



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 093 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, February 27, 2018

—
Chair

Mr. Bob Zimmer

Standing Committee on Access to Information, Privacy and Ethics

Tuesday, February 27, 2018

• (0850)

[English]

The Chair (Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC)): I call the meeting to order.

I want to thank everybody for coming to the Standing Committee on Access to Information, Privacy and Ethics. This is meeting number 93.

Pursuant to standing order 111.1(1), we are studying the certificate of nomination of Caroline Maynard to the position of Information Commissioner, as referred to the committee on Wednesday, February 14, 2018.

Please go ahead, Ms. Maynard.

[Translation]

Ms. Caroline Maynard (Nominee for the position of Information Commissioner, As an Individual): Mr. Chair, members of the committee, I am honoured to appear before you today and I feel very privileged to have my application for Canada's Information Commissioner considered.

[English]

I am particularly honoured to be nominated, given the importance to Canadians of the role of the Information Commissioner in protecting and promoting access to information, a right that has been recognized as a core principle in a functioning democracy.

The challenges and the changes ahead cannot be underestimated. However, as a jurist with 20 years of experience in oversight agencies, I cannot hide my enthusiasm in being considered for the position of the commissioner responsible to oversee the implementation of the proposed new legislation, Bill C-58.

Building on the Office of the Information Commissioner's 34 years of knowledge and experience, I would make full use of the current and proposed powers to provide a fair and efficient independent review of government decisions relating to access requests to increase both transparency and accountability.

Before I discuss in greater detail how I envision fulfilling my duties as an agent of Parliament, let me introduce myself.

[Translation]

First all, I was born and raised in Saint-Hyacinthe, in the province of Quebec. I graduated in civil law from the Université de Sherbrooke. In my final year, I met my husband, who, at the time,

was also studying law, but in Alberta. In 1993, we moved to the Outaouais. We have been married now for 20 years. I am also the mother of three boys, between 13 and 18. When I am asked how I spend my time after work, I say that I am a licenced chauffeur, a 24-hour convenience store operator, and a hockey mom.

[English]

After a brief period in the private sector, I joined the federal government. My public service career has been spent largely in agencies responsible for providing an independent review of grievances submitted by members of the RCMP and the Canadian Armed Forces. Whether I was acting as legal counsel, director general, general counsel, or recently as the chairperson of the military external review committee, I have always been guided by the same values: integrity, excellence, fairness, and timeliness.

My leadership style is based on the same principles. My employees would tell you that I am a very open and reasonable person who recognizes a job well done and promotes innovation and efficiency.

When I began with the external review committee in 2006, it was a relatively new tribunal. The committee is responsible for providing an independent review of military grievances referred by the Canadian Armed Forces. It issues findings and recommendations to the chief of the defence staff, who is the final authority of that grievance process.

As civilian oversight of military grievances, the committee had to work very hard to build its credibility. Collectively with management, and in consultation with employees, we worked diligently to find ways to improve our internal process. Through teamwork, innovation, and determination, we reduced the average time spent on files from nine months to four months, while increasing the quality of our findings and recommendations. We showed that a civilian oversight agency could provide significant value added to the administration of military affairs.

As a result, I am proud to say that the committee's portfolio has increased from receiving 40% of all grievances at the final authority—mainly mandatory referrals—to now receiving 95% of all grievances, because it includes files that are sent on a discretionary basis.

[Translation]

I have been working in complaint resolution for almost two decades because I know that we are able to change things. I am motivated by the fact that my organization is full of competent officials, who care about what they do, and about the impact they have on Canadians. I have spent my whole career making sure that the rights of those without representation are respected and that the decisions that affect them are justified and reasonable.

[English]

Should I become the next Information Commissioner, this is the spirit I would bring to my duties. I see this opportunity as a logical progression in my career in the public service. I am more than ready to report to Parliament on how I would oversee the access to information regime.

[Translation]

That leads me to explain to you my particular interest in the position of Information Commissioner, as well as my vision and what I believe to be the greatest challenges I will have to face in the event that you approve my application.

In Canada, access to information about government decision-making is a well-known and well-established right that is almost constitutional. That statement is supported by the growing number of requests made each year, as reported by the Treasury Board Secretariat. The office of the commissioner's website also tells me that the number of complaints increases each year. In addition, given the new amendments to the act and the recent launch of the electronic form, it is reasonable to assume that the number of complaints will continue to grow.

[English]

Should I be appointed, I can assure you that my first commitment to Parliament and to all Canadians will be to tackle the current backlog of complaints. From the report submitted by the current commissioner, I understand this has been one of her main concerns as well, and obtaining additional resources is listed as part of our office's priorities. In this regard, I know that the president of Treasury Board has committed to providing further funding for the implementation of Bill C-58, and this is very encouraging. Also, with the lessons I have learned in streamlining the committee's grievance review process, I'm confident I would bring a critical eye to the commission's internal processes that could help optimize efficiencies. Addressing backlog issues is a necessity, as I truly believe that Canadians are entitled to have their complaints dealt with in a timely manner. Access delayed is access denied.

That said, success relies on a change of culture, a change of culture towards access rights within the federal institutions subject to the act. I can say from my own experience that even though the access to information legislation was enacted 34 years ago, there appears to still be an impulse for exemptions and exclusions rather than transparency.

