

PROPOSAL FOR REVITALIZING ACCESS TO INFORMATION LEGISLATION

May 7, 2016

PART I GOVERNMENTAL REVIEW OF THE ATI STATUTE

Speaking at the Canadian Open Dialogue Forum on March 31, 2016 the Honourable Scott Brison, President of the Treasury Board, reminded the audience that upon taking office he was tasked in the mandate letter signed by Prime Minister Justin Trudeau to review the *Access to Information Act* (Act). Minister Brison went on to advise the delegates that the government will be proceeding to implement that task in a two-phase process.

- 1. First Phase.** Giving the Information Commissioner the power to order government information to be released; ensuring that the Act applies appropriately to the Prime Minister's and the Ministers' Offices; ending fees for submitting requests, and, extending the reach of the Act to apply to administrative institutions that support Parliament and the courts.
- 2. Second Phase.** By looking for input on the best way to both improve and strengthen Canada's access to information framework. He also noted that his government will be conducting the first full and now-mandatory five-year review of the Act in 2018 to allow for a more "*fullsome review of the Act*".

I will readily admit to being pleased by this turn of events as it will give legislators and government an opportunity to pause and reflect on the issues at hand. After all, the task of drafting and reforming legislation is the exclusive province of parliamentarians and as such it requires their active participation in this democratic exercise. Moreover, given that the access to information legislation has already been characterized by the courts as being "*quasi-constitutional*" in nature, it follows that any such law-making or law-reforming activity should take into account the important doctrine and principles which form the genesis¹ of such legislation to ensure consistency of purpose and coherence with other legislated bodies.²

¹ To that end, Committee members should be aware, if not cognizant, of the following substantive sources of legislative policy which form the foundation for the existing ATIA legislation: [See: Chapter 13 of the FATIAPLA]

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However, in my respectful opinion the ministerial intention to give the Information Commissioner order-power controverts these views. This may be explained in part because in the past little while Parliamentarians have not played their leading role in examining the need for reforming this important legislation and making proposals for change. For all intents and purposes, this role has effectively been deputized to the Information Commissioner,³ who has advocated that her role and function be transformed from that of an Officer of Parliament (an Ombudsman) to one which would be vested with quasi-judicial powers.⁴

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- **1977 Green Paper** – Public Access to Government Documents – Hon. John Roberts, Secretary of State.
 - **1979 Discussion Paper** – Freedom of Information – Hon. Walter Baker, President, the Queen’s Privy Council for Canada.
 - **1980 Cabinet Discussion Paper** – Access to information Legislation – Hon. Francis Fox, Secretary of State and Minister of Communications.
 - **1980 Cabinet Discussion Paper** – Access to Information Legislation and Consequential Amendments to the *Human Rights Act* – Hon. Jean Chrétien, Minister of Justice and Attorney General of Canada

Source: Federal Access to Information and Privacy Legislation Annotated 2016 [FATIAPLA] by Professor Michel W. Drapeau and Me Marc-Aurèle Racicot, Thomson Reuters/Carswell.

² See this link which lists the eight (8) Officers of Parliament.
<http://www.lop.parl.gc.ca/ParlInfo/compilations/officersandofficials/officersofparliament.aspx>

³ It is rather unusual to have an office-holder more or less proclaim as unfit a statutory regime which she is duty bound to respect and implement in its current configuration – and, then propose reforms. In a working democracy, such a delicate task is normally left to an independent body [i.e. a Law Reform Commission] set up by a government to conduct law reform; that is, to consider the state of laws in a jurisdiction and make recommendations or proposals for legal changes or restructuring.

On March 31, 2015 the Information Commissioner proposed an in-depth report of the *Access to Information Act*. The Report contains 85 recommendations. The recommendations are for the most reasonable. However, some appear to have a self-serving agenda. [Recommendations 5.10; 5.12]

Detailed comments on these recommendations are attached in a Companion document title:
COMMENTARY ON THE INFORMATION COMMISSIONER’S 2015 RECOMMENDATIONS TO MODERNIZE THE ACCESS TO INFORMATION ACT.

⁴ That would constitute a repudiation of the foundational basis for the creation of that office as envisioned in the 1977 Green Paper on Access to Information Legislation. [See Part 13.1 of FATIAPLA].

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It begs the question: would the grant of order-power to the Commissioner ameliorate the response time for the benefit of requesters under the ATI. The answer is a resounding no. Why? Because the Commissioner plays no role in the front-end part of the ATI regime.

During fiscal year 2014-2015, over 90% of the 78,804 access to information requests received during the year were closed within 31-120 days of their receipt – all of them without the intervention of the Information Commissioner.⁵ Meanwhile during 2014-2015, the Office of the Information Commissioner “registered” a total of 1,749 complaints⁶ – a rather small workload of complaints unless one takes into account the current two years’ worth of accumulated open complaints. (See details on the Backlog at Annex A to this Brief). Putting it another way, each year on average only 2% of the access requests give rise to a complaint.

