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• (1100)

[English]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): I call this meeting to order.

It's 11 o'clock. We have quorum.

For information purposes, before I call upon our witnesses, Minister Blair will appear before the committee on the 20th to talk about the supplementary estimates.

Mr. James Bezan (Selkirk—Interlake—Eastman, CPC): Mr. Chair, with the minister's appearance on supplementary (C)s, will they be deemed to be reported back, or will it be in time for us to report them back?

The Chair: I don't think it's in time.

The Clerk of the Committee (Mr. Andrew Wilson): We don't know yet, because of the complicated process for when they're deemed to be reported back. It's three sitting days before the end of the supply period, which is the 26th—the following Tuesday—or three days before the last allotted day, which hasn't been allotted yet.

We won't know until that week, unfortunately.

Mr. James Bezan: Thanks.

The Chair: Okay.

We have one familiar witness appearing before us, who looks a little beaten up, and one witness who is not quite as familiar to the committee.

I'm going to ask Mr. Lick and Ms. Hynes to speak for the first five minutes, and then ask Mr. Joshi to speak for the second five minutes. Then we'll go to our rounds of questioning.

Welcome, Mr. Lick. I was going to say something about licks and he keeps on ticking, but that would be a lame joke.

Mr. Gregory Lick (Ombudsman, National Defence and Canadian Armed Forces Ombudsman): Good morning, committee members.

Over our history, every ombudsman has called for our office to be entrenched in legislation. We have advanced this committee copies of four reports we've prepared on this subject. Legislating this office and having it report to Parliament is both symbolic and practical. Most importantly, it would place the fair treatment of our constituents above politics.

[Translation]

In June 2022, at the height of the sexual misconduct crisis, I held a national press conference to address some of these issues head on. It was about improving accountability, which remains an issue to this day.

Various crises have eroded trust in National Defence and the Canadian Armed Forces. Many recourse mechanisms are not seen as being truly independent of those institutions. I hope the consensus around this table will be that legislating the Office of the Ombudsman would serve as a cornerstone in rebuilding trust and faith in the institution.

[English]

Without legislation, my organization is subject to oversight and investigation by the same department it is mandated to oversee. The conflict here is obvious. In the past, this has resulted in problematic investigations of this office that completely lacked credibility. In one case, the department investigated my predecessor and staff in a process so riddled with procedural defects and unfairness that it raised concerns the process was being abused. For one implicated member of our staff, the Federal Court was categorical that the individual “was denied procedural fairness in the investigation and in the decision-making process”. No one has yet been held accountable. There is nothing to prevent this from happening again.

[Translation]

The Minister of National Defence has no legal requirement to act on the recommendations contained in the reports of the Office of the Ombudsman. Our reports, which are evidence-based, are aimed at eliminating systemic issues facing the defence community.

[English]

In fact, responses to our reports are increasingly months late. They contain no tangible implementation details despite the fact that we know the department has developed them. Where is the choke point?

[Translation]

Let me be clear, on an individual file level, our organization is tremendously successful at achieving fair outcomes for our constituents.

[English]

However, with our systemic recommendations, the department and the CAF have not progressed sufficiently. We have historically lacked evidence on the implementation of these recommendations. Consequently, we regularly follow up with the department and the CAF and issue report cards based on what we see. This is a best practice in oversight, but the results are often not promising.

[Translation]

In the fall of 2023, I published a report pertaining to the identification of mental health and support needs of reservists participating in domestic operations. Five months later, I have still not received a response from the minister.

[English]

Before I leave this post on July 2 of this year, I will release a report that will address issues related to CAF complaint mechanisms. Will we have to wait months again for a response? Is this how you wish accountability to work?

• (1105)

[Translation]

Three weeks ago at this committee, I indicated that family issues are the number one reason people are leaving the Canadian Forces. Logically, fixing these issues would help the CAF retain members. Our office has been vocal on issues facing military families for more than a decade.

[English]

As members of Parliament, you are not unaffected by these issues facing military members and their families. That is precisely why, in my estimation and that of my predecessors, this office needs to report to the people's House—this House—and not just one member of it, especially when the issues involve more than the Department of National Defence and could be matters of national security.

Ministerial responses to previous governance reports have usually been that things are fine, and if they're not, pick up the phone and call them. However, as my predecessor faced in 2018, what happens when this person is the source of the problem or refuses to listen? If I cannot get the attention of the minister, should I set up more meetings with members of all parties? Should I resort to using the media? How does Parliament want to ensure ministerial accountability if it does not have a completely independent body providing it with advice or recommendations?

We have fully legislated oversight for federally incarcerated inmates, those who commit serious crimes. Why do those who proudly wear our military uniform, on whom we depend for national security, not have the same?

[Translation]

It makes no sense.

[English]

Canada is the only member of the Five Eyes to not have legislative oversight. You can change that.

Thank you.

The Chair: Thank you, Mr. Lick.

Mr. Joshi, you have five minutes, please.

[Translation]

Col Vihar Joshi (Interim Chairperson, Military Grievances External Review Committee): Good morning, everyone.

Mr. Chair and members of the committee, thank you for inviting me to this important meeting today.

My name is Vihar Joshi. I'm the interim chair of the Military Grievances External Review Committee.

For brevity's sake, I'll refer to the Military Grievances External Review Committee as the MGERC throughout my presentation.

The MGERC is an external component that's an integral part of the Canadian Armed Forces grievance system. It was created in June 2000 under the National Defence Act. The MGERC is an independent quasi-judicial body with one mandate: to review grievances referred to it by the Chief of the Defence Staff and to provide findings and recommendations to the Chief of the Defence Staff and the CAF members who filed the grievances.

The MGERC's findings and recommendations are not binding upon the Chief of the Defence Staff. However, if the CAF decides not to adhere to one of the findings or recommendations, they must explain their reasons in the final decision.

[English]

Although the MGERC does not have decision-making power, its role is nonetheless pivotal in maintaining transparency and confidence in the Canadian Armed Forces grievance system.

At arm's length from the Canadian Forces, the MGERC has developed considerable expertise over the past 23 years and is well positioned to undertake in-depth investigations into grievance matters and provide impartial and independent assessments to both the chief of the defence staff and grievors on how a grievance should be resolved. The MGERC provides its annual report to Parliament through the Minister of National Defence. It publishes its annual reports, case summaries and systemic recommendations online, thereby further strengthening transparency.

Although the regulations only require that certain types of grievances be referred to the MGERC for review, all grievors should benefit from an external independent review before a final decision is made on the grievance. Not only has this notion been highlighted by independent review authorities, including Mr. Justice Fish in his recent third independent review, but until recently, it has also been a Canadian Armed Forces best practice for the past 13 years. To ensure that all grievors benefit from this review, this practice should be entrenched in legislation.

Justice Fish also made a number of other recommendations to enhance the transparency and efficiency of the Canadian Armed Forces grievance system. The MGERC looks forward to working with the Canadian Armed Forces to improve the grievance system for all soldiers, sailors and aviators.

With regard to access to information requests and parliamentary questions, I can confirm that in the last five years, the MGERC has responded on average to 116 parliamentary questions, three formal access to information requests and 19 informal access to information requests. In the interests of efficiency and to reduce the administrative burden on those making requests, it is the MGERC's standard best practice to respond quickly and without the need to initiate a formal access to information request process.

The MGERC's specific role in the Canadian Armed Forces grievance system is valuable and important. In essence, it increases transparency and confidence in the system by ensuring that grievors have full disclosure of all relevant information and that their grievances have an in-depth, independent and impartial review before the chief of the defence staff renders final decisions. We have heard time and again, from both grievors and the chief of the defence staff, that the quality and thoroughness of our reviews adds value to the process.

● (1110)

[Translation]

Thank you for the opportunity to speak to you, and I look forward to your questions.

Thank you.

[English]

The Chair: Thank you, Mr. Joshi.

We'll go to our six-minute round, starting with Mr. Kelly.

Mr. Kelly, please go ahead.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you to our witnesses.

Mr. Joshi, in your 2022 annual report, less than two years ago, you said that for three out of the last five years your “ability to deliver” on your mandate “was hampered by lapses in Governor in Council appointees' tenure”. How many Governor in Council appointments have lapsed, and for how long, in the last five years?

Col Vihar Joshi: In the last five years, we had two lapses. In 2018, we came up to full complement. In 2022, the full-time vice-chair left the committee, and the chair left the committee in the summer of 2022. Those positions have not been filled yet.

Mr. Pat Kelly: This is a troubling trend that goes along with the non-appointment of judges. There are delays in the government appointing so these bodies can do their work. Are you concerned?

How about the cuts that are proposed? They're going to cut a billion dollars in the defence budget. We've been promised at this committee that it will not affect operational readiness or direct frontline forces. Are you concerned that it's going to be the transparency mechanisms that suffer under the cuts that are coming?

Col Vihar Joshi: With respect to our committee, I do not have any fears or concerns in the sense that our budget at this point is not being affected. In fact, we've been able to increase our budget slightly to increase our staffing levels to deal with the higher number of grievances.

Mr. Pat Kelly: Okay, but you don't have the appointments so that the hearings can take place, and it's slowing down your work, you said.

Col Vihar Joshi: We do still lack numbers at this present time.

Mr. Pat Kelly: Thank you.

Mr. Lick, how long does it take complainants to get to the stage of asking your office to assist? They have to go through the MGERC first. How long does it take, typically, before they get to you?

Mr. Gregory Lick: First of all, they can access our services at any point in time—it does not matter—and we will make sure they get on the right path to get the right recourse mechanism, if that's the case, or to get the information, whatever it is. They can access us at any time. It does not matter.

Mr. Pat Kelly: My office and other MPs' offices have heard from veterans who have filed privacy requests for information on sexual misconduct cases and have ended up having the charges stayed against the alleged offender for a lack of timely delivery of the information necessary to make a complaint and to make a case.

How does the denial of this type of information affect morale and affect serving members and their families when they can't get the information they need from the military to carry out a complaint?

Mr. Gregory Lick: First of all, in the area of law enforcement or judicial proceedings like that, we are prevented from looking at that area in particular and any criminal matters in that regard.

On your question in general of being able to access information to support their lives or their careers, it is morale damaging when they can't get the information in time. One of the roles of our office is to make sure that we can get that information to them in time. They can access our services if they're finding it difficult to get that information, except for criminal matters.

• (1115)

Mr. Pat Kelly: What about medical information for retiring CAF members?

Mr. Gregory Lick: In some of our previous reports, we outlined some of the issues we saw with getting information for members to access their records and so on or for VAC to make an adjudication on their particular benefits. It is better now. They can access those services and access that information as they release, but they still run into some similar simple problems. Perhaps they give it on a CD, but many people don't have CD players anymore.

They're working through that issue right now. I think it is getting better, definitely. Whatever it is, they can access their information, but maybe not in as timely a manner as we would like to see.