We need to give meaning to the concept of open government. It has to become part of federal institutions' day-to-day practices and approaches. It is only when the access right becomes a foundational right and principle, just as the respect of our official languages is now ingrained in our society, that Canada will reassert its leadership

as an open and transparent government that is a model for all democratic nations.

In consultation with the commission's stakeholders, I believe our efforts must be geared towards the promotion of disclosure and transparency. I'm pleased to see these efforts will be supported by the new wording of the purpose found in Bill C-58, which clearly states that the goal is "...to enhance the accountability and transparency...in order to promote an open and democratic society..." This is, in my view, a clear message that there is a commitment to hold federal institutions accountable with respect not only to their decisions but also to their obligations under the act. This expressed intent, in addition to the new powers provided to the commission to issue and publish orders, suggests that accountability and transparency are to be taken very seriously.

● (0855)

[Translation]

Before closing, I must recognize the important work and the undeniable devotion of Commissioner Legault and her employees in championing and promoting access legislation in Canada. The expertise acquired by the office of the commissioner over the last 34 years provides a solid foundation on which I commit myself today to carrying out my mandate, if Parliament sees fit to honour me with the position of the next Information Commissioner.

[English]

I also pledge to act with integrity and to the best of my abilities and to serve Canadians and Parliament with the highest degree of independence.

I thank you, Mr. Chair and honourable members, for considering my nomination.

[Translation]

I am now ready to answer your questions.

[English]

The Chair: Thank you, Ms. Maynard.

The first up is Monsieur Picard.

[Translation]

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

Good morning.

Welcome; as the mother of three boys, you are a brave woman. That is surely a feat in itself. How do you manage to balance family and work?

Ms. Caroline Maynard: I am not sure I do manage, but I try.

Mr. Michel Picard: You used a cliché that we hear in the context of a lot of programs, a lot of applications and a lot of discussions. This is the famous "culture change", the need to change the culture. What in our culture is not working?

Ms. Caroline Maynard: In the field of access to information, even with legislation that has promoted the right to access for 34 years, there is still fear, or reluctance, surrounding the idea that people should know everything that is happening in an organization. Sometimes, even managers hold information back, as if doing so allowed them to maintain control.

However, my experience has allowed me to realize that, the more access to information people have, the more they trust their managers and their organizations. That is why information has to be sought out and why transparency has to be promoted.

Mr. Michel Picard: How do you see the role of commissioner and of the commissioner's office?

You say that people tend to hold information back and that it is a form of control. Not sharing information probably provides a feeling of power. They might well think that some people "can't handle the truth", as it were.

Where do you stand in a decision, a choice, to communicate all information without exception and to answer all requests without necessarily trying to find out whether it is appropriate?

Are we going to consider and filter the information before providing it, or, again, are we going to choose complete openness?

● (0900)

Ms. Caroline Maynard: One of my priorities is to give meaning to the expression "open government". That has to become more than just a slogan; people in organizations have to believe in the power of sharing information. It is clear to me that it will take time. After all, the Access to Information Act has its limitations. I feel that the role of the commissioner's office is to make sure that decisions are made consistently and that the guidelines that have to be used when those limits apply are well enough known.

Currently, I see that little information is shared about decisions or investigation, given that the office of the commissioner can only write annual or special reports. The new legislation allows the office of the commissioner to issue orders.

In the coming years, if I become commissioner, I would like to explore the possibility of doing more than that. Issuing orders seems very negative in that we are forcing people to abide by the law. Why not also publish best practices, exemplary practices, and decisions in which organizations are encouraged and congratulated for the work they have done. I would like to work with institutions, with Parliament, in order to determine how to implement best practices and to encourage people to disclose information, rather than forcing them.

Mr. Michel Picard: You mention issuing orders, but is there not a danger there?

Could that not be trying to be more transparent than transparency itself?

The information is there. I am not talking about attacking the reputation of the person or the group identified by the order, but would the disclosure not have a negative impact on the people's lives in areas other than the ones intended by the order? A person could be affected economically, professionally, through their family, or even their friends, regardless of the specific points covered by the order.

Ms. Caroline Maynard: The goal is not to make people uncomfortable or to cause difficulty for organizations. In my opinion, the point is rather to make sure that people can be aware of the results of investigations and can know whether the commissioner's office, in certain situations, considers the decisions to be justified, reasonable or subject to discretion, and whether or not that discretion was used reasonably. The goal, in a way, is for the orders to play an educational role.

Of course, before an order is given, there is a process and an exchange of information. We try to negotiate, to mediate, to come together. Ultimately, I still believe that information is relevant when it is asked for. If the decision is too long coming, the information is no longer relevant, so I find that when it is clear that there is no meeting of the minds, an order is needed to make sure that the disclosure takes place.

Mr. Michel Picard: I still have one minute.

You talked about the growing number of requests and complaints. That is not surprising, perhaps, but you see technology also increasing the number of complaints that the commissioner's office will receive.

Is technology becoming a burden for you? Do you have any technology solutions yourself to help you deal with the increase in these requests?

Ms. Caroline Maynard: Absolutely.