Granting the Information Commissioner with order-power would come at a steep price. First, it would strip the Information Commissioner of her status as an Officer of Parliament with the assumption of quasi-judicial functions the Commissioner would become duty-bound to “*act judicially*” instead of carrying out her work under the guidance and direction of Parliament and report to a Parliamentary Committee. Second, this would lead to an even greater ‘judicialisation’ and ‘bureaucratisation’ of the OIC complaint mechanism potentially forcing ATI users to experience even longer delays than is currently the case.

REFORMS IMPLEMENTED BY PRESIDENT OF TREASURY BOARD

On May 5, 2016, the Government of Canada issued a directive by which it began the revitalization process of the access to information legislation, notably make government data and information OPEN by default and easy to use as well as eliminate all fees except the initial \$5.00 fee and,

- a. When information cannot be released provide requestors with a written explanation;
- b. Give Government institutions and the Information Commissioner authority to decline to process requests that are frivolous or vexatious;

⁵ See TBS *InfoSource* Bulletin in 38B – Statistical Reporting. There were a total of 78,804 access to information requests handled by institutions subject to the ATIA in fiscal year 2014-2015. 65.1% of these requests were disclosed within 30 days and an additional 30.2% of them were disclosed between 31 and 180 days. This means that at least 95.3% of the requests were addressed without recourse to the OIC – why would one submit a complaint to the OIC if he knows in advance that the anticipated complaint response time is two years or more?

⁶ See page 55 of the OIC 2014-2015 Annual Report. These complaints are broken down as follows: 1,102 refusal complaints (about the application of exemptions); 604 administrative complaints (about delays, time extensions and fees); and, 43 Cabinet confidence exclusion complaints.

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- c. Give the Information Commissioner the power to order the release of government information;
- d. Ensure that the *Access to Information Act* applies appropriately to the Prime Minister's and Ministers' Offices, as well as administrative institutions that support Parliament and the courts;
- e. Undertake a legislative review of the Access to Information Act every five years; and
- f. Strengthen performance reporting on the federal access to information program

Also on May 5, 2016, the Interim Directive on the Administration of the Access to Information Act was implemented to hasten action on revitalizing access to information. I agree wholeheartedly with each of the above proposals. However, I also wish to submit the following proposal. Before I do however, I propose to review the constitutional foundations of the act as presently written.

1. PURPOSE OF ACCESS TO INFORMATION LEGISLATION

Ensures citizens participate in the democratic process

Ensures accountability to the electorate by politicians and bureaucrats

The Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 held that the overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry.

With increasing disappointment and much alarm, however, I hold the honest opinion that we are the early witnesses of a regime that is on a slow (hopefully reversible) descent into irrelevance,⁷ principally but not exclusively because of the increasing ineffectiveness of its designated watchdog. This will be discussed further below. The *Canadian Journalists for Free Expression* [CJFE] has also been critical of the ATI regime when it stated on

⁷ According to the *Centre for Law and Democracy*, Canada's Access to Information (ATI) system currently ranks 56 out of 89 countries, just below Colombia and Mongolia. See: http://www.rti-rating.org/country_data.php. A similar critical review was published in a Joint Statement titled "Fix Canada's Broken Access to Information System" by the B.C. Freedom of Information and Privacy Association on September 14, 2015.

September 2014 that the access regime “*is severely failing to meet its minimum requirements, let alone adequately serve the population’s needs.*”⁸

The CJFE went on to warn that this is having corrosive consequences on Canadian democracy: “*In censoring information, the government is controlling and restricting public debate on critical issues that affect all Canadians.*” In other words, this is antipodal to good governance and constitutes a clear affront to democracy.

2. THE ‘RIGHT TO KNOW’ IS A QUASI-CONSTITUTIONAL RIGHT

ATI legislation is a counter-balance to government universal penchant for secrecy

Since governments almost everywhere are not partisan and they often are plain hostile to genuine openness, transparency and accountability, there was an absolute requirement, from the start, to have both a working access to information statute and, as importantly, a politically-independent, vigorous and strong watchdog, the Information Commissioner, whose sole task is to investigate and report on complaints made by users.

Sweden recognized this necessity in 1766 by voting a law providing citizens with a legislated right of access.⁹ In 1976, that right surfaced in the United States of America in response to the Watergate scandal. It migrated to Canada in 1982; regretfully, however, the elected were too shy to include such a right in the *Charter of Rights and Freedoms*, which was enacted the same year.

Keeping in mind the natural and quasi-universal recalcitrance of governments to give ready access to government information, the *Access to Information Act* [the Act] entrusted an Officer of Parliament with immense legal powers to properly investigate complaints¹⁰ and to report to Parliament (and in so doing to the electorate) on the performance of government and its institutions in response to the exercise of this quasi-

⁸ See “*Your Right to Know: A dwindling right in Canada?*” by Alexandra Theodorakidis on September 26, 2014.

