]

Mr. Frank Baylis: When I look at this 2,500 complaints, how many of those are—

The Chair: Sorry to interrupt you.

We still have 15 minutes. If you want to go ahead and then we'll finish with Charlie, we still have time to do those two last questions.

Go ahead for five minutes.

Mr. Frank Baylis: Thank you. I'll keep talking then. I'll talk slower.

Is IRCC still representing more than 50% of your requests?

Ms. Caroline Maynard: It represents 50% of the requests in terms of the requests for access to information, government-wise but not 50% of my complaints, I don't believe.

Mr. Frank Baylis: But they're 50% of your requests.

Ms. Caroline Maynard: It's 50% of the requests for access to information

Mr. Frank Baylis: Are we taking any action to deal with that? It seems to me that this is weighing down your whole operation—people just wanting to know where their refugee claim or their immigration is. It seems to me it's not the right avenue to use access to information to get that.

Are you looking at changing that, adapting it?

Ms. Caroline Maynard: I'm dealing with the complaints only, but the access requests are being governed by Treasury Board. I understand that they are looking at tools to help IRCC respond to these requests through other mechanisms than access requests.

Mr. Frank Baylis: Okay, so you are strictly the complaints.

Ms. Caroline Maynard: Yes. I'm just doing the complaints.

Mr. Frank Baylis: If we start off with, say... Let's just simplify it. It's a bit more than 50%. Let's say that 50% of the requests are IRCC, which really shouldn't be access to information, in my opinion.

How many of the 2,500 complaints are...? Is it 50% too?

Ms. Caroline Maynard: No. They're doing really well. IRCC is actually... As you mentioned, the requests are very simple. They have a process in place and they are dealing with them. It's on almost an automatic basis. The only thing is that it's a huge volume.

Mr. Frank Baylis: I understand.

I just grabbed the numbers here. I think 2016-17 are the last ones we had. About 90,000 requests and 48,000 were theirs. Where are these complaints coming from, the 2,500?

Is it spread across all of the complaints, or are there one or two problematic areas that need to be addressed?

Ms. Caroline Maynard: I believe their access requests are all dealt with at one office here in Ottawa.

Layla just told me that we got 500 complaints last year from the IRCC. So they're dealing with about 55,000 requests a year and I received 500 complaints.

Mr. Frank Baylis: Out of the 2,500, already we can take off 20%, 500. Is my understanding correct?

Ms. Caroline Maynard: It's 500 of the 2,500 complaints last year.

Mr. Frank Baylis: So 20% of your complaints are just there. That answers that question.

Now you have 2,000 left. I'm seeing that these requests come from across the board. I have numbers.

Where are the problematic departments? It could be that we have one or two departments where all these are washed up, because you have 500 out of 50,000. That makes about a 1% complaint rate.

Ms. Caroline Maynard: Yes, it's 1%.

Mr. Frank Baylis: You're looking at dealing with that, so that would take away 20% of your work. That's really good.

Where is the next biggest problem?

Ms. Caroline Maynard: Based on the stats from last year, we received the most from the RCMP.

Mr. Frank Baylis: Is that the Canada Border Services? No, RCMP is the third one.

Ms. Caroline Maynard: It's RCMP.

Mr. Frank Baylis: How many did you have from them?

Ms. Caroline Maynard: We received 370 cases from the RCMP.

Mr. Frank Baylis: That was 370 and they had 3,800 requests the previous year, or whatever, so you got 10% of their actions or complaints, compared to 1%. The RCMP is a big one. Ten per cent of RCMP actions are people complaining against them.

Ms. Caroline Maynard: Yes.

Mr. Frank Baylis: What's the next one?

Ms. Caroline Maynard: The CRA is our next one.

Mr. Frank Baylis: The CRA, okay, and how many complaints have you received?

Ms. Caroline Maynard: For the Canada Revenue Agency, we only received 183 from them.

Mr. Frank Baylis: That's about 5% there.

Ms. Caroline Maynard: They receive a lot requests.

Mr. Frank Baylis: I have that it was 3,100 two years ago. I mean it's a lot, but they're getting about 5% complaining.

Ms. Caroline Maynard: Yes. The next one would be Canada Border Services Agency, with 156.

Mr. Frank Baylis: They got 6,000 or 7,000.

Ms. Caroline Maynard: Then it goes down to the Privy Council Office.

Mr. Frank Baylis: How many complaints do you have there?

Ms. Caroline Maynard: There are 82.

Mr. Frank Baylis: They have 820, so there's 10%.

Have you done the math to look at where your problematic...?

Ms. Caroline Maynard: Oh yes.

• (1620)

Mr. Frank Baylis: Okay, so are you not telling me, or do you not want to give me the list?

Mr. Michel Picard: You didn't ask the question.

Mr. Frank Baylis: I didn't ask the question, fair enough.

Where are the problem departments? Who are the problem departments? How many do you have?

Ms. Caroline Maynard: Each department has its own.... I couldn't tell you. With the RCMP, it's clearly a resource issue.

Mr. Frank Baylis: Are the complaints resource-based, like they don't have the resources to do that? What happens? They don't do it, then people complain to you, and you say "Give me more resources so I can handle their complaints".

Ms. Caroline Maynard: They need more resources.

Mr. Frank Baylis: Is it right for us to be giving you the resources, or should we just give them to the RCMP?

Ms. Caroline Maynard: That's exactly what I was saying earlier. Even if you give me more, if you give me \$9 million tomorrow morning and I hire 25 new investigators, I will not get the response I need from the institution because it doesn't have the resources to respond.