One of my priorities is to see how the commissioner's office works. We have a backlog of 3,000 complaints, as I understand it, according to the information available. The number of complaints increases each year, each year, so there has to be room for technology in the investigations.

We have to see whether it needs better time management and whether standards have been established. We can implement all kinds of lessons we have learned. Often, the employees themselves have solutions. By having discussions with the people in the commissioner's office, we will certainly find ways in which we can deal with the backlog.

● (0905)

Mr. Michel Picard: Thank you very much.

[English]

The Chair: I'll just make it clear to everybody in the room that this meeting is not in camera. We're having problems with our signage and the recording devices, but the media in the room should know that this is a public meeting and they're all okay to be here. I just wanted them to know that.

Next up is Mr. Kent for seven minutes.

Hon. Peter Kent (Thornhill, CPC): Thank you very much, Chair.

Thank you for being with us this morning and for your introductory remarks.

In recent months it's been customary for us to ask officer of Parliament appointees about the appointment process itself. I wonder if you could tell us when it began for you. Did you apply for this position, or were you recruited?

Ms. Caroline Maynard: The journey started in November. I was invited to attend mandatory training for new GIC appointees. As acting chair, I decided to go, because I thought it would be a good thing for me to tell the new chair, him or her, what this training was all about.

At the training, I met people from Treasury Board and PCO. I had some questions with respect to terms and conditions for new members who were going to be appointed to my committee, where I'm working now. The lady from PCO who was there followed up with me a week later. During that conversation, she asked me if I would be interested in applying for a position of agent of Parliament. There were two positions at the time, Ethics Commissioner and Information Commissioner.

I was very flattered. I have to say that at that point, I was in a situation where I was getting ready for the new chair at the committee, so it was not something I'd thought about, but it was something that, for my own progression, I was definitely curious about. I looked into the mandate. I spent a week looking at what the commissions do. I realized it was very similar to what I've been doing for 17 years.

Those opportunities come only once every seven years, so I decided to apply. I applied online on November 20. I remember that, as it was the day after my birthday. It was a big decision. I did the interview on December 1. I did the psychometric testing. Then there was a recess during Christmas. We didn't hear anything until January. I was called by the chief of staff of the Treasury Board to make sure I was still interested, which I was. Then I was told that the consultation process was going to start.

Hon. Peter Kent: Thank you.

Well, as this process was under way, you must have been aware of your predecessor's unprecedented report, entitled "Failing to Strike the Right Balance for Transparency". Essentially Commissioner Legault characterized Bill C-58, which is now before the Senate—it passed through the House against the wishes of the opposition—in this way, making three key points:

The government promised the bill would ensure the Act applies to the Prime Minister's and Ministers' Offices appropriately. It does not.

The government promised the bill would apply appropriately to administrative institutions that support Parliament and the courts. It does not.

The government promised the bill would empower the Information Commissioner to order the release of government information. It does not.

There were some changes before the bill was passed, but just last week the departing commissioner did an interview in which essentially she reiterated her original statement, saying that rather than advancing access to information rights, Bill C-58 instead would result in a "regression of existing rights".

What are your thoughts on this as you are about to—presuming this meeting goes well—assume the office?

Ms. Caroline Maynard: I definitely read with interest all the reports and a lot of information that is available on the website. I don't think it would be appropriate for me to compare and contrast myself with Madame Legault's opinion. I can tell you, from my own perspective, that when I read the new Bill C-58, any new amendment that limits or potentially would delay access is a concern, and any

new amendment that increases accountability and increases access is progress, in my view. Bill C-58 contains both. At the end of the day, I really think that no matter how great legislation could be, for the people who are applying the act and who are trying to access the information, if the culture doesn't change to give them access, we're not reaching the goal of having access and promoting access and transparency and democracy. That's why I think there's progress in Bill C-58. I'm happy that the act will be open for review in a year, so if I do become the next commissioner, I'll have way more information and I will be a lot more confident in reassessing those concerns that have been raised by Madame Legault and a lot of stakeholders, and I will be happy to report back to Parliament on what my personal views are and where we are and whether or not we have achieved progress.

● (0910)

Hon. Peter Kent: In addressing culture change and working with regard to the concerns that Commissioner Legault raised and which you may have in varying forms, will you be a public advocate for changes or for improvements, not only in changing the culture but also with regard to what Commissioner Legault had characterized as a very large step backwards, in terms of Canada's access to information laws?

Ms. Caroline Maynard: As an agent of Parliament, I find I have to be careful with use of the word "advocate". I like to use the word "promotion", upholding rights and making sure that the statute is respected. I will definitely not take the role of legislator. I will bring you all information that is available to me to make sure that Parliament and legislators are aware of what is out there and what the concerns are and what the issues are, but I will make sure that I stay independent and I will apply my mandate as the statute is providing me my rights.

Hon. Peter Kent: Thank you.

The Chair: Thank you, Mr. Kent.

Next up, for seven minutes, is Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Madame Maynard. I'm very pleased to meet you. Your role will be very important for our democracy. There's nothing theoretical here; this is very political.