⁹ The celebration of the 250th Anniversary of the world's first FOIA was launched in Finland and Sweden on December 4, 2015 -- (<http://www.chydenius.net/eng/articles/artikkeli.asp?id=1728>). The world's first Freedom of Information legislation was adopted by the Kingdom of Sweden in 1766, which at the time also included Finland. The Swedish name for this act was *offentlighetsprincipen*, the “principle of publicity”.

¹⁰ The Information Commissioner currently has very strong powers that support her in the conduct of her investigations. She can summon and enforce (by subpoena) the appearance of persons before her and compel them to give evidence or produce documents, administer oaths, enter any premises occupied by any government institution, and examine any record held by a government institution (excluding Cabinet Confidences). [See section 36 of the Act.] However, the Commissioner seldom uses these powers during investigations.

constitutional right by the citizenry. The Act also made provisions for the Information Commissioner to initiate or intervene in Court proceedings or appear before the Court on behalf of any person who has applied for a review under the Act.

3. COMMISSIONER HAS A RIGHT OF ACCESS TO PARLIAMENT

1997 White Paper on Access: Scheme of the ATIA: “The Parliament Option”

The 1977 Green Paper on Public Access to Government Documents considered a number of possible procedures to ensure the ongoing performance and oversight of the access to information regime. The weight of the arguments was not in favor of a review process outside ministerial authority regarding the release of government documents by providing order-power to the Information Commissioner. The 1977 Green Paper clearly opted instead for what it referred to as the “*Parliamentary Option*” giving Ministers, and not a quasi-judicial body acting as the Information Commissioner, responsibility for the final decision as to the release of information in records.

[This Parliamentary] option would involve scrutiny by Parliament of the administration of a statute by the instruments used to review the administration of other statutes, such as questions in the House of Commons, debates on Estimates, Ministers and officials appearing before committees, and Opposition days. Means might be provided for some cases to be discussed during the Proceeding on Adjournment Motion in the House of Commons. . . **This option would have the advantage of constituting no infringement of present ministerial and parliamentary responsibility.** It would, furthermore, involve very little incremental administrative expense.¹¹ [My emphasis]

Armed with this potent right of access to Parliament,¹² the Information Commissioner was expected to promote awareness of the importance of open and transparent government and apply democratic pressure on federal institutions to make information more easily available to the public so as to keep the federal government accountable to Canadians. Past Commissioners, in particular the late John Grace and the Honourable John Reid,¹³ were particularly skilled in the use of this right of access to Parliament at critical junctures when accountability, transparency and openness in our

¹¹ See FATIAPLA, Chapter 13 pages 13-17.

¹² The 1979 Discussion Paper (See: FATIAPLA, Chapter 13, page 13-84) which states:

Given the importance of the right of access to be created by this legislation, it seems important that its implementation should be subject to ongoing supervision by a parliamentary committee.

¹³ What distinguishes these individuals from contemporaries currently acting in various Officer of Parliament positions is that at the time of their appointments they were not in mid-career, aware of their next appointment. Most importantly they had also been serving outside government or at least, if from within government they were in their last career position and hence had the requisite separation and independence from the public service, immune from possible or perceived influence, interference or pressure from the centre.

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governmental system took a back seat to the protection of the elite, to create more balance between Government and citizens.

The current Commissioner insists, however, that Parliament as a whole no longer play any part in the administration of the Access to Information regime. She argues that she should be provided with order-making power and transformed into a quasi-judicial body. However, granting the Commissioner additional power to order the release information in government records, as currently envisioned by the President of the Treasury Board, should not be seen as a panacea and an effective response to the current stalemate situation with regard to the access to information regime. To that end, the Parliamentary Committee should take counsel of what is currently taking place in Quebec, where there is growing discontent with the order-power regime granted to its Commissioner.¹⁴

The 1997 Green Paper warns that such a process would result in a diminution of the role played by Parliament in our political system.

[T]he power to order mandatory release of documents [can be expected to] involve more elaborate and time-consuming procedures than option three (An Information Commissioner with Advisory Power). Its main disadvantage is that it would be contrary to the basic principle of ministerial responsibility ..¹⁵

[. . .]

Under our current conventions, it is the Minister who must remain responsible for deciding whether to refuse or grant access to documents and this responsibility is a constitutional one owed to his (or her) Cabinet colleagues, to Parliament, and ultimately to the electorate. A judge cannot be asked, in our system of government, to assume the role of giving an opinion on the merits of the very question that has been decided by the Minister. **There is no way that a judicial officer** [either the Information Commissioner or the Federal Court Judge] can be properly made aware of all the political, economic, social and security factors that may have led to the decision in issue. Nor should the courts be allowed to usurp the constitutional role that Parliament plays in making a Minister answerable to it for its action.¹⁶ **[My emphasis]**

¹⁴ In fact, in Québec, a jurisdiction which had chosen the "decision making power" as its model, is now reconsidering its previous approach.