Mr. Pat Kelly: There are persistent problems, still, among those with service injuries, who have to re-prove their injury once they discharge from the CAF.

Mr. Gregory Lick: Yes. That's one of our recommendations that was not accepted by the department. That was to have the CAF, or the military health services, make that decision on service attribution of an injury. We still believe in that, absolutely, because it seems to be the most logical and most efficient way of doing it, but they've been reluctant to look at that since our previous report.

Mr. Pat Kelly: Why won't they do it?

Mr. Gregory Lick: At the time—and perhaps I'll ask Robyn to supplement this—they brought up the ethical issues of a treating doctor providing that decision. There are ways to get around that. They could have a separate group within the organization do it, separate from the treating doctor. That was the issue they brought up at the time.

Mr. Pat Kelly: Does an injured forces member take any comfort from that explanation?

Mr. Gregory Lick: I wouldn't say so. I think the point is that we want to see retiring members get the benefits they deserve as quickly as possible, and, in fact, get the adjudication decision before they leave the forces so they have every piece of information and all the benefits and services in place before they leave.

Mr. Pat Kelly: That's right, because we are sometimes talking about members discharged for medical reasons—it's a medical discharge—who are unable to access benefits for the injuries that were the source of the discharge.

Mr. Gregory Lick: Exactly.

The Chair: Thank you, Mr. Kelly.

Madame Lambropoulos, you have six minutes.

Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.): Thanks, Mr. Chair.

My first question is going to Mr. Lick. Thank you for being here with us today.

You mentioned that five months ago, you sent a letter to the minister regarding mental health. I know you said you haven't heard back in five months. I'm wondering whether prior to this you had similar experiences or you wrote and received responses in a timely manner.

Perhaps you can comment further on other times you tried to communicate with the minister's office.

Mr. Gregory Lick: I would say that, since I started in 2018, we've experienced the same problems and delays in getting information from the department—in this case, the minister and minister's office—with respect to our systemic recommendations. We know the department, through our discussions with them, has been working on these recommendations—whether or not to implement or action them. However, for some reason, we can't get an answer from the department—officially, the minister and the minister's office—in a timely manner. This affects more than anything the transparency of the whole institution.

We made a recommendation. They have the right to not accept it, absolutely. That's fine. At the same time, our defence community deserves an answer—yes or no—but we're not getting it in a timely manner. We don't understand why.

Ms. Emmanuella Lambropoulos: You also mentioned that Canada is one of the only countries without legislated military oversight. I'm wondering whether you could go into a little detail as to how this would be helpful, in this case or in general, for improving transparency.

Mr. Gregory Lick: We can provide this committee with a chart of that information for all places in the world we have that information for. In the area of the Five Eyes—the most closely linked communities and countries we work with—we are the only one that does not have a legislated mandate for its ombudsperson, inspector general or whatever they might be called.

What I've said and what my predecessors have said in numerous reports is that, more than anything, it is sometimes the perception of interference or real interference occurring that causes our inability to action some of the investigations we carry out. It is also about being able to raise or escalate issues to Parliament, beyond the minister or the government in power at the time. I can use the media, absolutely. I can talk to all the different political parties. However, is that how ministerial accountability should work? I don't believe so. I think I'd need to bring these issues to Parliament, whether it's at a committee or in other ways. Ultimately, it is that.

The other aspect is that legislation provide protection from a witness being compelled in a particular case. That is important. The Correctional Service investigator, as an example, has that. I do not. I will fight back if I'm asked to do that. I'll fight it in court if I need to. Really, that should be in the legislation in order to protect the confidentiality of the services we provide to our constituents.

• (1120)

Ms. Emmanuella Lambropoulos: Thank you very much.

My next question will go to Mr. Joshi.

We heard about the military grievance process. We know that to improve the culture of the CAF, we need to improve the grievance process and make sure people are getting a fair and timely response.

I'm wondering whether you can suggest any specific improvements that you think would help us as they relate to access to information.

Col Vihar Joshi: One of the big things I would suggest, as I mentioned before, is having all of the grievances come to us as discretionary or mandatory, as we call them. How does this help? First of all, with access to information, it would give all grievors the disclosure they need to have their grievances properly considered. It would give an impartial and independent review back to the chief of the defence staff.

While it may look as if it would take more time to send all those files to the grievance committee, at the end of the day, it saves time in the process. Why is that? What the Canadian Armed Forces and the member get back is a fully analyzed file with all the information contained in it and the logical flow of how we arrived at a recommendation or conclusion. When it gets back to the final authority, they have a complete file. They can review it. They have an independent opinion on it. It also explains to grievors why we feel their file should be decided in a certain way. That gives us some transparency and boosts confidence in the system.

Ms. Emmanuella Lambropoulos: Currently, you have to go through regular access to information requests, I imagine, which takes longer.

Col Vihar Joshi: We do not. In the National Defence Act, there's a provision that says when the chief of the defence staff refers a file to the committee, the chief of the defence staff is required to provide us with all relevant information. To the extent that we don't get a full file or there's information missing, we have lines of communication with the Canadian Armed Forces that allow us to get that information.

Of course, sometimes it takes time, because as we know, grievances are not necessarily the priority of the organization in that way. They have an operation to run. However, we do have a system in place to get the information back.

Ms. Emmanuella Lambropoulos: Thank you both very much, and Ms. Hynes too.

The Chair: Thank you, Ms. Lambropoulos.

[*Translation*]

Ms. Normandin, you have the floor for six minutes.

Ms. Christine Normandin (Saint-Jean, BQ): Thank you very much to all the witnesses.

Mr. Joshi, I'm going to start with you because I want to follow up on Ms. Lambropoulos's questions.

You mentioned that not all grievances are referred to the Military Grievances External Review Committee. I would like to know on what basis some are and others aren't. What are the criteria? Do you have any idea why some are referred to you and others aren't? Could there be a lack of transparency in the selection process that's hiding something specific?

[*English*]

Col Vihar Joshi: With respect to referrals to the committee, there are two types of referrals: mandatory and discretionary.

The classes of files that must come to the committee are prescribed in regulation. They are administrative action that affects finances, so forfeitures or deductions from pay; Canadian Armed Forces policies related to political activities, harassment, pay and allowances, and entitlement to medical and dental care; and decisions the CDS has made that are personal decisions.

[*Translation*]

Those are the mandatory cases they have to refer to us, but other types of cases are discretionary.

• (1125)

[*English*]

With careers, for example, the chief has a decision to make based on whether he or she feels there would be value with the committee and whether he or she feels we have the capacity. That is completely discretionary. How they choose in between, I'm not entirely sure.

[*Translation*]

We receive all the mandatory files and, up until last year, all the discretionary files. We're receiving far fewer of them this year.

Ms. Christine Normandin: About the discretionary files that are referred to you, can the fact that they're discretionary become a political tool, in a way? I'm curious about your views on that.

Col Vihar Joshi: Yes, it's possible, if people have something to hide.

[*English*]

I don't really think that is the issue. For me, it's more in the workflow of the files and where the belief of efficiency lies. However, as I have mentioned before, to ensure transparency and confidence in the system, it certainly would be more preferable that we get all the files.

[*Translation*]

Ms. Christine Normandin: Thank you very much.

Mr. Lick, I'd like to talk more about how your recommendations are acted upon. As things stand, the committee has no power to compel action. From a legislative standpoint, how can action be compelled? Do you have any recommendations in that regard for our report?

[*English*]

Mr. Gregory Lick: In legislation, it could be as it is with the Auditor General. In its legislation, the mandated timelines for responses are a way of making sure departments respond in a timely manner. That's one way it could be imparted in legislation. However, I would come back to the other part of it: It doesn't mean that they have to accept those particular recommendations.

We are pretty good at the work we do and the recommendations we put forward. The vast majority are accepted. The implementation is just much slower than I think we would all like to see.

The other part of it is that the way we impose transparency on the organization is through producing progress reports. Every year, those are updated by the departments. We analyze the evidence and show whether the recommendations that have been accepted have been fully implemented, partially implemented or not implemented. That is all public. That's actually a best practice that I would like to see in the rest of the public service.

[*Translation*]

Ms. Christine Normandin: Thank you very much.

Now let's talk about response times to your reports. You specifically referred to the one about reservists' mental health, which you submitted five months ago. You still haven't received a response.

Would it be possible for the response time to be legislated and for the minister to have an obligation to explain why he's not responding if he can't respond within the allotted time?

[*English*]

Mr. Gregory Lick: Exactly.

We're not naive. Sometimes it does take a longer time to analyze and assess the recommendation and so on. That's absolutely true.

I would expect at least an acknowledgement of the report. I would expect at least, if there was an issue with getting a response back in time, that we receive an explanation. We have received none.

[*Translation*]

Ms. Christine Normandin: Thank you very much.

The committee received the comparative charts detailing the mandates of federal public sector ombuds. Parts of the mandates of other ombuds differ from yours and might make you jealous. Can you tell us about elements in the other mandates that you would like to see in yours?

[*English*]

Mr. Gregory Lick: As I think I've said a number of times, it would be legislation and various pieces in legislation that would stop me and my staff from being compelled, mandated timelines, and the ability to escalate beyond the political government in power to the national institution, Parliament, which represents all Canadi-

ans and the defence community. That would be the right thing to do.

Those are the three elements that I think are important. You can put all sorts of different things in the legislation. Every ombuds person who has legislation acts in a different way, but I think those are the three principles that I would include in legislation.

[*Translation*]

Ms. Christine Normandin: Thank you very much.

[*English*]

The Chair: Thank you, Madam Normandin.

Madam Mathyssen, you have six minutes, please.

Ms. Lindsay Mathyssen (London—Fanshawe, NDP): Thank you both for attending today.

Mr. Lick, when the deputy minister, Bill Matthews, appeared for this study, he said that he had loosened some of the financial controls related to the administration of your office. Is that the case?

• (1130)

Mr. Gregory Lick: No.

Ms. Lindsay Mathyssen: Have you experienced a loosening of the department's control of human resources in your office?

Mr. Gregory Lick: No, and that area is most problematic for our office. We experience it almost every day. There are so many controls on our office that I would say are not appropriate. They're not illegal by any means; they're just not appropriate.

One of the principles of ombudsmen around the world is that we should be able to hire the people we believe are best able to do the job. However, there are so many HR controls on our office that we're not able to do that as best as we think we should be able to.

Robyn can provide you with a current case in which we have to redo a process because they made a mistake in one of their controls.

Ms. Lindsay Mathyssen: In terms of controls related to the administration of your office, was that what your predecessor faced as well?

Mr. Gregory Lick: I believe that my predecessor faced different controls and different issues, probably more severe than what we're experiencing now, but in essence it still continues. One of the issues is that this changes from deputy minister to deputy minister, and that should not be the case, unless there is a government-wide process or a particular issue we are doing incorrectly.

We are subject to the same controls as every other public servant, but it's inappropriate when those controls affect our ability to do our job in an independent manner.