Your predecessor, Madame Legault, was a paragon of integrity and political virtue, someone who really understood the issue of public accountability in the service of the public, so when Madame Legault states publicly that she's concerned that government is sliding into more secrecy, I take that as a real warning sign. I want to know, if you're going to step into this role, whether you believe you have the tools to ensure that government doesn't drop the cloak of secrecy. Do you have the power and the willingness to stand up for those who will be wanting to look into the windows of government? My colleague Mr. Picard was very concerned that the act could be used to embarrass politicians. Well, that's the point of the act. That is the fundamental point of access to information. The Supreme Court states that the role of access to information is to facilitate democracy by ensuring politicians and bureaucrats remain accountable to the citizenry.

Do you have the tools to fulfill that job?

Mr. Michel Picard: On a point of order, Mr. Chair, I take exception to that, to embarrassing politicians. I'm sorry, but I said to embarrass any person touched by

[*Translation*]

the order in question. I will not tolerate people making insinuations about what I said or did not say.

[*English*]

The Chair: I don't think it was a point of order.

Continue on, Mr. Angus.

Thank you, Mr. Picard.

Mr. Charlie Angus: Did that come off my time?

The Chair: No, it's not going to be held against you.

Mr. Charlie Angus: Thank you.

Ms. Caroline Maynard: I do believe that I have the tools, or that I would have the tools, using the Access to Information Act, to make sure that the access rights are respected and to make sure that the limitation and exclusions that are provided under the act are not abused.

I don't see my role as a role of shaming, but more of educating and making sure that government is accountable. If, ultimately, the result is shame, it's unfortunate, but it may happen. However, the goal is not in terms of... I agree with you, information is key for anybody in Canada to have confidence in the government. It's one of the government's priorities. They are saying that they want open government, so we need to work towards that. I think the promotion of disclosure, the promotion of transparency, getting institutions to understand the purpose of this, not that... It's a burden, yes, but it's not going away. The access rights have been here for 34 years, and we will continue to increase and promote that access.

● (0915)

Mr. Charlie Angus: Thank you for that.

Again, I want to be very clear on your role. Your role is to adjudicate whether or not documents should be revealed, why they should be revealed, or if they're going to be excluded if they meet the exclusions. That's what certainly, as a member of the opposition who uses access to information all the time, I look to.

I'm concerned that Madam Legault had said that some of these changes would make the ability to challenge government obstruction of the release of documents more difficult.

Again, I want to go back. Have you looked at the tools you can use to hold government accountable? I was really impressed when you said that access delayed is access denied. You also said that if they hold the information for a long enough period, it becomes irrelevant. Do you have the tools?

Ms. Caroline Maynard: Yes, I do believe so, with the new authority to issue orders, and within 30 days of the institution receiving that order, it's going to be public and published. I will have no hesitation to use that tool to increase accessibility and accountability.

The other thing we have to remember is that if the institution is not in agreement with the order, the onus is now on them to appeal it to

the Federal Court, but the commission, I am pleased to see, has not lost its authority to represent the complainant and appear in front of the court, which is a very unusual authority for a board, a commission, or a tribunal. Usually when you issue an order, the order has to be so well written that it defends itself, but in the act the commission is actually allowed to represent the complainant and if there is a public interest or if there is a question in law or something that's really important for all Canadians, I will definitely not hesitate to do so.

Mr. Charlie Angus: That's excellent.

We have certain departments that are notorious for ignoring their legal obligations. The justice department is one of the big outliers.

I'll give you an example. Five years ago I did an access to information over the decision to suppress evidence in Ste. Anne's residential school cases. What were the briefing notes to the minister? What were the QP cards? We were denied for three years. The new government came in, and they refused to turn it over. Your predecessor threatened to take them to court. They agreed to turn over documents. They turned over, over the course of a year, 10,000 pages of blacked-out documents, which to me shows almost a complete disregard for the orders about which the Information Commissioner was threatening to take them to court. That was five years of obstruction. I had brown hair back then.

I am concerned that if the justice department will even ignore a legal action—and there are certain outliers, including the justice department, RCMP, and a few others—how do you hold them to account?

Ms. Caroline Maynard: Personally, I have no problem making a decision to issue an order—I wouldn't threaten for five years—on taking somebody... Actually, under the new act it wouldn't be the commission that would have to go to the Federal Court, but it would have to be following an order of publication.

When I say that access delayed is access denied, I would not wait that long to issue this order, because at the end of the day, as I said earlier, if you agree to disagree, why are you waiting? Just pursue it.

● (0920)

Mr. Charlie Angus: Thank you very much.

The Chair: Thank you, Mr. Angus.

Next up, for seven minutes, is Mr. Erskine-Smith.

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

You're potentially coming into the position at an interesting time because, of course, Bill C-58 has not yet passed the Senate, and the current Information Commissioner has raised a list of concerns. I wonder how you foresee involving yourself in this debate if you are appointed.

Ms. Caroline Maynard: I know it's at second reading in the Senate. I don't know how long it's going to be there until it's enacted. I hope, if I am invited and I have time to better understand all the issues, that I'll be able to present myself.

One of the concerns I have is that this authority to issue and publish orders under the current Bill C-58 will only come into effect a year after the act is approved. I don't know if there's a policy reason for that particular amendment to come into effect a year after everything else is in effect. I'd like to raise it, because it's a new tool and I think it should be used—

Mr. Nathaniel Erskine-Smith: Strangely, the order-making powers only apply to forward-looking complaints and not the backlog of complaints, which is curious as well.

