



Office of the Information Commissioner of Canada

Presentation to the

House of Commons Standing Committee
on Access to Information, Privacy and Ethics

November 20, 2007

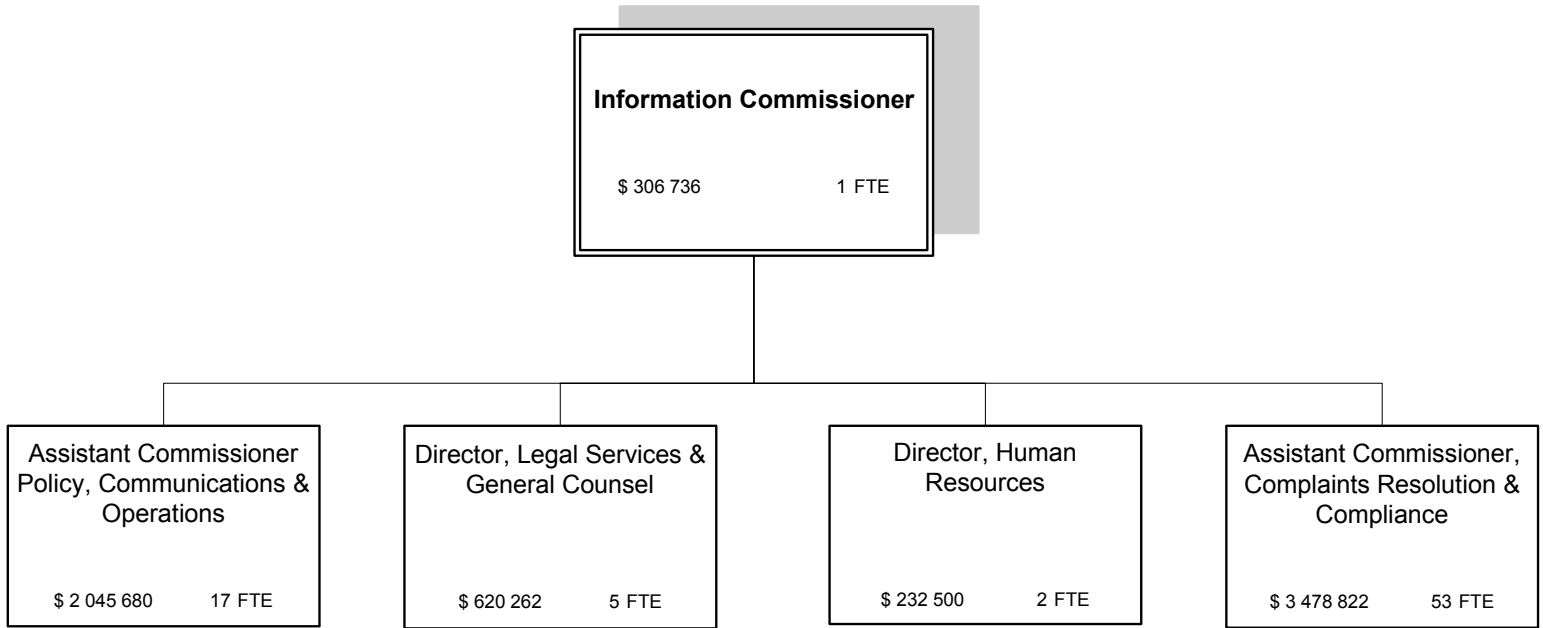
Who we are

The Office is fortunate to have very knowledgeable staff. On the recommendation of the Commissioner, two new Assistant Commissioners were appointed in May of this year.

The **Assistant Commissioner, Complaints Resolution and Compliance**, directs investigations and dispute resolution efforts concerning complaints filed under the Act and oversees broad systemic institutional reviews for compliance with the Act.

The **Assistant Commissioner, Policy, Communications and Operations** monitors federal institution’s performance through the publication of report cards, and provides strategic advice and corporate leadership for financial management, information management, program evaluation and internal audit, communications, and management of parliamentary relations.

These functions are complemented by **Human Resources** and **Legal Services**. The Director of Human Resources ensures compliance with the *Public Service Employment Act*, the *Public Service Modernization Act* and the various policies of the PSC, and provides advice to managers and employees on HR issues. Legal Services are under the leadership of the Director of Legal Services and General Counsel who represents the Commissioner before the Courts and provides legal advice on investigative, legislative and administrative matters.