Ms. Lindsay Mathyssen: When the minister came to this committee, I asked about Treasury Board cuts, and Mr. Kelly referenced them to Mr. Joshi.

Can you confirm, Mr. Lick, whether your budget, travel budget or anything else will be experiencing any of these cuts?

Mr. Gregory Lick: They have currently proposed cuts on the travel and contracting sides of our budget. They have not been implemented yet because the new fiscal year has not been implemented. We put forward our issues with them.

I don't sit on the committees that look at these particular issues, and that is rightly so because we are an independent office. We're not consulted in the same way that other senior leaders of the department are consulted, and that's problematic.

Ms. Lindsay Mathysen: The travel is in itself you going to visit complainants to see for yourself what is required.

Mr. Gregory Lick: That's correct.

Ms. Lindsay Mathysen: That will significantly impact the work you can do.

Mr. Gregory Lick: At this point, the proposed cuts should not significantly cut into the work, but we don't know sometimes until we get into it and find out there are issues we need to see to. For example, we might need to go to a base to investigate a particular issue. These types of situations appear during the year.

We don't think, at this point, that the cuts will be problematic, but at the same time, the issue is a perception of a lack of independence and a perception of interference.

Ms. Lindsay Mathysen: Based on your experience, what changes need to be made to the administration of your offices?

Mr. Gregory Lick: I do repeat myself a bit, but I think legislation and the principles of legislation that I put forward and just talked about are one way of doing it.

I'm not saying that reporting to Parliament would make it any easier budget-wise, as other independent officers of Parliament experience, but I think the biggest thing, which is due to our constituents—the defence community we represent—is real independence and the perception of independence. It's absolutely vital. It's the idea that the department is not interfering in the work we do, whether that's through a travel cut or a contracting cut. It's also that perception.

However, the other part of it, as I talked about earlier, is the idea of confidentiality. My staff in particular and I need to be protected from not being compelled to stand up and testify in court or in front of an administrative process. That is vital not only for the independence of the office, but also for the critical principle of confidentiality so that our constituents feel comfortable and confident to come forward and tell us things that we can then look at.

Ms. Lindsay Mathysen: Speaking to that, in 2021 you published a position paper entitled "Independent civilian oversight: The defence community deserves no less". Can you table this paper with the committee today?

Mr. Gregory Lick: Absolutely.

Ms. Lindsay Mathysen: Perfect. I believe it's about a lot of what you're speaking to today as well.

In your opening remarks, you talked about your retirement. I know many of us are very sad to see you go. Has the government begun the process of replacing you?

• (1135)

Mr. Gregory Lick: I have different feelings about leaving as well. I will say that, just to start off.

I've been looking at the assignment opportunities for my type of position—GIC opportunities. I have not seen anything there. I'm concerned at this point. July is not that far away, and a transparent process to select the best individual to represent the defence community and the work we do has not started. I do not want to leave the organization in a place without an ombudsman, but there's nothing going forward. Where is it?

Ms. Lindsay Mathysen: The government hasn't circulated a job posting or anything like that. What are the options? Would they just choose from a list of previous applicants? What are the problems with that?

Mr. Gregory Lick: There is no list. As any public service selection process goes ahead, you have to say up front that you're going to create a list or pool of individuals you may use in the future. That was five years ago and there was no announcement like that.

The selection process I went through was very transparent. Anybody could apply. I think the same thing should occur going forward. We should not be selecting from a list that was never created before.

Ms. Lindsay Mathysen: However, one would—

The Chair: Thank you, Ms. Mathysen.

Before I turn it over to Mrs. Gallant, you said something about stopping you and your staff from being compelled, so I asked the analysts what you meant by that. We don't know. Could you explain that to us?

Mr. Gregory Lick: Very simply, in certain processes, like a board of inquiry that the military sometimes carries out, we have been asked to provide information on constituents we may have investigated or helped with an investigation. We have not provided that information in the past, but I'm not legally protected from having to provide that information.

As I said, I will fight it in court if I have to, but that should not be the case. Yes, it might have helped the board of inquiry, but the principle of confidentiality that we adhere to is so critical for people's confidence to come forward that I will protect it no matter what cost.

The Chair: Thank you. That's helpful.

Mrs. Gallant, you have five minutes, please.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you.

First I'll go to Mr. Joshi. Can your department provide a response to a file within 45 days?

Col Vihar Joshi: No, we're not able to do that.

Mrs. Cheryl Gallant: What would the average time be?

Col Vihar Joshi: The average time from receipt to dispatch of a file in the last year was about 16 months.

Mrs. Cheryl Gallant: Missing information had been mentioned. Do you think this is intentional?

Col Vihar Joshi: No, I don't think it's intentional. In many cases, for example, it's a two-tiered process where an initial authority decision is made first. After that, if it goes to the final authority, it comes to us. In many cases the initial authorities do not get a decision out, so we don't get a file at all. We get the grievance with not a lot of background information. That is one area of cases where you have missing information.

Mrs. Cheryl Gallant: Do you have timely access to a member's service number if it's not the person who is providing the grievance?

Col Vihar Joshi: I'm sorry. I'm not sure if I understand the question.

Mrs. Cheryl Gallant: If a grievance involves another member, how much time does it take for you to get the other member's service number?

Col Vihar Joshi: We wouldn't get the service number.

Mrs. Cheryl Gallant: Okay.

Have there been any instances of reprisals from DND or CAF superiors when a service member requested an ATIP?

Col Vihar Joshi: We don't have any grievances of that nature. I have not seen grievances of that nature.

I can get back to the committee. We can look at it to see if we've had reprisal types of grievances for an ATIP. Our ATIP system is completely separate.

Mrs. Cheryl Gallant: Are you aware of any situations where superiors went after members or enacted reprisals against members for bringing forth a grievance?

Col Vihar Joshi: There are certainly instances where grievors have put in grievances about that subject. They say they were aggrieved because they put in a grievance and now the chain of command is mistreating them.

We certainly do see grievances of that nature. They are not that common, but yes, we do see them.

Mrs. Cheryl Gallant: How should the service members be protected against reprisals?

Col Vihar Joshi: There are regulations in place in the Queen's regulations and orders. Members should not have to fear reprisal or any bad things happening to them for putting in a grievance. It's their statutory right to do so.

• (1140)

Mrs. Cheryl Gallant: What are some of the challenges that members of DND or CAF face when they want to blow the whistle or demonstrate wrongdoing?

Col Vihar Joshi: Just as with anybody else, there's the fear that the chain of command will take negative action against them in some way, shape or form.

Mrs. Cheryl Gallant: Very early on when I got to Parliament, we had André Marin as the military ombudsman. He was very ca-

pable and successful in uncovering and getting to the bottom of soldiers being exposed to different chemicals and getting compensation for that. He seemed able to cut through, at that time.

Have laws or regulations changed since then to make your job even more difficult to get to the bottom of a situation or to get the information you need?

Mr. Gregory Lick: As I said in my opening remarks, when we're talking about individual investigations—when people come forward with a complaint or something—we are very successful in getting a resolution for them. I might have mentioned our statistic that we're 100% successful at this point in getting a resolution for them when we see unfairness in a process.

What I'm concerned with more than anything is the ability to have responses on our systemic investigations and, probably more importantly, to have action on our systemic investigations. That could involve any sort of circumstance, different constituents or whatever it might be. That is probably where my biggest concern is at this point in time.

Mrs. Cheryl Gallant: Were there any instances where DND or CAF tried to interfere with your duties as an ombudsman, specifically in regard to complaints to DND or CAF superiors from subordinates?

Mr. Gregory Lick: In my experience—perhaps Robyn could supplement with her previous experience—I have not seen anything at this point that would suggest anything inappropriate in terms of interference in an individual complaint. Sometimes it takes a bit of time to get some information. Sometimes it might be classified. We generally find the CAF to be very co-operative when we ask for information.

I always say that when the investigators call, the people on the other end of the phone line sit up straighter. It's just the idea that they respond pretty well.

The Chair: Thank you, Mrs. Gallant.

Mr. Collins, you have five minutes, please.

Mr. Chad Collins (Hamilton East—Stoney Creek, Lib.): Thanks, Mr. Chair.

Welcome to our witness.

Mr. Joshi, many of the questions at our meeting today and in past meetings centred around the number of grievances and the process of a grievance after it's been filed by a CAF member. I'm interested in the conflict resolution process that you have in place prior to someone filing a formal grievance and how that process might help us reduce the number of grievances we have.

Could you relate to the committee what processes are in place for a member who has an inquiry about a personal matter they have and who is contemplating filing a grievance?

Col Vihar Joshi: We only see a grievance when it's referred to us by the Canadian Forces, which is long after the grievance has been filed. Usually it's four to six months at least after it's filed.

We do keep on our website the case summaries we publish. If an individual calls us, we can direct them to our website with case summaries so they can have an idea of what types of findings and recommendations have been provided in the past. When final decisions are made by the chief of the defence staff, we summarize them and add them into our case summary batch so a grievor can see, in essence, how the Canadian Forces may have looked at it.

In terms of us engaging in conflict resolution early on in the process, that is not part of our mandate.

Mr. Chad Collins: They would then turn to the complaint management service that's offered.

Col Vihar Joshi: That is correct.

Mr. Chad Collins: I know there are a lot of similarities with the collective bargaining process and unions as that relates to the rights they have. Of course, our system here is managed differently under the act.

I've found over the years, when dealing with employee grievances, that oftentimes it's a leadership issue. I could look back at that in the career I had prior to this one. For some individuals, wherever they went in the organization, we'd see a bump in the number of grievances. That just seemed to be a trend that followed them. I think a lot of that had to do with leadership skills and interpersonal skills, and how they dealt, in this instance, with employees.

Mr. Lick, how much of the ballooning number of grievances we've seen is an issue related to culture and leadership? Conversely, how much is it related to the cultural change we want to see within the organization?

• (1145)

Mr. Gregory Lick: There's likely a whole range of reasons why people are putting forward grievances or complaints in our case. Yes, absolutely, some of them have to do with leadership and the ability to resolve conflict in a workplace. That doesn't always mean it's leadership. Sometimes it's with your colleague. The ability to deal effectively with interpersonal relations is absolutely a skill, and the lack of skill results in complaints and grievances.

The department is putting in place some means of helping people deal with that through the CCMS group, which helps individuals deal with conflict in the workplace. It's a great initiative. In fact, we refer people back and forth between our group and theirs, depending on which is best able to handle a particular complaint.

The informal conflict resolution process that you spoke about is, I think, new for the CAF at this point in time in the grievance process. We're optimistic that it will provide another opportunity to resolve a complaint or conflict before getting into the long grievance process. We're optimistic, and I think it will be a positive thing. We just don't see all of the results just yet because it is so new.

Mr. Chad Collins: To follow up on that, you talked about mandatory timelines and the benefits that come with them as they relate to resolving grievances and complaints. I know that in dealing with unionized employees, the big issue is that it becomes a morale issue the longer it festers and boils. It can also lead to other grievances.