A lot of concerns were raised about section 6 and additional criteria that could allow departments to reject requests. Do you have any views on that particular provision?

Ms. Caroline Maynard: As I said earlier, it is a concern when you have an amendment that could further limit or delay an access request. I'm happy to see that section 6 has been amended to add that the institution cannot refuse to act on a request without the commission's authority or approval. That's a good thing, but that will definitely add to the workload for the commission, and we'll have to have some resources for that particular section.

Mr. Nathaniel Erskine-Smith: The last question I have for you about Bill C-58 is on the order-making power. You are a lawyer, and there is a difference between a reasonableness review versus a *de novo* process. One gives you more power than the other. Do you have any view as to what would be most appropriate?

Ms. Caroline Maynard: As a committee right now, we have a *de novo* review power and the decisions that the city renders are being reviewed on a judicial review standard. I have experience with both. When the decision is rendered and it's justified, reasonable, and very well detailed, it's really hard to change or to modify whether you have a *de novo* or a judicial review. My goal would be to make sure the orders are meeting all these criteria.

Again, I find the fact that the commission has a right and an authority before the court adds to the value of the order, because instead of leaving your order to represent itself, you can explain it to the court.

Mr. Nathaniel Erskine-Smith: Given you are likely to be entering the role before it enters the committee stage at the Senate, where there's the opportunity to make changes, I would encourage you to be actively involved in the process alongside Ms. Legault.

Are there any reasons to think we shouldn't nominate you?

Voice: Oh, oh!

Ms. Caroline Maynard: I have three boys.

Mr. Nathaniel Erskine-Smith: Is there anything in your background?

Ms. Caroline Maynard: I don't believe so.

Mr. Nathaniel Erskine-Smith: Okay.

In your previous experience, as you mentioned, you reduced the time for complaints from nine months to four months. Obviously

backlogs and a culture of delay are incredibly problematic. Did you use particular tools in the successes you previously had? What do you expect to do in the current role to reduce the terrible delay?

Ms. Caroline Maynard: My first step will be to understand the process. At the committee we reviewed every step and made sure that what we were doing was adding value to the process. Sometimes you do something just because you've been doing it. You don't question whether it gives you positive results. I think that coming in as a newbie, and with a different eye, maybe I'll be able to question some of the steps and make sure we're all consistent. If there are different groups, maybe we could make smaller groups or include team leaders. There are a lot of things.

● (0925)

Mr. Nathaniel Erskine-Smith: I'm sharing the rest of my time with Ms. Vandenberg, but I would encourage you to also sit down with... We've had a number of journalist organizations testify here. That's the purpose of the act. So much of the act is used improperly by people accessing their own personal information. That's not to say it's a completely improper use of the act, but it's not the core purpose, which is democracy, as Mr. Angus mentioned.

I would encourage you to sit down not only with departments and give them a hard time but also sit down with journalists and see how we can better improve the processing behind the scenes.

Ms. Anita Vandenberg (Ottawa West—Nepean, Lib.): Thank you very much for being here. Your qualifications are very impressive, and your 20 years of relevant experience with oversight institutions is going to serve you well in this job.

As you know, Canada is chairing a global initiative, the open government partnership. That's under the Treasury Board. Aspects of that also call for an open Parliament action plan that could be attached to the open government partnership.

Do you see, first of all, any intersection in terms of your role and promoting open government through this global network? Do you see this as helping you in the work you're doing, having parliamentarians engaged in open Parliament, having legislators engaged in open government? Would you see this as something that would increase the capacity of what you're able to do in your role?

Ms. Caroline Maynard: I think that any venues that increase or promote access and transparency... Definitely, the commission has an interest in participating, whether it's within other jurisdictions, internationally, or nationally.

My priority will be to tackle Canada's problems right now, but definitely, when you look at other jurisdictions and what they've done, you can get some really good feedback and ideas from how they've succeeded, from their success stories. I'm really open to all these opportunities, yes.

The Chair: Mr. Gourde is next, for five minutes.

[Translation]

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

In your presentation, you proved that you are well aware of the major challenges that await you. What concerns me the most—and you mentioned it a little—is the backlog in processing files. I gather that about 3,000 files are late. Sooner or later, you are going to have to make some administrative decisions.

If the delays keep happening, as has been the case for a few years, it could mean hiring people back permanently, unless you can use outside consultants for a certain length of time. Often, when outside consultants become almost full-time, they cost a lot more than the employees in the commissioner's office. What will your strategy be?

Ms. Caroline Maynard: As I said in my presentation, the current commissioner has asked for additional funding. The commissioner's office has been doing so for a number of years. As I understand it, the office receives about 3,000 new complaints each year and processes 2,000 of them. So 1,000 files always go unprocessed.

I am very concerned that it takes about seven months to assign a file to an investigator. It takes about nine months to process a file but there is a wait of seven months before a file is assigned to an investigator. I find that unacceptable. Can we put it down to a lack of resources? Is that the only reason or do we have to look at the process itself? Do we have to change it? Does it have to be less formal? Do we need new technology or a more modern case management system? All those solutions have to be examined.