On March 18, 2015, the Government of Quebec published a discussion paper (*<i>document d'orientation</i>*). In this document, the Government proposes a new model based on the ombudsman model where the Commission would report directly to the National Assembly and where the access regime would be dejudicialized. (see <http://www.institutions-democratiques.gouv.qc.ca/transparence/documents/doc-orientations-gouv.pdf> - pp- 136-149).

¹⁵ See: FATIAPLA Chapter 13, page 19.

¹⁶ See: FATIAPLA Chapter 13, pages 19-20.

This does not mean, however, that the current role and functions of the Information Commissioner should not be substantially reviewed. Quite the reverse. There is an urgent requirement to conduct such an examination.

I will discuss this in the next part.

PART II REFOCUSING THE INFORMATION COMMISSIONER FUNCTION

The Office of the Information Commissioner (OIC) is currently not structurally staffed to respond, in a timely fashion, to the growing appetite of the Canadian public who is eager to have more, not less, access to information in records and, more importantly, have their complaints reviewed within a reasonable period. Over the years, the OIC has assumed an increasing range of functions and the creation and the staffing of these new and expanded functions has been done at the expense of its investigative branch whose personnel is devoted to its core and only function (the investigation of complaints).

One such function has been the internal wall-to-wall review of the Act conducted by the OIC. The OIC project titled: ‘*Open Dialogue with stakeholders and Canadians*’ was designed to provide ‘advice’ to Parliament on potential changes to the Act. There can be no doubt that such an ambitious undertaking has necessitated the assignment of significant OIC resources and substantial ongoing senior OIC management attention; all of which comes at the expense of the OIC’s primary duty: the investigation of complaints.

The Commissioner’s devotion since at least 2012 to the task of producing proposals for reforming the Act has, not surprisingly, captured a significant portion of her attention, having an inescapable, measurable impact in her day-to-day management of access complaints which, as noted earlier, is at the very heart of her responsibility.¹⁷ This might have also prevented her office, at least in part, from significantly addressing the accumulation of the two-year backlog of complaints.

¹⁷ As noted by the Federal Court of Appeal, *Canada (Information Commissioner) v. Canada (Minister of National Defence)* (1999), 240 N.R. 244, “the investigation the Commissioner must conduct is the “cornerstone of the access to information system [...] The importance of this investigation procedure is reinforced by the fact that it constitutes a condition precedent to the exercise of the power of a judicial review [by the Court].” In *Canada (Attorney General) v. Canada (Information Commissioner)*, 2004 FC 431, the Court went further by rightfully emphasizing that the OIC “investigation is conducted in furtherance of the quasi-constitutional right of access that has as its purpose the facilitation of democracy.”

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An out-of-balance OIC organizational structure

The OIC presently houses in excess of eighty (80) personnel to handle its sole and only function -- the investigation of complaints. Other functions, such as the preparation and submission of special and annual reports, are mostly contracted out to the external consultants. [See detailed listing of OIC position by rank and function at Part 12.11.1 of the FATIAPLA.]

- a. Core function. The OIC has currently assigned 32% of its human resources to handle its core function, that is the investigative function (with a total of 28 investigators) to address the annual crop of complaints, plus the two-year backlog of complaints.¹⁸
- b. Increased number of lawyers. Over the past few years the OIC legal staff complement has ballooned to nine (9) lawyers¹⁹ (See table below) probably made necessary by the combination of two factors.
 - First, the decision by the Commissioner to conduct public consultations which led to the production of a Special Report to Parliament with a blueprint on “modernizing” or “reforming” the *Access to Information Act*.
 - Second, to pave the way for the anticipated transformation of the OIC into a quasi-judicial body.
- c. Management and administration. To provide direction, management and support to these 42 individuals, the OIC has on staff a total of five (5) senior executives and 35 administrators and managers which together account close to half of the available human resources.²⁰

¹⁸ Annex A provides the number of complaints received during the period 2004 to 2014 inclusive that are still outstanding as of December 1, 2015. This information was disclosed by the OIC on December 8, 2015 under ATI File Number A-2015-00085.

¹⁹ For instance during the period 2001-2007 there were a total of four lawyers in the OIC legal branch. Today, the OIC has more than double the number of lawyers to complete only a slightly higher number of complaints each year. See <http://www.oic-ci.gc.ca/eng/rp-pr-ar-ra-archive.aspx>

²⁰ Annex B provides a listing of OIC personnel including the rank and classification of each employee.