Can you speak to some of the morale issues that have come about as a result of the investigations you've undertaken in your office, and their impact?

Mr. Gregory Lick: As I said, we're very effective in getting resolutions for people who come to us, but we can only really help people resolve an issue if they come to us, apart from some of the systemic investigations we do.

On an individual basis, yes, we're very successful, but we always say to people, as I think I mentioned earlier, that if they can come to us earlier, we may be able to help them earlier, whether that's with information or helping them deal with a particular issue. Sometimes it's a simple phone call to somebody we know in our great network of contacts.

Some people leave it to the last minute to come to us, and that's usually not helpful. We can still help them, hopefully, but we always say to people that, while we're the office of last resort, we're also the office of first resort to help people deal with an issue, hopefully before it becomes an issue in the first place.

The Chair: Thank you, Mr. Collins.

Before I turn over two and a half minutes to Ms. Normandin, I'm taking note that all of the noise in this room seems to come from one location. I've yet to determine it, but I have an idea. I might mention it the next time the noise level hits. Show respect for colleagues, please.

You have two and a half minutes, Ms. Normandin.

[*Translation*]

Ms. Christine Normandin: Thank you very much.

Mr. Lick, something in the documents you sent us caught my eye. In the United Kingdom, not only can the ombuds make recommendations, but also, in some cases, those recommendations are binding. What kind of recommendation could be binding? Is that something that could apply to your position?

Mr. Joshi, I would also ask you whether it might be possible to make some of the recommendations of the Military Grievances External Review Committee binding.

[*English*]

Mr. Gregory Lick: The U.K. Service Complaints Ombudsman has the ability, in essence, to enforce certain recommendations—not all, but certain recommendations. That is one way of doing it. I think we've proven, with CAF in particular, that we were able to do it without that type of enforcement. I'm neutral as to whether that would be beneficial or not.

The idea, usually, with most ombudspersons around the world, is that there is no enforcement power. That's because of the way ombudsmen work through moral suasion: Do the right thing with the evidence of our investigation.

As I said, generally, we find that with individual complaints, this works quite well for us. I don't think it's absolutely necessary. There may be a situation in the future when it may be nice to have that, but I would say it's not absolutely necessary with the situation we're currently in. At the same time, that situation could change with different leadership. I'm neutral in that way.

• (1150)

[*Translation*]

Ms. Christine Normandin: Thank you.

Mr. Joshi, do you have anything to add?

[*English*]

Col Vihar Joshi: Very quickly, is it possible? Yes, it is possible.

Mr. Fish made two recommendations in that regard. One said that if the final authority does not make a decision in 90 days after receiving the call from us, our findings and recommendations would be binding on the Canadian Forces. As for the second scenario, he called for a working group to look at whether the final authority power should be directed somewhere else, somewhat like the committee.

I would caution that it's not as easy as it may seem, because the authority that's set must follow. If we are giving decisions with a financial implication or putting people in certain positions, the authority set must be there. However, it is certainly something that could be investigated, and Mr. Justice Fish, in his third IRA report, did make those recommendations.

The Chair: Thank you, Madam Normandin.

You have two and a half minutes, Ms. Mathysen.

Ms. Lindsay Mathysen: To build off Madam Normandin's questions, when the minister was here at committee, I asked directly whether changes to those pieces of independence, especially around the ombudsperson and their office, which I was calling for in my legislation, Bill C-362, will be made within the changes he has indicated he will be making. Unfortunately, he said they were not, so I'd love your comments on that.

Mr. Joshi, you talked, in reference to independence, about the importance of independence in your office and the changes that Justice Fish and Justice Arbour were asking for as well. Do you believe those will come forward in future legislative changes? Have you heard anything? How important are both of those things for both of your offices?

Mr. Gregory Lick: I'll start first, if I may.

The minister has not consulted with me on that particular legislation, so it's hard to say what exactly it is, though I may have some knowledge of perhaps what it could be. Certainly, he has not consulted with me on the issue of the independence of our office. That is unfortunate in the sense that I think it's appropriate that I put a case forward, and he can decide what to do with it, obviously.

Obviously you know my opinion and all of my predecessors' opinions on whether we should be legislated or not, but at the same time, ultimately it is a choice of Parliament as to whether this happens or not. I think the best opportunity is going forward with legislation, absolutely.

Ms. Lindsay Mathysen: Go ahead, Mr. Joshi.

Col Vihar Joshi: With the grievance system, we know that the Canadian Armed Forces is making internal adjustments to their system. We've been briefed on some of the amendments to the system, but there has been no discussion on their part, with us at least, to look at those two critical Fish recommendations.

Ms. Lindsay Mathysen: Thank you.

The Chair: You have 30 seconds.

Ms. Lindsay Mathysen: That's fine.

The Chair: Thank you.

Mr. Bezan, you have five minutes.

Mr. James Bezan: Thank you, Mr. Chair.

I want to thank all three witnesses for being here today.

Mr. Lick, please remind me. Did your predecessor Gary Walbourne propose legislation to make the office of the ombudsman independent as an office of Parliament?

Mr. Gregory Lick: Yes. The document that we'll table with the committee has draft legislation for the independence of the office through legislation.

Mr. James Bezan: You're looking at making sure that you are truly independent.

When we look at historical cases, going on Mr. Collins' line about a lack of leadership, we know that with the sexual misconduct case against former chief of the defence staff Jon Vance, documents brought before your predecessor were given to the Minister of National Defence at the time, Minister Sajjan, who refused to handle that documentation.

As an independent office, how would that situation have been handled?

Mr. Gregory Lick: It would be difficult to understand how it would be handled without having all the details. If it was a criminal matter, we would make sure that it got to the right place to deal with it, whether that's with the military police or whatever else.

With that particular instance, while I don't have all the details, obviously we could put in legislation. How would I escalate it? Would I escalate it to the Prime Minister or beyond the minister if I'm not getting action on it? Would I escalate it to this committee? There are a variety of ways we could do it for the different situations we might encounter. My point is that it should be escalated to someone who can take action on it and who is apolitical or not political.

Mr. James Bezan: At least you'd be able to get action on it, and you wouldn't have the cover-up that we witnessed under the previous Minister of Defence. I appreciate that.

If we start looking at your budget, you're saying that there are cuts coming. Those are a unilateral decision made by the Minister of National Defence, and you don't even have any input in saying what your budget is or what your needs are. Are they just going to give you the budget and you have to make do with what you get?

• (1155)

Mr. Gregory Lick: They've proposed cuts to our organization. We do have the ability, through the business planning process, to say what the impact would be. Generally, though, the decision on those cuts at the very end is not mine. The decision is the department's.

Mr. James Bezan: You're saying that it's going to impact your travel—being able to go across to bases, meet with members of National Defence and meet with members of the Canadian Armed Forces—and your contracts. Would the contracts you're talking about be for specialized inspectors or investigators?

Mr. Gregory Lick: It could be, yes. Generally, it's a contract for professional services. That could be hiring a team, as we have done, or an organization that would help with research, as we do right now. It could be something as simple as IT support. It could be a variety of things. It doesn't really matter.

One thing we'll likely have problems with going forward is our IT system. We don't have the experience in-house to do that.

Mr. James Bezan: You're done on July 2. Do you know whether anyone has been appointed, or is somebody in the works of being vetted to replace you as ombudsman?

Mr. Gregory Lick: No, we do not.

Mr. James Bezan: Is there a similar problem over at the MGERC, that you don't have a permanent chair or vice-chair at this time and no indication that anyone is being appointed to fill in?

Col Vihar Joshi: The vice-chair was appointed last week. We got notice of the OIC last week with a start date in April. With respect to a permanent chair, we understand that it's in the works. We can expect something very soon, but I do not have a date for that.

Mr. James Bezan: Then the foot-dragging on appointments is impacting the ability to get work done. Who knows what will happen going forward with the ombudsman's office if they don't extend your contract?

You talked about the CDS referring cases to the military grievance committee. Does CDS just cherry-pick these, or are they escalated by some other means?

Col Vihar Joshi: For the mandatory grievances, there's no choice in the matter. If it fits into a subject category, mandatorily it comes over to us. For discretionary files, we have no visibility on the criteria being used. Up until very recently, we received almost all discretionary files, but as of last year, the number of discretionary files we've received has gone down significantly.

Mr. James Bezan: You say that it takes 16 months to do one of your reviews and to report back to the CDS. ATIPs take, by law, 45 days. If ATIPs were actually handled in a transparent manner and were going from Department of National Defence and Canadian Armed Forces to members or to those asking for this information, whether it's on privacy or just extra information, would there be as big a backlog facing your committee in dealing with grievances?

The Chair: Be very brief, Mr. Joshi.

Col Vihar Joshi: ATIP does not affect us at all. We come outside of it. However, if a time limit were put in place, absolutely it would have an impact on getting back the information.

The Chair: Thank you, Mr. Bezan.

Mr. Fillmore, you have the final five minutes.

Mr. Andy Fillmore (Halifax, Lib.): Thank you, Chair.

Thank you, witnesses, for your work and for your time today.

I want to switch gears a bit. There are many facets to the questions the committee is studying. The facet that I'm interested in is the information and data, how it moves and how it's accessed.

This question is for whoever would like to talk about it with us.

A 2020 paper by the Office of the Information Commissioner of Canada talked about options for establishing a declassification strategy for documents to do with national security and intelligence records. Would an automatic declassification regime be beneficial in your work as it pertains to DND and CAF records?

Mr. Gregory Lick: For my purposes, we very rarely deal in classified information. Most of the information we deal with is “protected B” and that type of thing. That particular issue of having a way of declassifying information with regard to the Information Commissioner I don't think would affect us in any material means.

Mr. Andy Fillmore: Mr. Joshi, does having access to classified documents or getting documents declassified aid you in the work of the MGERC in any way?

Col Vihar Joshi: Very similar to the ombudsman's position, it would have very little impact. In fact, there's an obligation under the National Defence Act for the chief of the defence staff to provide to us all relevant information. Of course, it behooves a griever to provide us all relevant information if they want us to consider their grievance fully.

• (1200)

Mr. Andy Fillmore: Thank you for that.

Staying with this theme of data and information, it was brought up at a previous committee meeting on this topic, on this study, that we live in a modern era. The preponderance of data that comes with that is pretty vast. Whereas a grievance in 1980 might have involved walking down a hallway, opening some file drawers and finding some papers, now there's a great deal of searching for electronic records and so forth.

Do you think the preponderance of electronic information and data is linked in any way, even in the smallest of ways, to the length of time or the timelines we're talking about now to fulfill the requests for information?

Col Vihar Joshi: It, in fact, speeds it up, because the search, for us, is a bit more efficient than having to look through all the paper files to find the information. How we can store and access it within the committee is enhanced by having it electronically.

Mr. Andy Fillmore: Is there anything from your office, Mr. Lick?