Ultimately, if I, together with the experts in the commissioner's office, come to the conclusion that we cannot do better than what is being done at the moment, I will ask for additional funds to hire people. I agree with you that having permanent employees who are part of the team is more of an incentive, more motivating for everyone than hiring people on contract to come to work for us for only a certain time.

• (0930)

Mr. Jacques Gourde: You talked about a way forward that involved new technologies. Artificial intelligence can offer a possible solution. Have you started a study to find out how artificial intelligence could help you?

Ms. Caroline Maynard: In the committee where I'm currently working, all files are processed electronically. But, since some people still prefer reading paper files, we have both. However, everything is now available electronically. We use it a lot. It's a lot easier to work from home. Nowadays, new technology offers several possibilities that must absolutely be encouraged.

Innovation is another government priority, one that I strongly support for my employees. As I said earlier, they often have ideas that managers don't always think of. Employees are at the heart of the work; they are the ones who study the files, work with the people, and call those who file complaints. So, if there are certain possibilities we can explore to help them do their work as efficiently as possible, we should do so, no question.

Mr. Jacques Gourde: I imagine that one needs pretty specific skills to work in your office. If somebody wants to join your team, what education and skills should they have to do so?

Ms. Caroline Maynard: It's hard to say, because I haven't worked in the office of the commissioner yet. However, I can tell you that the committee I belong to strongly encourages diversity. Given that we work on cases that include veterans' grievances, and

that we want these cases to be reviewed independently, we have joint teams of veterans, public servants who have bachelor of law degrees, and people specialized in labour relations. This allows us to be truly sure that we have looked at the issue from all angles, and that no doors have been prematurely shut.

So, it would be the same thing in the office of the commissioner. I'm under the impression that we have legions of people with investigative experience, such as former police officers, for example. I also want to be sure that we will give them the tools, and that the teams will actually ask questions at the outset of the process, and not at the end of it. We do not want doors to be left open during investigations. This is why I also encourage teamwork.

Mr. Jacques Gourde: Thank you.

The Chair: Thank you, Mr. Gourde.

[*English*]

Mr. Baylis is next. You have five minutes.

[*Translation*]

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Good morning.

I would like to return to the questions asked by my colleague Mr. Picard on the use of technology.

[*English*]

If I look at the statistics, the vast majority of requests to the department are for immigration, is that correct?

Ms. Caroline Maynard: I wouldn't be able to tell you. I know there are many institutions.

Mr. Frank Baylis: Well, I have it right here, actually. Over 55% are strictly for immigration, and another 6.8% for border services, which we assume are related to immigration, so almost two-thirds of the work of your department is basically someone asking...We tend to think of this department being used strictly for a big investigation some journalist is doing, but the vast majority of it is someone wanting to know what's happening with their file.

In that light, I'd like to hear your thoughts or ideas on how you would use technology to completely remove the need for more people, yet allow individual citizens to access their information, which is the vast majority of work done by your department.

Ms. Caroline Maynard: I don't know how we would increase accessibility through technology within the institutions. That is something I'm going to have to explore. One thing I am concerned about right now—and I don't have answers there either—is the relationship between the Office of the Information Commissioner and the Privacy Commissioner.

As you say, there are a lot of access to information requests that touch on privacy. Currently, Bill C-58 is adding the intervention of the Privacy Commissioner into some of those requests that the Information Commissioner is going to be investigating. While I'm concerned about the delay that it could add to the process, I like the idea of having the two commissions working together.

• (0935)

Mr. Frank Baylis: You like the idea of a balance.

Ms. Caroline Maynard: Yes. You cannot ignore the rights of Canadians to privacy. It is a constitutional right.

Mr. Frank Baylis: I agree with that. The majority of these requests are not privacy concerns, because they are from people who want to know about themselves. If I'm in immigration, I want to know what's happening to my file, and I don't care what's happening to someone else's.

There are ways to use technology now that we could use to work towards that. I was wondering if you plan on investing time and energy to develop and learn those tools.

Ms. Caroline Maynard: I will definitely have to look into working with the institution to see what it is that stops that kind of request from being accessible, but I would also have to work with the Privacy Commissioner.

Mr. Frank Baylis: Okay.

Are you familiar with a website called openparliament.ca?

Ms. Caroline Maynard: Yes.

Mr. Frank Baylis: There is a private website called openparliament.ca. Someone came up to me because they wanted to know how I voted, and they were looking at this website, not the government's website, and it was a French person.

[Translation]

This surprised me a bit. I had asked myself why it wasn't available in French. I then realized that it was a private website.

[English]

He said, "The site was launched in 2010. I wanted to know what my MP had been doing in the House and, short of laboriously going through every day's voluminous transcripts by hand, Parliament's dated and hard-to-use site wouldn't tell me."

He does say that since 2010, the government's own site, which is called ourcommons.ca, has gotten a lot better. This is an example within less than seven years that.... He says that the government site is using a lot of the way that he presents data. It's not just having data, but the availability. This is an example of a private citizen using openparliament.ca, which sounds more like the government's site than ourcommons.ca, but he has that name, openparliament.ca.

In this example, would you be open to calling this person up, bringing him in, and saying, "How are you doing your data, collecting it, and presenting it to the public so they have access to data?"