FTE: 78
Budget: \$6,684,000

What we do

The Information Commissioner carries out the duties and responsibilities set out for him in the *Access to Information Act* (Act). In particular, he promotes the need for openness of government, for active participation of citizenry in the democratic process, for accountability of federal institutions with regard to their handling of information under their control and for parliamentary oversight. As a result of this mandate, the Commissioner is in the unique position of interacting with all three branches of the State: the executive, the legislative and the judiciary.

Investigations

The Office of the Information Commissioner receives and investigates complaints from requesters who believe that their rights under the Act have not been respected by federal institutions. We usually receive two types of complaints: those that are administrative in nature (about fees, delays, and extensions, for example) and those stemming from federal institutions' refusal to disclose the information (application of exemptions and exclusions, missing records).

The Commissioner makes recommendations to the institution on how to resolve the complaints: however, he has no order-making powers, so when an institution does not follow his recommendations, his only recourse is to the Federal Court of Canada. This being said, the Commissioner favours alternative means of dispute resolution, such as mediation, over formal hearings, and the exercise of judicial powers during our investigations. This is what we call our "three Cs" approach": collaboration, cooperation and consultation. We believe that this approach will yield positive results.

Advocacy

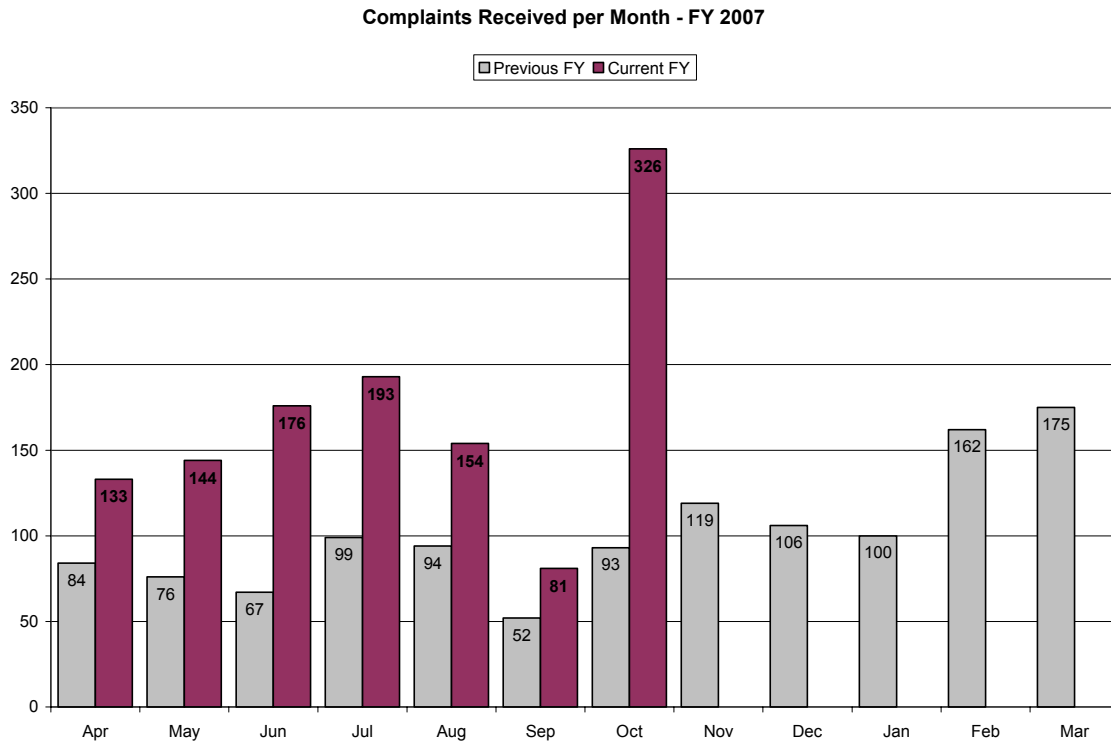
The Commissioner encourages federal institutions to develop and follow sound information-handling practices. The Office monitors the performance of federal institutions engaging in systemic or repeated breaches of the Act and recommends as to the actions needed to improve compliance. We aim to be vigorous and responsible in ensuring that the Act is working effectively. As an agent of Parliament we provide relevant information, as well as objective advice, about the access to information implications of legislation, jurisprudence, regulations and policies.