Mr. Gregory Lick: Sorting through boxes and boxes of paper files was a pretty inefficient way of finding information. With our investigations, the issue is sometimes a time issue and getting information from the department. We have to search through the information. Sometimes it's an issue of getting the information from the complainants as well, because it's hard to get hold of them, so it's on both sides.

Mr. Andy Fillmore: I'm thinking a lot about the infrastructure with which the federal government moves information. We know there is a lot of information out there, with records that need to be accessed, and sometimes I wonder if we overlook the train tracks that this information has to move on.

Thinking about it through a lens of modernizing systems, do you have any reflections on that as it pertains to your work?

Mr. Gregory Lick: Certainly, as I said, we need to update and modernize our IT system, just as any IT system needs to be updated over time. The department, in our case, has zero access to the information we store on our IT servers. That's really important for the confidentiality principle that we work under, but it does need to be modernized, absolutely.

Mr. Andy Fillmore: I'll move on from that for one minute. It's hard to fit this in, but for you, Mr. Ombudsman, what is the greatest way the ATIP process impacts your work?

Mr. Gregory Lick: For the ATIP process, we follow the law, in essence. We absolutely don't get as many ATIP requests as the whole department gets, but we follow the law. We're very good at getting the information for an ATIP request. We're actually pretty good, so it doesn't truly affect us. It does change year to year, though, so we never know from year to year how many requests we might get. We do have a professional service contract in place as a retainer, so if we need to add additional resources for a big year, we will access it.

Mr. Andy Fillmore: Thank you very much.

The Chair: Thank you, Mr. Fillmore.

Mr. Lick, Mr. Joshi and Ms. Hynes, I want to thank you on behalf of the committee. Your contributions to our study are quite valuable.

With that, we'll suspend and return with a new panel.

• (1200) _____ (Pause) _____

• (1205)

The Chair: We're back on. We have almost half the committee here. That's pretty good.

This is our second hour. We have Caroline Maynard, Information Commissioner, and Allison Knight, senior director of investigations, priority cases, historical and intelligence, Office of the Information Commissioner. That's quite a long title. We also have Harri-

et Solloway, Public Sector Integrity Commissioner, and Brian Radford, general counsel.

Welcome, all, to the committee.

I'll ask you to do your first five minutes in sequence.

Ms. Maynard, you have five minutes.

[*Translation*]

Ms. Caroline Maynard (Information Commissioner, Office of the Information Commissioner of Canada): Thank you for inviting me to speak today.

Since this is my very first presentation before your committee, I would like to give you an overview of my mandate as Canada's Information Commissioner. To fully understand my mandate, it is important to recognize that I am an independent agent of Parliament whose role is defined under the Access to Information Act.

• (1210)

[*English*]

The Access to Information Act provides a right of access to information in accordance with the following principles: that government information should be made available to the public, that necessary exceptions to the right of access should be limited and specific, and that decisions on the disclosure of government information should be reviewed independently of government.

The Treasury Board Secretariat holds the overall responsibility for administering the act. That includes providing guidance and tools to government institutions.

Access to information requests can be made for any records under the control of a government institution. About 260 institutions are subject to the act, including the Department of National Defence.

[*Translation*]

Each institution is responsible for responding to the access to information requests it receives. My role as Information Commissioner is to investigate complaints relating to those requests.

Complaints are submitted to my office when requesters are not satisfied with the amount of time it's taking for an institution to respond, or if they believe they haven't received all of the information to which they're entitled.

[*English*]

So far this current fiscal year, I have registered 103 complaints against the Department of National Defence. As of today, the department ranks sixth in the number of complaints received by my office.

At the conclusion of an investigation, I have the power to issue an order against the institution, including ordering the disclosure of information to the requesters. My orders are legally binding. When institutions receive an order, they must implement the order unless they apply to the Federal Court for a review.

This year, I have issued orders in 29 investigations against the Department of National Defence, mainly on the timeliness of responses to access requests. In several of these investigations, I found that it was a lack of responsiveness from teams responsible for providing records that affected the department's ability to meet its obligations under the act.

[*Translation*]

As I've often noted in statements on the importance of transparency within the federal government, senior leadership is key to influencing corporate culture change. This leadership must be extended to information management practices and internal communications protocols in order to ensure compliance with the Act.

[*English*]

This brings me to an update for you on recent investigations I have concluded against the Department of National Defence.

Last June, I ordered the Minister of National Defence to release records on DND's COVID-19 policies by November 30, 2023. These policies were requested through an access to information request made the year before. The department told my office it would comply with the order. However, it did not meet the November deadline. This is why last December I filed an application for writ of mandamus to compel the Minister of National Defence to comply with my order. This was the second time I had to make this type of application as a result of an institution ignoring my orders.

Last week, I filed two new applications to compel the Minister of National Defence to comply with orders that should have been respected in November and December 2023. These files are currently ongoing with the Federal Court, and I therefore cannot discuss the particulars of these proceedings. However, I can tell you that this type of extraordinary recourse to compel an institution to respect orders should not be required. It raises doubts about my authority and, more importantly, the credibility of the access to information system of the federal government.

I will now be happy to answer your questions.

• (1215)

The Chair: Thank you, Ms. Maynard.

Ms. Solloway, you have five minutes.

[*Translation*]

Ms. Harriet Solloway (Commissioner, Office of the Public Sector Integrity Commissioner): Good afternoon, everyone.

Mr. Chair, I appreciate the opportunity to provide information on the federal public sector's external whistle-blowing regime.

The Office of the Public Sector Integrity Commissioner of Canada was created in 2007 under the Public Servants Disclosure Protection Act as part of a federal government accountability initiative. The office provides a confidential mechanism for public ser-

vants and members of the public to disclose certain wrongdoings committed in the federal public sector. It should be noted that the act provides a very specific definition of what constitutes wrongdoing, which does not include all wrongdoing in the general sense of the word. The act also provides that current and former public servants may file complaints of reprisals resulting from disclosures.

As an agent of Parliament, I perform a function that guarantees independence and neutrality.

My office cannot investigate disclosures made against the Canadian Armed Forces, the Communications Security Establishment or the Canadian Security Intelligence Service. Under the Act, these organizations must maintain their own internal whistle-blowing regime. However, my office can investigate disclosures made against the Department of National Defence and complaints made by public servants who work or have worked within the department.

The act also provides that federal organizations subject to the act must establish internal processes, which we call internal regimes. Organizations must designate a senior officer for disclosures and give that officer a mandate that mirrors that of my office. The Secretary of the Treasury Board is responsible for administering internal regimes. Under the act, public servants may disclose information to their supervisor or the senior officer through a given organization's internal regime, or they may go directly to the Office of the Commissioner under the external regime. The choice is theirs.

[*English*]

My office establishes standardized processes for handling disclosures and reprisal complaints, including service standards for various stages in the process and clear policies to support decision-making. These internal processes are intended to ensure the consistent and fair treatment of cases. They are reviewed on an ongoing basis and are periodically amended to optimize efficiencies.

Any individual may make a confidential disclosure of wrongdoing to my office by submitting a form online via fax, by mail or in person. Once received, disclosures are analyzed to determine whether they fall under my jurisdiction and whether allegations could constitute wrongdoing as defined in the act. Analysts may reach out to the discloser for further information during this time.

In cases where I do not launch an investigation, the discloser is informed in writing of the reasons for my decision and the matter is closed. In cases where additional significant information becomes available, I may reconsider that decision.

In cases where I decide to launch an investigation, the deputy head of the affected organization is contacted, as well as the discloser and the alleged wrongdoer, and the investigation begins. We have a service standard for completion of investigations, which is within 12 months. Investigations can include interviews with witnesses and the alleged wrongdoer, as well as the collection and examination of documents or other evidence. Throughout the process, my office respects the right to procedural fairness and natural justice for all involved parties.

[*Translation*]

After investigating, I determine whether or not a wrongdoing was committed based on the balance of probabilities. In the case of a proven wrongdoing, I have 60 days to table a report in Parliament describing the wrongdoing. The report also includes my recommendations for corrective action and the chief executive's response to those recommendations.

To date, my predecessors have tabled 19 such reports.

• (1220)

It should be noted that I have been on the job for less than five months.

I understand how difficult it is to make a disclosure, and I take the obligation to protect the confidentiality of disclosers seriously. Public servants responsible for their organization's internal regime have that same obligation. The Office of the Public Sector Integrity Commissioner never discloses the identity of the discloser. However, the discloser may be subject to reprisals if their identity is revealed by other sources. If that happens, the discloser can file a complaint with the Office of the Commissioner. The process for receiving and handling complaints is similar to that for disclosure, but the Public Servants Disclosure Protection Act requires me to decide—

[*English*]

The Chair: Madame Solloway, can you wind it up?

Ms. Harriet Solloway: I will just add that conciliation and mediation are important tools to optimize outcomes for the parties, and we have thus far funded 24 successful conciliations.

I thank you for your time.

The Chair: Thank you.

Mr. Kelly will start our six-minute round.

Mr. Pat Kelly: Thank you.

Commissioner Maynard, thank you for clarifying some things in your opening statement.

Two weeks ago at this committee, Minister Blair said that he didn't believe the matter of ATIP compliance and the litigation that has resulted arose from his department, so I thank you for some clarity around that.

Can you confirm for the record that the title of the case is the Information Commissioner of Canada versus the Minister of National Defence?

Ms. Caroline Maynard: It is in three cases, yes.

Mr. Pat Kelly: It's in three cases now. Thank you for bringing that to our attention.

Since we had the minister here two weeks ago, you have had two more refusals from his department. You are taking him to court now over two other refusals.

Ms. Caroline Maynard: That's correct.

Mr. Pat Kelly: I understand you are not able to talk about the case itself or the merits of the case, but can you give us some timelines? What communication or information were you given regarding their refusal to comply with your orders?

Ms. Caroline Maynard: It's not so much a refusal. I think it's that they're incapable of respecting the orders because of the lack of resources and responsiveness from the different sections of National Defence where the records are held. There's an issue there.

In our investigation, we realized that when we issue orders, they're still incapable of getting information out. We have to go to court now to make sure that is respected.

Mr. Pat Kelly: When did you make the orders in the two new cases?

Ms. Caroline Maynard: Allison, do you have that information?

I know the orders were to issue the information by dates in November and December. The dates of the orders themselves would have been in the summer because they usually have 36 business days to comply with an order.

Mr. Pat Kelly: Did they inform you that they were incapable of fulfilling the lawful order you gave them? Did they tell you they were incapable, did they just let the clock run out or did they make excuses over willingness?

Ms. Caroline Maynard: When we issue an order, we have to give them an intent to order. They have 30 days to respond to us as to whether or not they are going to comply or take us to court.

In all three of these cases, they told us they were going to comply with the orders. We found out through information—often it's the complainants who reach out—that they were not met. The date passed. In that way, we have to go to court to make sure an order is respected.