Mr. Frank Baylis: Realistically, then, pumping more money into your department is not actually the solution.

They can't answer someone else and that someone else comes and complains to you. You say, "Okay, now you have to talk to them and to me", but they still say, "I don't have anybody to answer the question".

Ms. Caroline Maynard: Yes. There are some institutions where we will need additional resources to me and—

The Chair: Frank, this is your last question.

Mr. Frank Baylis: Would it be possible for you to give us a list of who needs what? Instead of just saying what you need, you'd say it would be better if the RCMP got this and Canada Border Services got this, specifically targeting these requests for information so they don't come to you.

The Chair: If you can answer that quickly, it would be appreciated.

Ms. Caroline Maynard: I'm trying to do this through my investigations, to make recommendations to each of these institutions. They have to go and get the money and the resources. They are responsible to put their priorities into ATIP access.

Mr. Frank Baylis: Should they be asking for it?

Ms. Caroline Maynard: I can do that in my annual and special reports. We try to do that, yes.

Mr. Frank Baylis: Okay.

The Chair: Thank you, Mr. Baylis.

Next up is Mr. Angus, to take us home.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you very much.

I'm interested in following up on some of the questions raised by Mr. Baylis.

My first question, though, is the following: We have repeat offenders, the same organizations year in, year out, do we not? The RCMP—I've always been on this beat and it's always been RCMP, CRA and Canada Border Services. It's a question of either they don't have the funds or they decide not to put the funds in because they have other priorities. To me, if we have a quasi-constitutional right to access to information and you find the same laggards, year in and year out, the problem is not a lack of funds. It's a corporate problem within their structure.

What tools do you have to make them comply?

Ms. Caroline Maynard: You're right.

One thing we are trying to do more and more is systemic investigations and audits of places where we know there's an issue with either resources or training and make recommendations to the institutions to address those. I'm trying to do more of those and I do have the authority.

The other thing we have to remember is that it's not that people are complaining about an agency, that they are doing something inappropriate or they are not applying the act properly. That's something I'm trying to do better in reporting in the next couple of years. Some requesters expect more information and they will complain no matter what the response from the institution is. You might end up with an institution that's doing really well, and it might have more complaints, but we ultimately make findings that the complaints were not well founded.

I don't think my office has been doing really well at providing that information through our annual reports or special reports, and it's something we're going to be working on. We need to really go and examine what the issues are, what causes the delays and whether the exemptions or exclusions are appropriately applied.

The other thing is that the statistics we have from Treasury Board just provide statistics on timelines but don't give you the full picture of how big the request was or how many pages. What we are noticing right now is that some institutions are doing really well in terms of the timelines, but we're getting a lot of complaints on the exclusions and exemptions side. They're responding to the request really quickly, but they will block everything. Then we have to investigate. They might look very good on paper because they respond to requesters quickly, but they might not be that good in meeting their obligations.

• (1625)

Mr. Charlie Angus: When we make requests, sometimes the department comes back and says, "Oh my God, it will be so many thousands of pages. What about focusing it and limiting it?" Then maybe instead of asking for a two-year period or a three-year period, we ask for a two-week period where we're looking.

To me, that's reasonable. That's a department that's trying, within its means, to respond.

My concern is that we've just had a situation with Facebook telling the regulator, "Thanks, but we're just going to carry on."

I dealt, through your office, with the justice department for six years to try to get the political decisions around the decision to target the St. Anne's residential school survivors, and we were given delay after delay and a threat to go to court. We ended up with 3,000 pages of blacked-out emails. That tells me that the justice department doesn't believe they actually have to comply.

Do you have the tools to make them comply? In a case that, to me, is so egregious, I'm sure out of 3,000 pages there had to be at least one email that wasn't solicitor-client privilege.

We hear that with SNC-Lavalin. We hear it whenever there's a government scandal. They just throw in solicitor-client privilege and then they can black everything out.

How, then, do we actually hold the justice department of Canada to that—that they have to respect the quasi-constitutional rights of citizens as well?

Ms. Caroline Maynard: You're right in the sense that I'm limited right now under the act to make recommendations to departments when I don't agree with them, but I hesitate to go to court after, if they have agreed with my recommendations.

The new act will give me the authority to make the orders. At that point, the institution will have to go to court if they don't agree with the orders. I think that will be very helpful and it's something we'll be using.

The other thing, as I said earlier, is that it's really hard to issue recommendations on a daily or weekly basis but we can't do anything about it or publicize any of it, so people are not aware of what we're doing, because we have to wait until the annual report or a special report is issued.

Under the new Bill C-58, I'm going to be able to publish those decisions, which I think the institutions are not going to like as much. That's another tool that will be used or will be beneficial. Hopefully, the more we publish and the more Canadians see what they're entitled to and the institutions realize what we're pushing for, the more we'll have consistency and a better response rate.

Mr. Charlie Angus: The ability, then, to make an independent report based on a case and the ability to issue order-making powers are fundamental for you to ensure the rights of citizens to get access to information.

Ms. Caroline Maynard: Yes, it's key.

Mr. Charlie Angus: Thank you.

The Chair: Thanks, everybody.

Thanks again to the commissioner for coming today. It's been a while.

You're starting to settle into your job well.

Ms. Caroline Maynard: Thank you.

The Chair: We look forward to your coming back again soon.

Ms. Caroline Maynard: Thank you very much.

The Chair: We're going to suspend temporarily. We're going to go in camera for committee business in about two minutes.

[*Proceedings continue in camera*]

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