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Fiscal Years	Number of complaints completed	BACKLOG OF COMPLAINTS	Total OIC personnel
OIC with a complement of four (4) lawyers			
2000-2001	1337	912	
2001 - 2002	1232	729	The OIC annual report at page 11 notes the presence of 52 employees.
2002 – 2003	1004	657	
2003 - 2004	970	1025	The OIC annual report at page 76 notes the presence of 23 investigators and a total of 54 employees or 42%.
2004 - 2005	1140	1365	The annual report at page 17 notes the presence of 56 employees
2005- 2006	1319	1454	
2006-2007	1863	1417	
OIC with a complement of nine (9) lawyers			
2014-2015	1605	2944	

Detachment

It is noteworthy that pursuant to section 37 of the Act, the Commissioner is obliged to report to the head of the applicable federal institution, the complainant(s) and any third parties, the findings of any OIC investigation and any recommendations the Commissioner considers appropriate.

Given their importance, under previous administrations these letters of findings and recommendations were customarily signed by the Commissioner. However, this is now rarely the case. According to information recently obtained from the OIC during period August 2011 and August 2014:

- the IC has personally signed approximately ten (10) reports of findings and recommendations (less than 0.2% of the overall reports);
- A slightly larger number of the reports of findings and recommendations have been signed, on delegation, by the Assistant Commissioner who has personally signed approximately 164 reports of findings and recommendations (3.5% of the overall reports); and
- The remainder (96.3 %) of the reports were signed by officials of much lower rank at the OIC.

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Letters of findings and recommendations from the OIC are formal substantive documents reporting on the results of a particular investigation and, as importantly, recommending to the applicable Deputy Minister or Head of the institution concerned certain remedial actions.²¹

Long-standing correspondence protocols in the Canadian federal public service establish that letters signed personally by someone of the rank of an Officer of Parliament or someone holding a similar rank (i.e. a Deputy Minister) receives the personal attention of the targeted Deputy Minister or the Head of a federal institution. In this way, recommendations are brought directly to the personal attention of the most senior executive of the concerned institution instead of being directed to a more junior departmental delegate such as the access-to-information coordinator to whom correspondence on technical or routine subjects are normally addressed.

Obviously, a letter of findings and recommendations carrying the imprimatur of the IC ensures that the uppermost senior executive of the applicable institution is made personally aware (negating any future plausible denial of having such knowledge) of the recommended remedial actions allowing him or her by the same token to provide the required leadership, support and advice to ensure more coherent, consistent and efficient corporate management processes and procedures to respond to future access requests. At present, this is not occurring.

PART III PROPOSALS FOR ATIA REFORMS

Positive steps should be taken to tackle the residual widespread culture of secrecy within Government, promote open government and to make it clear to one and all that access to information is a basic right. Four recommendations are advanced:

1. **HAVE THE OFFICE OF THE AUDITOR GENERAL (OAG) CONDUCT A SYSTEM AUDIT OF THE OIC and the ATIP offices.**²² The purpose of such an audit is to:

²¹ Also, pursuant to section 41 of the Act, any person who has been refused access to a record is permitted on receipt of such a letter of findings and recommendations to apply to the Federal Court for a review of the matter.

²² We recommend that such a system audit of both the access and privacy offices be done simultaneously.

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- Examine whether the OIC and, by ricochet, the ATIP offices of the major federal institutions are properly structured, staffed and focused on their legislated functions. See Annex C.
 - Examine the extraordinarily lengthy procedure used by the OIC (and the OPC) to investigate complaints.
 - i. The ATIA stipulate that complainants must first exhaust the OIC lengthy procedure before applying for a judicial review.
 - ii. It follows that the current two-year backlog of complaints constructively denies a complainant his statutory right to have recourse to a judicial review process.
2. **RATIONALIZE AND UNITIZE THE LEGAL AND ADMINISTRATIVE STAFF OF BOTH THE OIC AND THE OPC structures.**²³ Given the great similarities and commonalities in scope and mandate between the Information Commissioner and the Privacy Commissioner, each operating under a statute which mirrors the others' powers and responsibilities and, as importantly, each of these two offices are housed under the same roof, there would be significant advantages and savings in having them share a common administration.²⁴

²³ By way of example, a Courts Administration Service was established in 2003 to support the four courts of law (Federal Court of Appeal, the Court Martial Appeal Court, the Federal Court and the Tax Court) so as to facilitate coordination and cooperation and enhance accountability for the use of public money and supervision over and direction of the support and administrative functions.

²⁴ As noted at page 112 of the OIC 2000-2001 Annual Report, the Offices of the Information Commissioner and the Privacy Commissioner of Canada operated under a one-vote structure from period 1983-84 to period 2000-01. Commencing in 2001-02, each of these offices operated independently of the other, under their own respective vote structure but shared corporate services, based on a service usage basis. These shared services – finance, human resources, information technology, and general administration – were centralized in the Corporate Management Branch to avoid duplication of effort and to save money for both government and the programs. At the urging of the then Privacy Commissioner (Mr. George Radwinski), effective April 1, 2002 the shared Corporate Management Branch was split into two separate branches. In his report, the OIC Commissioner warned:

This departure from the traditional organizational design will increase the resource expenditure as each Commissioner (one willingly, the other not, pays individually for formally shared services. This increased expenditure is not justified for such a small department (the offices of the Information and Privacy Commissioners are classed as a single department by the Financial Administration Act). Unnecessary expenditures of public funds is regrettable at the hands of the Officers of Parliament.