Mr. Pat Kelly: I'll ask you the same question I asked the minister. Is this openness and transparency at work, or is it a demonstration of openness and transparency for Canadians, per the 2015 promise this government made?

Ms. Caroline Maynard: It's definitely affecting the credibility of the access to information system.

Mr. Pat Kelly: How does that affect people who need information from the department? We have reports of people trying to register their complaints of harassment or sexual misconduct. They need access to information to make their complaint and are not able to get information.

What does this say to people who need information from the department?

Ms. Caroline Maynard: I can't talk about privacy access. The Privacy Commissioner would be the proper person to talk to you about complaints for privacy requests. I suspect they have the same problem with the responses to these types of requests.

We definitely see that our complaints are related to timelines. The department is getting worse as we speak. In the last three years, complaints have been increasing. It's usually about timelines not being respected.

• (1225)

Mr. Pat Kelly: Again, what reasons do they give for not meeting the timelines?

Ms. Caroline Maynard: The reasons we find during our investigations are mainly with respect to what we call the OPI, the office of primary interest, which is where the records are. The ATIP unit is asking for those documents—the information—and they don't receive that information.

Mr. Pat Kelly: With respect to some of the recommendations from your last report, the government “takes note” of your recommendations. Is that code for they reject your recommendations?

Ms. Caroline Maynard: You're talking about the systemic investigations.

Mr. Pat Kelly: Yes.

Ms. Caroline Maynard: That's the report I did in 2018. National Defence definitely had some issues in treating and answering requests at the time. We did a systemic investigation. We issued nine recommendations. Since then, the department has put in place a management plan to respond.

It was really good the first two years, I have to say. The complaints were reduced in 2019 and 2020. However, since then they have gone up.

As I said, I think leadership has a big role to play. The department is not responding to the request.

Mr. Pat Kelly: I am just about out of time.

I was actually referring to the set of recommendations made by the ethics committee in 2023. That was where the minister explicitly said they had noted the recommendations but weren't implementing them. To be specific, recommendation number 7 of the ethics committee was about “creating an expedited access to information system” for victims of military misconduct, which they did not accept and aren't implementing, as far as I understand.

Do you have any further comment about that recommendation?

Ms. Caroline Maynard: This report was sent to the Treasury Board Secretariat. The Treasury Board president, as you said, responded that they were going to be looking into it. No recommendation was actually implemented.

Mr. Pat Kelly: None was implemented.

The Chair: Thank you, Mr. Kelly.

Mrs. Lalonde, you have six minutes.

[Translation]

Mrs. Marie-France Lalonde (Orléans, Lib.): Thank you very much to our witnesses. It's really a pleasure to have you with us.

Ms. Maynard, my first question is about the data and decisions of the Office of the Commissioner published on the Internet. Looking at this data, we see an increase in the number of decisions made about the Department of National Defence in relation to its delays in responding to information requests.

You mentioned that these delays started in 2021. So it seems certain that the situation was different in 2019 and 2020. Would you be willing to tell us what might explain the increase in delays starting in 2021? We had a major event in 2020—the pandemic—and everything was shut down for a while. Do you think that has had an impact on the number of decisions?

Ms. Caroline Maynard: The pandemic has certainly had an impact on all institutions in terms of meeting their obligations under the act. However, during the pandemic, the Department of National Defence's access to information unit was exemplary, in the sense that it processed a huge number of cases during 2020. It was interesting.

It was in 2021 and 2022 that we received an increasing number of complaints. The pandemic began to have an impact on the years that followed, and the delays continue to increase. Right now, though, we can no longer use COVID or the pandemic as an excuse for a delay.

As I was saying earlier, what seems to be the main reason for delays at National Defence is that the services that hold the information do not respond within 30 days, in other words, within the time requested by the access to information unit.

[English]

Mrs. Marie-France Lalonde: That's great. What would you recommend?

At our last committee meeting, one of the witnesses brought in the perspective that 30 days may not be realistic. There were suggestions by this witness that maybe we should look at expanding that. Instead of 30 days, let's make it longer.

Madam Maynard, and maybe Madam Solloway, I would really like to hear your perspectives on that.

• (1230)

[Translation]

Ms. Caroline Maynard: According to Treasury Board statistics, 60% of requests meet the 30-day deadline, but generally, a little over half are late. Of course, if we gave 60 days, people would still ask for additional time. I think we have to look at all the factors that lead to delays not being met.

Earlier, we talked about information management. There's far too much information. People aren't good at information management. When you make an access to information request, you are no longer talking about two or three pages in a small paper file. Now people keep thousands of pages to explain a decision.

[English]

There's definitely an issue with information management, and that causes delays.

The consultation between departments causes delays. Something has to be done with respect to giving a timeline to institutions that are receiving consultation requests to shorten those delays as well. That is one of the recommendations I made in my submission to Treasury Board with respect to the legislation.

Mrs. Marie-France Lalonde: Madam Solloway, I would like to hear your perspective.

Ms. Harriet Solloway: Insofar as the act under which we operate is concerned, I don't think we've had a systemic problem with a disrespect for the delays the act imposes.

I will hand it over to Brian Radford to expand on that.

Mr. Brian Radford (General Counsel, Office of the Public Sector Integrity Commissioner of Canada of Canada): Thank you.

Madam Solloway is correct that we have not seen this issue raised with us to any significant degree.

With respect to our own commissioner's office, we're a very small entity of 36 people with a single mandate to implement the PSDPA, the Public Servants Disclosure Protection Act, which means it might be a bit easier for us to meet the 30 days when we are faced with an access to information request. Of course, we have certain exemptions with respect to our disclosure of information.

Mrs. Marie-France Lalonde: I have a few minutes left.

I know that during your time for opening remarks, you couldn't finish everything. Is there a perspective you would like to bring forward to our committee?

Ms. Harriet Solloway: Thank you for the opportunity.

I was actually pretty close to the end. I was just going to mention some of the process for referring cases of reprisal to the tribunal. For the most part, everything was touched upon.

The Chair: Thank you, Mrs. Lalonde.

[Translation]

Ms. Normandin, you have the floor for six minutes.

Ms. Christine Normandin: Thank you very much to both witnesses.

Ms. Maynard, the Standing Committee on Access to Information, Privacy and Ethics recommended that the Information Commissioner be able to impose fines or penalties for non-compliance with his orders. You had to file three mandamus applications in order to enforce the orders you had issued.

Wouldn't penalties be a way to discourage agencies from not complying with orders? It would also avoid getting to the point where you have to file a mandamus application in order to successfully enforce those orders.

Ms. Caroline Maynard: In terms of orders, I had recommended during the discussions surrounding former Bill C-58 that a process for approving orders issued by my office be put in place. Under

such a process, it would be enough to have an order of my office approved by the Federal Court for it to be respected in the same way as a court judgment. Such a process would be much easier than a mandamus application.

At the time, the government said that we didn't need a process like that because it was going to comply with the orders of the Office of the Commissioner, which had the force of law. We now have proof that this isn't exactly the case. I think a certification process would be enough for institutions not to want to be charged with contempt of court, if I can put it that way.

When it comes to penalties, people often ask us who should be punished when the department doesn't respond or doesn't comply with the act. I think it would be very difficult to establish a process that would sanction a public servant, director or deputy minister. I think it would be easier to establish within the department a performance evaluation process for responding to access to information requests. When it affects premiums and pay, it can have an impact.

• (1235)

Ms. Christine Normandin: As the saying goes, money makes the world go 'round.

I have a financial question. I understand that you've asked for about an additional \$6 million over three years to complete the complaints that you've received. You received double the usual complaints, but with the same budget. What is the status of that request?

Ms. Caroline Maynard: This is a request that was sent using the existing supplementary budget request mechanism. I haven't heard anything from either the Minister of Justice or the Department of Finance. I don't have a lot of hope for additional money. It's unfortunate because I'm an independent officer of Parliament, but I must report to those departments in order to receive additional money to carry out my mandate.

Fortunately, we received fewer complaints this year, so we're able to meet the demand, but my backlog isn't decreasing much because the number of applications coming in is equal to the number of applications processed. We should definitely have a way to get money when we need it to meet the demand, or to give money back if there is a drop in the number of requests. This is a process that I think should be independent of the government.

Ms. Christine Normandin: Thank you. I will come back with more questions later.

Ms. Solloway, last September we received information that the Department of Defence had violated the Public Servants Disclosure Protection Act. I understand that it was your predecessor, Mr. Friday, who made the information public. He described his findings as troubling because, for a number of years, the Department of National Defence, as part of its internal regime, hadn't even updated its website to say that there were ongoing investigations, and hadn't even informed the whistle-blowers of the outcome or follow-up of those requests.

I'd like to hear your thoughts on the parallel roles of your office and the internal regimes of federal institutions. I understand that a whistle-blower may decide to use either the internal system of the institution or your office, or both. If there's a loss of confidence in the internal plans, what is the impact on your organization? Over the past few years, has the number of requests that you process at your office increased compared to the requests that are handled by the internal systems?

[English]

Ms. Harriet Solloway: Without commenting on the reason why—because I haven't done a full analysis—I will say there's no question that our office has been seeing a consistently increasing caseload. I stand to be corrected, but I believe we are approximately 50% over last year, and I believe the year before there was an increase.

With regard to budgets, our office has not had an increase in its budget since it was established in 2007. I had been in the job two weeks at the time that we had to submit a budget request. We did make some very modest requests for an increase in the budget for the coming budget year, primarily because our IT system is about to collapse. We are now taking stock of where we are and what we need with a view to looking at how we can best be structured to increase efficiencies and identify resources that we're going to need going forward based on this strong trend analysis we've done.

We have a concern that I know other agents of Parliament share, but in our case, it's quite acute. We do have a concern for the budgets going forward.

I don't know whether that responds to your question.

The Chair: Thank you for that response.

Madam Mathyssen, you have six minutes, please.

Ms. Lindsay Mathyssen: Thank you.

You haven't had an increase since 2007. That's horrific. You said your IT system is about to collapse. Can you go into more detail?

Ms. Harriet Solloway: Up until several months ago—and Brian has the institutional memory here—our IT services were contracted out. Now we've moved towards an in-house capability. We have two people in-house, and they're keeping the system together for now. We've already requested equipment, which we were able to do in this budget year, so we expect that quite shortly we'll be upgraded.

• (1240)

Ms. Lindsay Mathyssen: You want to keep that in-house going forward.

Ms. Harriet Solloway: At this point we have to keep it in-house for a whole host of reasons that I won't go into but are in our budget submission. If you would like me to expand, I can.

Ms. Lindsay Mathyssen: I would assume that it's because it's also more affordable.

Ms. Harriet Solloway: It's more affordable. It's more secure. For a number of reasons, yes, it is more affordable and secure.

Ms. Lindsay Mathyssen: This is for both commissioners.

Throughout this study, we've heard a lot about the differences among the officers of Parliament and between being a commissioner and being an ombudsman. We just heard from the ombudsman. I'm particularly interested in the independence of those offices.