The Commissioner reports annually to Parliament on his activities, at the latest, three months after the end of the fiscal year. He can also make special reports to Parliament on issues of importance or urgency.

What have we been doing

During the Commissioner's appearance last year, he reported that, as a result of the *Federal Accountability Act* (FedAA), we would become subject to the *Access to Information Act* and the *Privacy Act*. The coming into force of the FedAA has had direct implications for us. It required us to implement legal and operational requirements necessary to comply with both acts, as well as, establish a process to allow for independent investigations of complaints against the Information Commissioner. Former Supreme Court of Canada Justice, the Honourable Peter Cory, agreed to undertake this role. We have received approximately 100 access requests since April 1st, 2007, when we became subject to both acts.

The passage of the FedAA expanded dramatically the community of institutions subject to the Act. With the addition of 70 institutions, it is expected that our workload will follow suit. In fact, we have handled an unprecedented caseload and have received double the number of complaints in the first six (6) months of this year compared to the same time last year.



Investigations

The Office has maintained a consistent record of resolving almost all complaints without recourse to the courts. However, our record of timeliness in conducting our investigations is not as impressive. In the 2006–2007 fiscal year, the average turnaround time for investigations was about 12 months (as opposed to the service standards of 30 days for administrative complaints and 120 days for denial of access complaints) and we have a significant backlog (1,030 investigations at the end of 2006–2007). Contributing to the backlog was our inability to hire additional resources due to insufficient office space.

To address the backlog situation, we have devised a strategy and set challenging goals that are expected to be fully implemented during fiscal year 2009-2010. The strategy includes a comprehensive review of our complaints handling process, staffing new positions and dealing with the oldest files first. Preliminary results of our complaints handling process review indicate that there would be benefits and efficiencies gained by having a dedicated intake function and an early resolution function. These functions would provide: an enhanced client-service focus, an improved response time for more straightforward complaints, more productive use of investigative staff, and improved staff morale. This early analysis also points to the need to review our service standards.

We are happy to report that additional office space will be available before the end of the current fiscal year. Although a number of investigations are taking longer than we want, we continue our efforts to resolve as many cases as quickly as possible.

Advocacy

With respect to the Office's litigation function, the Information Commissioner participates in each case where a significant issue of the proper interpretation of the statutes or an important legal principle relevant to the operation of the Access to Information Act is raised. No new applications for review were filed by the Information Commissioner in the 2006-2007 reporting year.

Over the same period of time, the Supreme Court of Canada, the Federal Court of Appeal and Federal Court issued twenty-one (21) decisions in access cases. The Commissioner was an intervener in the two cases before the Supreme Court Canada and was a party in three (3) cases before the Federal Court Appeal and Federal Court.

A challenge by the Attorney General to the powers of the Information Commissioner was heard in May 2007 and dismissed on October 5, 2007. On November 2, 2007 the Attorney General appealed the decision to the Federal Court of Appeal (file A-492-07). Another case, Minister of Environment v. Information Commissioner, A-502-06 was heard by the Federal Court of Appeal on October 30, 2007 and the decision is reserved. On November 1, 2007, the Supreme Court of Canada granted the Information Commissioner leave to intervene in the appeal, Privacy Commissioner of Canada v. Blood Tribe Department of Health, 31755.

Office renewal

In the spring of 2007 the OIC began a renewal process. The aim is to create a service culture that allows us to better respond to Canadians, federal institutions and Parliament and to render the delivery of our services more effective.

What is on the horizon

Our priorities are:

Funding

- Respond to FedAA: take on new responsibilities and manage increased workload
- Conduct A-base review: we are currently in discussions with the Treasury Board Secretariat for 2008-2009 Supplementary Estimates (A). We expect to be making a submission to the Panel in December 2007.

Improved service delivery

- Put infrastructure in place to support program
- Implement backlog strategy
- Review service standards
- Streamline investigative process to improve turnaround time
- Priorities on oldest cases
- Staff positions as space becomes available

Report cards

- Renew approach and increase the impact of the Report Cards on federal institutions performance to ensure that all contextual elements that affect the overall performance are considered and responses from selected institutions are published simultaneously.

Reform of the *Access to Information Act*

- What is next after the Open Government reform proposal and the FedAA amendments to *Access to Information Act*

“Duty to assist”

- Develop a meaningful implementation of the new provision dealing with duty to assist