At the time of the split, 18% of the Full Time Equivalent (FTEs) were employed the Office of the Privacy Commissioner and 14% of the FTEs were employed by the Office of the Information Commissioner with their respective corporate services branch.

- Surely, given the high degree of commonality of purpose, efficiency gains could be made by combining the available 23 lawyers and 136 administrators under a single organization. [See Annex C which provides in a summary form a breakdown of the staff structure for each of the Office of the Information Commissioner and the Office of the Privacy Commissioner. Also, see Annex D which provides a listing of OPC personnel including the rank and classification of each employee.]
3. **BRING HOUSE OF COMMONS AND SENATE WITHIN THE AMBIT OF THE ATIA.** Following the example of the UK Parliament,²⁵ the House of Commons and the Senate should be subject to the ATIA including MP's involvement in inter-parliamentary associations and foreign travel but exempting their legislative, political or constituency work (which should be exempted under a parliamentary privilege).
 4. **GIC APPOINTS DEPARTMENTAL ATIP COORDINATORS.** Heads of government institutions are required to designate a Coordinator to exercise and perform any of their powers, duties or functions under the legislation. At present, these public servants do not have the same level of authority as the head of the institution and must often live with strong adverse pressure from their managers regarding the processing of access to information requests.

One bold and innovative move would be to have the Governor-in-Council appoint these Coordinators, thereby insuring their independence and authority within their respective organisation to process access to information requests. They should also be made accountable to the responsible Minister.

²⁵ The UK Parliamentary Expenses scandal in 2009 caused public outrage by the disclosure of widespread actual misuse of the permitted allowances and expense claims by Members of Parliament (both in the House of Commons and the House of Lords). It resulted in a large number of resignations, sackings, deselections and retirement announcements, together with public apologies and the repayment of expenses. Several members or former members of the House of Commons, and members of the House of Lords, were prosecuted and sentenced to terms of imprisonment.

The scandal also created pressure for political reform extending well beyond the issue of expenses, and led to the Parliament elected in 2005 being referred to as the 'Rotten Parliament'. It also led to both the House of Commons and the House of Lords being brought under the ambit of the UK Freedom of Information legislation.

**PART IV
CONCLUSION**

Canada deserves an open, honest and accountable government. This can be achieved, at least in part, by having a working access to information regime. Yet at present the access to information system is in a state of crisis. It is also high time to put the ATI spotlight on parliamentary secrecy. Recent expense scandals in the Senate make it urgent to have all Members of Parliament and Senators subject to the *Access to Information Act*.

Equally urgent is the need to recognize the pivotal role played in the administration of the ATIA by each of the Access to Information Coordinators at federal institutions. At present, they are subservient to the wishes and dictates of the mandarins, not the public or the ATI users whom they are mandated to serve. These ATI Coordinators need the status, independence and authority which flow from a G-I-C appointment in order to properly perform their onerous duties to the Canadian democracy.

The OIC also plays an important role in maintaining the integrity of the access to information regime (as is) by ensuring that Parliament – and Canadians – have access to independent information as part of the framework of accountability and scrutiny of the Executive Government. This was anticipated by those who drafted the ATIA by giving this independent statutory officer extraordinary powers to investigate complaints as well as a right of access to Parliament to alert the Canadian democracy when government and its several institutions fail to live up to their obligations. As noted before, these existing powers are seldom used to their fullest extent and purpose. That is and should remain the main focus. However, to perform that function with both diligence and rigour, the Commissioner must remain focused on that mission and not be diverted to perform non-mandated tasks. Moreover, the Commissioner also needs to remain an Ombudsman (as an Officer of Parliament) and not become the head of an administrative tribunal.

This obviously places onerous demands on the Commissioner who, like her predecessors, must constantly display strong, if not forceful, and sustained advocacy to counter-balance a government's disrespect for the citizens' right to know. The visibility of her presence is also important to the Court, senior officials of governments, as well as ordinary citizens who, as both users of access and complainants, will be reassured on receiving a copy of the investigative report bearing the imprimatur of the Commissioner, an inimitable and undeniable sign that that the Information Commissioner is vigilant and personally involved in the investigative process of their complaints.