Could you talk to us more about that independence and about how the independence of your roles as commissioners allows you to do what you do? Can you comment on the importance of extending that role, maybe, to the role of an ombudsman?

Ms. Caroline Maynard: It's interesting, because I was at the MGERC in 2011 and the issues are the same. I was listening to Mr. Vihar Joshi, and they haven't changed that much. It's the same thing for the ombudsman.

As agents of Parliament, the good news is that we are reporting to Parliament. We are completely independent. The resource issue is the only thing that really affects us. It really has an impact on whether or not we have the resources to fulfill our mandate. Apart from that, I am investigating the Minister of National Defence, the Minister of Justice, the Minister of Finance and the President of the Treasury Board. We are reporting to Parliament the results of our investigations.

Without the proper resources and the proper mechanisms to get the resources, it is impacting our ability to do more. About 87% of my budget is salary. I'm like Commissioner Solloway: I have an IT team that's super small. We can't go to the cloud. We can't do things that other big departments can do quickly. I want to do more investigations. I want to reduce my timelines. I want to be more efficient with the mandate that I've been given. We have to make choices on where the money is going to go. Those are difficult.

I'm sure that reporting to a minister as an ombudsman is not the same thing. When you have decisions being made by a department, you're responsible for that. We have a completely separate mandate.

Ms. Harriet Solloway: I would like to add to that. Because both of our organizations are so small—I don't mean to speak on your behalf—one of the challenges we have is contingency funding. That's for either sharp increases or sharp bumps that may or may not be sustained; for complex cases that may arise out of the ordinary; or for cases where there may be a need to finance or fund legal services for a judicial review.

These are things that are hard to budget for. We have to keep money aside for them in case they happen, which impedes us from using the money operationally on a day-to-day basis. We have to be prepared for any eventuality.

When you're in a larger organization, you can move things around a more easily. It's a bit challenging for us. Otherwise, I absolutely concur with my colleague.

Ms. Lindsay Mathyssen: In a meeting on this study, the deputy minister said that digitization was a large fix for this problem. Would you agree with that? Are you seeing that happen satisfactorily in the departments?

Ms. Caroline Maynard: Allison, do you want to respond to electronic digitalization?

Ms. Allison Knight (Senior Director of Investigations, Priority Cases, Historical and Intelligence, Office of the Information Commissioner of Canada): Sure.

It's certainly one piece of the puzzle. I wouldn't say the majority of the cases are impacted by a digitization problem. That largely goes to historical records that are still on paper. It's not like the military is working on paper today. If you're looking for contemporary records, I don't think that is the main barrier to the timeliness issue.

• (1245)

Ms. Lindsay Mathysen: How much time I do have, Mr. Chair?

The Chair: You have 30 seconds.

Ms. Lindsay Mathysen: I'll wait. Thank you.

The Chair: Thank you.

Colleagues, we're supposed to rise at 1:06, I'm told. We do not have time for 25 minutes' worth of questions. I'll take a minute off Mr. Bezan's question and keep on going.

Mr. James Bezan: Thank you, Mr. Chair, and I want to thank both witnesses for being here.

Commissioner Maynard, you gave us very compelling testimony today. How many departments other than National Defence have you been forced to take to court?

Ms. Caroline Maynard: There was only one. It was the TMC.

Mr. James Bezan: Was it just one case?

Ms. Caroline Maynard: Yes.

Mr. James Bezan: In the time that you've been commissioner, since 2018 or before, how many times have you had to do this?

Ms. Caroline Maynard: First of all, the authority to issue orders only started in 2019. It took us about a year or two to start having files where we issued orders. We're seeing an increasing number of orders. This year I have issued 298 or something like that.

Most of the time, institutions are complying, or they go to court to contest the orders. The act does allow that. In three cases now, two against National Defence and one against TMC, I've had to issue an order or ask for a mandamus to force the institution to respect the order.

Mr. James Bezan: You also said that this is undermining your authority and undermining the Access to Information Act. For a government that says they are going to bring in more transparency, what's your take on this? Are they doing this because they're trying to cover up information? Is it embarrassing? Why would we be in the situation where an officer of Parliament is forcing ministers to go to court?

Ms. Caroline Maynard: It has an impact on simply the authority itself and on the credibility of the access request, because we're seeing longer delays. Now we're seeing departments either taking the orders to court or ignoring the orders, so they take extra time to respond to access requests that should have been responded to within 30 days or within an extension that is legal.

Mr. James Bezan: I have some historic ATIPs that were never completed. I have one that we filed back on October 13, 2017, just asking for a policy change document. We have one from back in 2018 just asking for information surrounding the national ship-

building strategy, which you'd think would be pretty easy to come by. I have one looking for records on the hospitality expenses of an employee, and one looking for information on an Auditor General's report and the correspondence that went back. I have six that go back from 2017 to 2019.

Should I have filed these with you? As a member of Parliament, I don't know if I have the capability to come to you and say, "Make the department report." For some of these, we've only started to hear back from the department in the last couple of months, and they still haven't given us the information.

Ms. Caroline Maynard: I was going to ask you if you have complaints with my office. I don't think you do.

Mr. James Bezan: Should I?

Ms. Caroline Maynard: Well, the process is there for that. There is a timeline in the act, and if you don't get an answer within 30 days or within an extension that is taken legally, you have the right to make a complaint within 60 days of knowing why you want to make this complaint. Yes, you have the right to complain to my office.

Mr. James Bezan: Is this because of the department or the minister? Are they incapable or incompetent? Is it a lack of leadership or a political scandal and cover-up?

Ms. Caroline Maynard: There are lots of factors that affect a department's ability to respond. As I said earlier, there is information management, the culture of the department, the lack of resources, lack of tools—all of these things. Often the leadership has an impact as well.

The Chair: Mr. Bezan, four minutes is not five minutes.

What does TMC stand for?

Ms. Allison Knight: Trans Mountain Corporation.

The Chair: Okay. We were wondering about that.

With that, Mr. Fisher, you have four minutes.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Thank you very much, Mr. Chair.

The Chair: This is not a Bezan four minutes.

Voices: Oh, oh!

Mr. Darren Fisher: I want to thank the two commissioners and their teams for being here.

It's funny. I had a prepared question, but I hear the frustration in your opening remarks and in your responses.

We heard a 2007 reference when it came to the budgets. We heard a 2011 reference. Ms. Maynard, you referenced 2011 and how bad things were.

We know historically how bad things were under the previous government, but my goodness, it doesn't seem like it's getting a lot better. I can look at graphs and charts that show me there are some minute improvements. This is really frustrating.

It's one thing for us to sit here and say the opposition years ago was really bad, or to sit over there and say, "You guys are really bad." We as a committee, as a government, as ministers and as departments need to do better.

Can both of you tell me in the remaining time I have what we need to do, notwithstanding the IT system issue—which was well received, thank you—and the budget issue, to get this ATI system fixed? I know I'm not leaving you an awful lot of time. I'm frustrated and I hear your frustration, and I hear the frustration from members around the table. What do we need to do to get beyond what I see in charts as incremental improvements. We'll take two seconds to pat ourselves on the back for incremental improvements and then get back to work. What do we need to do to make this better?

• (1250)

Ms. Caroline Maynard: I agree with you that things don't change. When it's your information, you're protecting it, and when it's not your information, you want it.

If you want things to be changed, you need to change the culture within the government. The leaders have to provide priorities, clear objectives, resources, training and innovation.

We need legislative changes. Right now, we'll be waiting until 2025 to have another round of legislative changes. That's going to be just the start of the legislative changes. There are going to be consultations probably, and I'm not even sure I'm going to be there for that. However, we definitely need stronger legislation. That act is 40 years old and it hasn't changed that much.

We need investment in money and in resources to respond to the access requests. They are not going to go anywhere. People are asking for information. They know they have the right to do it and they are doing it.

Mr. Darren Fisher: Ms. Solloway, I think there's still a bit of time left.

Ms. Harriet Solloway: I'm not quite sure how to answer. To be very transparent, to my knowledge, I'm not sure that my predecessors have asked for a budget increase in previous years, so I cannot say that requests were denied. However, I do think we need some flexibility built into our budget to address *sui generis* situations, making sure we don't waste money but making sure that we have access to money when we need it.

I think that's one particular issue, but as I said, it's going to be up to us. This is what we're in the process of doing in looking at our organization, and we'll be ready, hopefully by the next budget cycle, to make a clear-eyed request about what is required.

Mr. Darren Fisher: Thank you very much for that.

Thank you again to you both for your opening remarks and your comments.

I think it's incumbent upon us as a committee to stop the "they're worse than we are, we're worse than they are" partisan sniping and just get down to work and make this system better for you folks.

The Chair: Thank you, Mr. Fisher.

You have a minute and a half, Ms. Normandin.

[*Translation*]

Ms. Christine Normandin: Thank you very much, Mr. Chair.

Ms. Maynard, two weeks ago, I quoted part of your 2020 report, which states that public servants tend not to disclose too much information so as not to risk getting into trouble, that they sometimes routinely classify information as confidential and that their work related to access to information requests is only one of a number of tasks.

I asked a witness about this, and he said that there wasn't really a problem there, that the work was well done and that these officials were assigned exclusively to access to information requests. I'd like to hear your point of view so that your testimony can also be part of our report.

Ms. Caroline Maynard: Access to information units do virtually nothing but this work all the time. There's no doubt that these people work hard and that working in an access to information unit is a calling. On the one hand, requesters aren't happy about not having the information they want and, on the other, departments don't want to give it out because they have other things to do.

The obligations under the act are part of the responsibilities of public servants, but I don't think they've been taught that. We have to show leadership and tell them that this is part of their department's priorities and that it isn't just a secondary task that can be ignored because it's not important or fun.

• (1255)

The Chair: Thank you, Ms. Normandin.

[*English*]

You have a minute and a half, Ms. Mathysen, and maybe a couple more seconds.

Ms. Lindsay Mathysen: Thank you.

I don't want to put you in the middle, and I think Mr. Fisher has the best of intentions. He's certainly right that it shouldn't be partisan. It should be about getting access out there. However, when we talk about a change in culture or you talk about showing leadership and the need for investments and resources, I often wonder how much of this is deliberate since, for example, one group has power and the other one has information, and then the other one has power and they want information.

How much do you think we can do? What can we truly do within legislation to ensure that all that partisanship is taken out of the equation and ensure that the deliberate under-resourcing of institutions does not occur?

Ms. Caroline Maynard: As we said, with regard to agents of Parliament right now, there are only two or three who have independent mechanisms to obtain their own finances outside of the government. Unfortunately, we are one of, I think, six that don't have a mechanism for independent financing. That definitely would be the right step forward. Then we would be able to obtain resources when there's a surge of requests or a surge of complaints, and, when we have an IT system that fails, we would not have to use our own resources to fix things.