Ms. Caroline Maynard: We have to be careful because your own information, which you are entitled to, is protected from everybody else.

Mr. Frank Baylis: He's all about open data. He's just taking data that's out there from the government, but it's not presented intelligently. He said the government has gotten a lot better.

As you said, let's say you ask some question, and I give you 10,000 pages, and the answer is only one paragraph somewhere in there. I haven't helped you, have I?

Ms. Caroline Maynard: No. It's clearly something that will need to be looked into. I don't know yet, because I haven't been doing the job, what it is that is limiting Canadians from accessing data, or what is limiting institutions from providing that data. Is it a privacy issue? Is it an accessibility issue? Is it a technology issue? It's definitely something that I would agree to look into.

Mr. Frank Baylis: Thank you.

The Chair: Mr. Kent, you have five minutes.

Hon. Peter Kent: Thank you again, Chair.

You raised the need for adaptation to technology, both in your office and in the departments you'll engage with. Your predecessor said that one of the largest gaps today in terms of the access to information regime is the messaging technology in, social media apps that allows content by decision-makers, by policy-makers, to not be archived. There's no record. A request by a civil liberties group, by an indigenous group, or by a media group for information on how a policy was developed and ultimately decided confronts this huge gap in terms of the new technology that avoids creating the records that you would demand access to. I wonder how you think you might address that.

Ms. Caroline Maynard: I've read so much. This is a concern not just in Canada. It is incredible how everywhere, even if you have the best laws of access, if everybody is doing what they call oral government or digital government decisions, it cannot access them, you're not going to be progressing towards access. It's a concern that I will have to definitely look into, because I hear it from colleagues and from people I know when we talk about the culture within institutions. People are still talking about, "Be careful, it's ATIP-able." They'll say that you don't want to put that in writing or that you don't want to put that comment in. My opinion is that you should be more careful how you say things.

We are so good at making financial decisions in writing, because we have to have a paper trail to show that we were accountable and we made the right decisions for budget cuts and expenses. Why can't we be that good for decisions that affect everybody? This is definitely the duty to report. It's definitely on my radar as a concern that needs to be addressed.

• (0940)

Hon. Peter Kent: I'm not sure what the technological solutions might be, but in terms of the use of off-line, non-archivable, and non-transcribable messaging between policy-makers and decision-makers, would you proscribe it? I'm just wondering how you address that, because that culture still exists.

Ms. Caroline Maynard: Yes.

Hon. Peter Kent: We know that it exists.

Ms. Caroline Maynard: Unfortunately, as the agent of Parliament, I will not be making the laws, but I will definitely bring to you and Parliament the concerns that will be raised, and I hopefully will have data when I get into this position, if I am appointed, on how often these types of technology are being used or questioned, and whether or not the obligation to report or to proscribe those devices is something that you may want to consider in the legislation.

Again, I believe so much in inspiring people toward transparency instead of legislating obligations, but we are living with different technologies, so we have to address those for sure.

The Chair: You have one minute.

Hon. Peter Kent: Thank you.

There was one other concern of the departing commissioner, and this was in the interview last week. She was expressing concern that requests for information that are too vaguely defined may be refused by the department or the official receiving a request. She cited the recent *Globe and Mail* series, "Unfounded", with regard to assaults that were missed by police forces and said that in fact these changes may deny media investigations that ultimately benefit our democracy. Can you respond?

Ms. Caroline Maynard: I agree that any limitations that are added to Bill C-58 or in the act are of concern—anything that could limit or delay access. It's something that I will definitely look into, because now that section 6 has been amended to add that the request cannot be denied or declined without the commissioner's approval, I will be very interested to look at how many cases we are looking into and how often section 6 has been raised as an issue.

Hon. Peter Kent: Thank you.

The Chair: Thank you, Mr. Kent.

The last question goes to Ms. Fortier.

[*Translation*]

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

Ms. Maynard, I want to congratulate you on your nomination. I would like to thank you for being here today to answer our questions, which will allow us to make a decision.

I heard about your experience. I became familiar with it in the documents we received.

If you are chosen, how will you leave your mark? How do you want to be remembered, if you are chosen today as the Information Commissioner?

Ms. Caroline Maynard: I would really like to use the experience I've acquired in the Military Grievances External Review Commit-

tee. Initially, this committee received 40% of the grievances, and those were strictly mandatory grievances. We worked very hard to establish the credibility of the committee, and to produce quality reports. We also insisted on the added value of having external independent advice. That is what I would like to bring to the office of the commissioner.

This is why I said that I would like to explore the option of publishing things that go beyond orders; I want to have somewhat of an educational mandate. Let's not forget that the office of the commissioner has been around for 34 years, and offers no glossary or index in which to find the investigations it has conducted and the cases it has processed. As a citizen myself, I have to go through 34 years of annual reports to get an idea of my options if I want to find out whether or not I have the right to ask for something, and whether or not an institution has the right to refuse me access to it. There are some guidelines, but it is very difficult for citizens to do that.

I'll come back to what Mr. Baylis was saying. If the office of the commissioner itself cannot access information, how will it help Canadians understand their rights, and help institutions understand their obligations? This is essential to me.