ANNEX A

**BACKLOG OF REGISTERED COMPLAINTS AT THE
OFFICE OF THE INFORMATION COMMISSIONER
AS OF DECEMBER 2015**

FISCAL YEARS	TOTAL COMPLAINTS OUTSTANDING AS OF DECEMBER 8, 2015	CUMULATIVE TOTALS
2005-2006	1	1 Eleven-years old
2006-2007	3	4 Ten years old
2007-2008	3	7 Nine years old
2008-2009	31	38 Eight years old
2009-2010	36	74 Seven years old
2010-2011	80	154 Six years old
2011-2012	148	302 Five years old
2012-2013	207	509 Four years old
2013-2014	419	928 Three years old
2014-2015	735	1663 Two years old
2015-2016	1281	2944 One year old

**DISTRIBUTION OF PERSONNEL
IN THE OFFICE OF INFORMATION COMMISSIONER
BY RANK AND FUNCTIONS
AS OF DECEMBER 2015**

Position and Title	#	Rank and Classification	Salary Range	%
SENIOR EXECUTIVES (5) plus 1				
Information Commissioner of Canada (lawyer)	1	GIC -10	\$307,000	6%
Director General Corporate Services	1	EX-03	\$133,900 to \$157,500	
Senior Director, Investigations	1	EX-02	\$119,600 to \$140,700	
Director, Intake and Early Resolution Unit	1	EX-01	\$106,900 to \$125,770	
Director, Public Affairs	1	EX-01	\$106,900 to \$125,770	
Director, SCMT	1	EX-01	\$106,900 to \$125,770	
Executive Assistant to the Commissioner	1	AS-03	\$58,281 to \$63,794	
LEGAL STAFF (9)				
Director Legal Services and General Counsel	1	LC-02	\$122,800 to \$155,890	17%
Senior Legal Advisor	1	LP-03	\$121,756 to \$152,433	
Counsel	4	LP-02	\$99,976 to \$137,886	
Counsel	2	LP-01	\$71,735 to \$98,936	
Legal Service Coordinator	1	AS-03	\$58,28 to \$62,794	
MANAGEMENT AND ADMINISTRATION PERSONNEL (35)				
Director Financial Services , Security etc.	1	FI-04	\$90,389 to \$116,712	40%
Director IM/IT	1	CS-04	\$89,690 to \$111,639	
Director ATIP Directorate	1	PM-06	\$89,112 to \$101,892	
Senior Human Resources Advisor	1	PE-05	\$87,458 to \$97,458	
Manager, Communications /Media Relations	1	IS-05	\$84,658 to \$92,328	
Senior Financial Officer	1	FI-03	\$80,186 to \$103,333	
Senior IT Security. LAN Infrastructure	1	CS-03	\$78,333 to \$97,322	
Senior Information Technician	2	CS-03	\$78,333 to \$97,322	
Parliamentary Relations Advisor	1	AS-05	\$76,002 to \$82,171	
Strategic Planning Officer	1	AS-05	\$76,002 to \$82,171	
Manager, Information Management	1	LS-03	\$72,844 to \$82,201	
Manager, Information Management	1	LS-03	\$72,844 to \$82,201	
Administrative Assistant	1	AS-04	\$63,663 to \$68,793	
Manager Security and Accommodation	1	As-04	\$63,663 to \$68,783	
Communication Officer	2	IS-03	\$63,363 to \$68,793	
Financial Officer	1	FI-02	\$62,721 to \$85,085	
Reference Librarian	1	EC-03	\$59,756 to \$67,614	
Procurement and Contracting Officer	1	AS-03	\$58,281to \$62,794	
Financial Services Officer	1	AS-03	\$58,281 to \$62,794	
Chief Liaison Officer	1	AS-3	\$58,281 to \$62,794	
Student Communications	1	IS-02	\$54,374 to \$58,586	
Administrative Assistant	1	AS-02	\$54,374 to \$58,586	
Help Desk Officer (Communications)	2	CS-01	\$53,611 to \$69,088	

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Policy Analyst	1	EC-03	\$49,751 to \$67,614	
Administrative Assistant	5	AS-01	\$48,796 to \$54,575	
Junior Access to Information/Privacy Officer	1	AS-01	\$48,796 to \$54,575	
Administration/ Material Management Assistant	1	CR-04	\$45,189 to \$48,777	
Administrative Assistant	1	CR-04	\$45,189 to \$48,777	
CORE FUNCTION: Investigators (28)				
Chief Operations	2	PM-06	\$89,112 to \$101,892	
Senior Investigator	1	PM -06	\$89,112 to \$101,892	
Investigator	12	PM-05	\$76,002 to \$82,171	32%
Investigator	8	PM -04	\$63,663 to \$68,793	
Investigator	5	PM-02	\$54,374 to \$58,586	

**ORGANIZATIONAL STRUCTURE
OFFICE OF THE ACCESS TO INFORMATION COMMISSIONER (OIC)
OFFICE OF THE PRIVACY COMMISSIONER (OPC)**

The table below is a listing by classification and level of each permanent staff position as of December 2015 at the Office of the Information Commissioner and the Office of the Privacy Commissioner. This table was compiled from information contained in records disclosed by both offices in response to separate requests under the *Access to Information Act*.

These numbers do not include the *Ad Hoc* Commissioner. It also does not include the cumulative person-years' worth of work either contracted out or performed by the several staff hired on a term or occasional basis.