Changing the law, making it stronger, making it a priority, making proactive disclosure a priority and proactive disclosure being under my authority to investigate.... Right now, part 2 of the act is not even being looked at. We don't even know if institutions respect their proactive disclosure obligations because nobody has a purview, an authority, to review that.

The Chair: We'll have to leave it there, unfortunately.

Mr. Bezan, you have four minutes.

Mr. James Bezan: Commissioner Maynard, do you believe that what's happening at National Defence—you have three court cases against the minister—is systemic? Is this the new modus operandi? Are they going to continue to try to block you rather than be compliant with the legislation?

Ms. Caroline Maynard: I really hope not.

Mr. James Bezan: We'll have to watch and see what happens.

Commissioner Solloway, you talked about people within departments who are coming forward with information and complaints and the reprisals happening from their higher-ups. At the Department of National Defence, we want to make sure that whistle-blowers are protected, but things like the National Defence Act, the Security of Information Act and non-disclosure agreements are being used now to hush people up.

Does it undermine whistle-blowers coming forward when they see wrongdoing within the Department of National Defence and the Canadian Armed Forces?

Ms. Harriet Solloway: I'm going to defer to Brian to answer that question. Having been here only four months, I have not been around long enough to detect patterns.

Mr. Brian Radford: Fear of reprisal is definitely an issue. Perhaps, as alluded to before, when the internal disclosure regime does not work very well, it affects the entire disclosure regime.

We have jurisdiction over the Department of National Defence but not the Canadian Armed Forces. However, we can investigate members of the Canadian Armed Forces alleged to have taken reprisals. The consequences at the end of the process may be a little different for them in that they are not public servants under the act, but indeed it adds to the fear of coming forward with information, as does the fear that nothing will be done if they come forward with information.

Mr. James Bezan: A CAF member can come to your office and still get a fair hearing.

Mr. Brian Radford: No. A member of the CAF can provide us information, as any member of the public can, with respect to wrongdoing.

Mr. James Bezan: You're strictly with DND employees.

Mr. Brian Radford: They're DND employees with respect to wrongdoing and DND employees with respect to making a reprisal complaint. People alleged to have taken a reprisal can, however, include a CAF member.

Mr. James Bezan: Mr. Chair, I want to move a motion based on testimony we've heard today. I think it's fairly straightforward. I move:

That the committee extend the transparency within the Department of National Defence and the Canadian Armed Forces study by one additional meeting and invite the Privacy Commissioner to appear.

I think it was an error that none of us had the Office of the Privacy Commissioner on our list of witnesses. We heard today from Commissioner Maynard that some of the questions we asked would be best put to the Privacy Commissioner.

We know that members of the Canadian Armed Forces often have to ATIP their own medical files and that falls under privacy, as does some of the other information that has been requested from the Canadian Armed Forces and the Department of National Defence. I think it is incumbent upon us to request that the Privacy Commissioner appear.

• (1300)

The Chair: The motion is in order, obviously. I don't think we'll have a debate, but for the committee's information, we've already invited the Privacy Commissioner. It's just a case of negotiating a time. We've extended an invitation.

Mrs. Marie-France Lalonde: Mr. Chair, I want to understand this. Mr. Bezan has brought in a motion and you're saying this particular individual was already on the list of witnesses.

The Chair: I don't think he was on the list of witnesses we'd already—

Mrs. Marie-France Lalonde: You already suggested that he should be coming, or this organization is—

The Chair: We have a superior chair and a superior clerk here, and we always anticipate every need of the committee.

Mrs. Marie-France Lalonde: We always believe that, Mr. Chair. You're well supported by a wonderful clerk.

The invitation was sent. Is that what I'm hearing?

The Chair: We have extended the invitation.

Mrs. Marie-France Lalonde: Okay, perfect. Thank you.

The Chair: The final four minutes go to.

An hon. member: No, we're on debate.

The Chair: You still want to debate this. I'm sorry.

Go ahead, Ms. Mathysen.

Ms. Lindsay Mathysen: I would argue that we should probably still have the motion go forward, because the invitation may be sent, but a further request from the committee would be valuable.

I would actually like to amend the motion.

The Chair: Okay.

Ms. Lindsay Mathysen: It would read, with my amendment included:

That the committee extend the transparency within the Department of National Defence and Canadian Armed Forces study by two additional meetings and invite the Privacy Commissioner, the Chief of the Defence Staff, and the former National Defence and Canadian Armed Forces Ombudsman, Gary Walbourne, to appear.

The Chair: Okay. Is there further debate?

Go ahead, Madam Lalonde.

Mrs. Marie-France Lalonde: I would like to understand this. I know we've been very generous with this important motion in facilitating it. There are other motions we would like to take on. We have also agreed to an extension on the housing study.

I'm not disputing that this is very important subject matter, but what is Ms. Mathysen's rationale for who she's inviting? It's two more witnesses, so it's four hours. Is that what I'm hearing, or is it two hours? I just want to understand this, with everything in hindsight and with everything piling up on our desk at this wonderful committee.

I'm not saying it's a no. I just want to understand it.

The Chair: Go ahead.

Ms. Lindsay Mathysen: When I originally put forward this motion, I expected it to be longer. As the committee will remember, it was shortened. As we've discovered, there's a lot to dig into, so I think we owe it to the witnesses who have come and shared their time to do a fulsome study, as we need to.

I also originally asked for the chief of the defence staff to appear because he has the final say. We have heard him and his office referenced several times today and in previous meetings as to the final authority on information and access to said information. I think that's really important. Even today with the ombudsman, as incredible as Mr. Lick and his office are, I think a lot of the historical context of what happened with former ombudsman Walbourne is important for this study.

If we feel that we're able to do it in a meeting and a half, that's fair enough. However, with the depth of these witnesses, I consider two meetings appropriate.

The Chair: Now we'll have Mr. Bezan and then Madam Lalonde.

• (1305)

Mr. James Bezan: I support the amendment. I believe what we heard this morning from the military grievances committee is that they do take direction from the CDS and refer files, so we want to hear from the CDS.

Based on Mr. Lick's testimony this morning and his comments surrounding the independence of the office, namely that Mr. Walbourne proposed legislation when he was the ombudsman, I think we should talk to Mr. Walbourne about the importance of making the office an independent parliamentary office that's able to do the investigations required.

This is in the interests of those who serve in the Canadian Armed Forces and those in the Department of National Defence. We want to make sure that we are promoting a culture of transparency. I think digging deeper in this study helps send a message about the culture change that needs to happen to ensure that we have collaboration and co-operation by department officials and the minister himself.

The Chair: Go ahead, Mrs. Lalonde.

Mrs. Marie-France Lalonde: As always, I like how at the last minute of every committee, without getting any proper notification or information.... We didn't see anything in writing. We have a wonderful amendment that I think will be interesting to see on paper written up, so maybe, Mr. Chair, we can adjourn so we can see it. Then we can come back to the discussion.

The Chair: Is that a motion to adjourn?

Mrs. Marie-France Lalonde: It is.

The Chair: Okay. Marie-France, are we adjourning the meeting or the debate?

Mrs. Marie-France Lalonde: I would like to adjourn the debate.

The Chair: Okay, that's a dilatory motion.

(Motion negatived: nays 6; yeas 5)

The Chair: The motion to adjourn debate failed, so we're back to the motion and the amendment.

Is there any other debate?

Go ahead, Mr. Fisher.

Mr. Darren Fisher: Can we get the amendment? This is just James's motion. Is there a way of getting the amendment or the amended motion?

The Chair: I don't think she has it in writing.

Do you have it in writing, Clerk?

Mr. Pat Kelly: On a point of order, the motion, if I understand your ruling, Chair, is in order.

The Chair: I'm not talking about that. We're trying to find—

Mr. Pat Kelly: We ought to just continue, and if there's no debate, it would go to a vote.

The Chair: The amendment is also in order. I'm asking whether there is a written copy of the amendment so we all know what we're talking about.

The clerk has it.

The Clerk: I have it in one language. I can't distribute it because I don't have it in both languages.

The Chair: We don't have it in both official languages. It has been read into the record, but for a point of clarification, I'll ask the clerk to once again read it into the record so we know what we're doing.

Mr. Pat Kelly: If I may, Chair, would you allow the witnesses to leave at this point?

The Chair: It looks like we're pretty well past the time anyway, unless you really want to stay for this really thrilling exercise in democracy.

Voices: Oh, oh!

The Chair: Thank you again.

Mr. Clerk, so that we all know what we're talking about, go ahead.

The Clerk: Perfect.

I'm going to read the whole motion, with the amendments that have been suggested by Madam Mathysen. The motion would read:

That the committee extends the transparency within the Department of National Defence and the Canadian Armed Forces study by two additional meetings and invite the Privacy Commissioner, the Chief of the Defence Staff, and the former National Defence and Canadian Armed Forces Ombudsman, Gary Walbourne, to appear.

• (1310)

The Chair: Okay. Does everybody understand?

Go ahead, Mr. Fillmore.

Mr. Andy Fillmore: Is it debate on the motion? Is that where we're at right now?

The Chair: It's on the amendment.

Mr. Andy Fillmore: I would like to offer this team's support of the amendment to the motion on one condition.

Ms. Mathysen should hear this, if she could.

We're prepared to support your amendment to the motion on the condition that the witnesses take their places at the back of the line and come after the space study. With that condition, we're supportive of what you're proposing, but we need to get to that study. We've seen what's in the news with Russia's satellite-killing technology. We need to get moving on this, and the window for travel is closing.

The Chair: Go ahead, Ms. Mathysen.

Ms. Lindsay Mathysen: I have so much faith in the competency of this committee that we could handle both at the same time if

we wanted to start. I know that the clerk, as incredible as he is, may have difficulty fitting in witnesses, and I know there's another study before the space study, but if we can juggle a bit and fit in people as we need to so that we're not wasting time, that would be amazing. I'm fully prepared to do that.

The Chair: Well, that is more of an undertaking than anything to do with the motion or an amendment to the motion.

Having said that, go ahead, Mr. Bezan.

Mr. James Bezan: First of all, just on substance, we support the motion.

Second, to Mr. Fillmore's comments, I think it is for the subcommittee or the chair to manage the timeline of the committee as best as possible. I think there are opportunities to juggle. We know the CDS and the Privacy Commissioner are both here in Ottawa. If we need to find witnesses, they're easy enough to pull in to fill any spaces that might happen on our calendar.

At the same time, I don't want to hold back the space study, especially on the travel side, so we can get going on starting that off. We can walk and chew gum at the same time.

The Chair: Are there any other points of debate?

The first vote is on the amendment.

(Amendment agreed to [*See Minutes of Proceedings*])

(Motion as amended agreed to)

The Chair: Thank you very much.

As a final point before we adjourn, I need someone to move the budget for the transparency study, which we set at \$6,000 for two meetings. We'll see whether we can get by on \$6,000.

Chad moves it.

(Motion agreed to)

The Chair: Thank you.

The meeting is adjourned.

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