The commissioner must exhibit neutrality, independence, integrity and consistency. In my opinion, publications are the only way to do so. This way, the institutions would be sure that decisions are made in a consistent manner. Whether it is National Defence, Immigration, Refugees and Citizenship Canada, or the Canada Revenue Agency, the decisions would be applied in the same way across the board.

• (0945)

Mrs. Mona Fortier: You have been talking about some of your priorities since the beginning of the meeting. Are there other priorities that you haven't had the opportunity to voice, and that you would like to tell the committee about, apart from the backlog? We hear you loud and clear on that issue. There is also the issue of enforcing the law once it has received royal assent.

Do you have other priorities in mind that you would like to inform the committee about?

Ms. Caroline Maynard: We must work to shorten delays, clear the backlog and ensure that new complaints are processed faster. That will be quite a significant challenge.

Mrs. Mona Fortier: Thank you. Your priorities are clear.

I have another question for you. You briefly touched on the subject when Ms. Vandenbeld asked you about it. Have you noticed exemplary practices, either elsewhere in the world or even in your experience, that you would like to implement or further study?

Ms. Caroline Maynard: Are you referring to practices concerning access to information?

Mrs. Mona Fortier: Yes.

Ms. Caroline Maynard: I would certainly have to speak with the heads of the institutions, but I can assure you that, in our committee, we try to promote informal access to information, to not require people to make access to information requests, especially for those who seek access to their personal file. There are still institutions that require even their own employees to make access to information requests, which is completely unacceptable.

I saw this with grievance cases, and I had to make decisions and send my findings to the chief of staff. Some Canadian Armed Forces members had to make access to information requests to acquire information relevant to their grievance right. We see this, but there are other places with very informal policies. I think that we should be going in this direction.

Mrs. Mona Fortier: Thank you.

I have asked all my questions, Mr. Chair. Thank you very much.

[*English*]

The Chair: Thank you, Ms. Fortier.

Next is Mr. Angus, and we do have time. We started a bit late.

Mr. Angus, you have three minutes.

Mr. Charlie Angus: Thank you, Mr. Chair.

I want to go back to the issue raised by your predecessor, the concern about the ability to deny access to information based on the vagueness of requests. That has a particular implication for indigenous communities doing research for claims. We just had a case in which a document that was nearly 100 years old, relating to the treatment of Indian children in a tuberculosis hospital, was denied. My concern is that the crown is always the defendant in dealing with any of these hearings for indigenous justice. The farther back you go in Indian Affairs, the more of a black hole it is, which is why many of the documents are more vague.

How do we ensure that indigenous justice is maintained in the application of Bill C-58 if people who are researching historic documents might not know the exact name of the document and have to do fishing expeditions because they're not sure where the evidence is?

● (0950)

Ms. Caroline Maynard: That particular issue is definitely of concern. I agree with you that with some documents, you don't know where they would be and in what form they would have been when they were produced, if they were produced. I don't know the extent to which an institution will use clause 6 to deny. It's something that I will have to really carefully monitor. As I said earlier, the fact that they need to have the approval of the commission to deny and decline is a good step forward, but it could still be an abuse of process and extend the delay in getting that information. We'll have to work with the institution concerned and explain the relevance of those documents and the right of these people to have access to these documents.

Mr. Charlie Angus: I would certainly suggest that you meet with some of the people—for example, Peter Di Gangi of the Algonquin Nation Secretariat—who have spoken on this issue. When you're dealing with this kind of information and these kinds of documents, it takes years, decades, to put the picture together. I did land claims

research in northern Quebec, and the type of documents you had to find and how you had to piece it together was an extraordinary situation. I would certainly recommend that you meet with some of the people doing this research so that you can see some of the parameters.

For my final question, I'll go back to the question my colleague Mr. Kent raised about how much information is now deliberately kept off the written record through personal messages using PINs so that the information isn't traceable.

You said you're not in a position to legislate, which is definitely clear, but I would say you're in a position to interpret—

Ms. Caroline Maynard: Yes.

Mr. Charlie Angus:—so I would also advise that you look at that and maybe come back with recommendations to our committee, because there's a lot of government traffic that.... Civil servants tell me that they are told never to put anything in writing and to send personal messages using PINs so that there is no record. Your interpretation of this situation would be very helpful.

Ms. Caroline Maynard: I will definitely welcome an invitation and come back.

Mr. Charlie Angus: We will invite you back very soon.

Ms. Caroline Maynard: That's if I am the commissioner.

The Chair: Thank you, Mr. Angus. Thank you, Ms. Maynard.

We have a motion from Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: You all have it before you. I move:

That the Committee report the following to the House:

Your Committee has considered the Certificate of Nomination of Caroline Maynard, nominee for the position of Information Commissioner, referred on Wednesday, February 14, 2018, pursuant to Standing Order 111.1(1).

Your Committee has considered the proposed appointment of Caroline Maynard as Information Commissioner and reports its recommendation that she be confirmed by the House of Commons as Information Commissioner.

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

The motion is in order. Is there any further discussion on the motion?

(Motion agreed to)

The Chair: Congratulations.

Some hon. members: Hear, hear!

We will suspend for about five minutes. We're going to go in camera. We have some committee business to deal with.

Thanks again, Ms. Maynard.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: <http://www.ourcommons.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : <http://www.noscommunes.ca>