Office of the Information Commissioner See Annex B			Office of the Privacy Commissioner See Annex D	
% of total staff	Number	Functions (Joint staff allocation)	Number	% of total staff
6%	1	Commissioner (2)	1	6.6%
	5	Executives (17)	12	
17%	10	Legal staff (21)	11	5.6%
40%	35	Management and Administration (136)	101	51.7%
68%	55	Total Executive, legal and administrative staff (180)	125	64.1%
32%	28	Core function Investigation of Complaints (98)	70	35.9%
100%	83	TOTAL (278)	195	100%

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**DISTRIBUTION OF PERSONNEL
IN THE OFFICE OF THE PRIVACY COMMISSIONER
BY RANK AND FUNCTIONS**

Title	#	Rank and Classification	Salary Range	%
EXECUTIVES (13)				
Privacy Commissioner of Canada	1	GIC	\$307,000	6.6%
DG Corporate Services	1	EX-03	\$133,900 to 157,500	
DG Audit & Reviews	1	EX-02	\$119,600 to \$140,700	
DG Communications	1	EX-02	\$119,600 to \$140,700	
DG PIPEDA Investigations	1	EX-02	\$119,600 to \$140,700	
DG Privacy Investigations	1	EX-02	\$ 119 ,600 to \$140,700	
Director Human Resources	1	EX-01	\$106,900 to \$125,770	
Director Financial & Administrative Services	1	EX-01	\$106,900 to \$125,770	
Director Policy and Research	2	EX-01	\$106,900 TO \$125,770	
Director Technology Analysis Branch	1	EX-01	\$106,900 to \$125,770	
Director Toronto Regional Operations	1	EX-01	\$106,900 to \$125,770	
Senior Advisor	1	EX-01	\$106,900 TO \$125,770	
LEGAL STAFF (11)				
Senior Legal Counsel & Director General Legal Services, Policy, Research and Technology Analysis Branch	1	LC-03	\$143,900 to \$176,000	5.6%
Director Legal Services and Senior Counsel	1	LC-01	\$108,900 to \$138,800	
Legal Advisor	3	LP-02	\$99,976 to \$137,886	
Legal Counsel	3	LP-02	\$99,976 to \$137,886	
Legal Counsel	2	LP-01	\$71,735 to \$98,986	
Paralegal	1	EC-02	\$50,122 to \$60,026	
MANAGEMENT AND ADMINISTRATION (101)				
Director IM/IT	1	CS-05	\$103,267 to \$134,571	51.7%
Manager Strategic Research	1	EC-07	\$98,444 to \$ 113,016	
Senior Strategic Research Analyst	1	EC-07	\$98,444 to \$ 113,016	
Special Advisor	1	EC-07	\$98,444 to \$ 113,016	
Manager Business Analysis System Management & Support	1	CS-04	\$89,690 to \$111,639	
Manager IT Operations Infrastructure Architecture	1	CS-04	\$89,690 to \$111,639	
Senior IT Research Analyst	2	CS-04	\$89,690 to \$111,639	
Director Business Plan, Management Practices	1	AS-07	\$89,594 to \$101,892	
Manager Communications Operations	1	IS-06	\$89,112 to 101,892	
Manager Strategic Communications	1	IS-06	\$89,112 to 101,892	
Casual 90 Days	1	PE-05	\$87,458 to \$97,458	
Manager Human Resources Operation	1	PE-05	\$87,458 to \$97,458	
Manager Human Resources Programs & Labour Relations	1	PE-05	\$87,458 to \$97,458	
Senior Analyst Stakeholder Relation	1	EC-06	\$87,128 to \$101,048	
Strategic Policy & Research Analyst	6	EC-06	\$87,128 to \$101,048	
Manager Corporate & Internal Communications	1	IS-05	\$84,658 to \$92,328	
Manager Public Education & Outreach	1	IS-05	\$84,658 to \$92,328	
Senior Communications Officer	1	IS-05	\$84,658 to \$92,328	
Manager Executive Office	1	AS-06	\$84,658 to \$91,328	
Manager IM Programs & Services	1	AS-06	\$84,658 to \$91,328	
Manager Account Operation Monitoring Policy & System	1	FI-03	\$80,186 to \$103,333	
Manager Financial Plan Budget Rep & Cost	1	FI-03	\$80,186 to \$103,333	

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IT Research Analyst	4	CS-03	\$78,333 to \$97,322	
IT Security & Malware Spec.	1	CS-03	\$78,333 to \$97,322	
Senior Analysis IT Architect & Infrastructures	1	CS-03	\$78,333 to \$97,322	
Senior Application Developer/Database Administrator	2	CS-03	\$78,333 to \$97,322	
Senior Human Resources Advisor, Centre of Expertise	1	PE-04	\$78,114 to \$86,824	
Business & Performance Analyst	1	EC-05	\$77,118 to \$88,764	
Parliamentary Affairs Officer	1	EC-05	\$77,118 to \$88,764	
Research Analyst	1	EC-05	\$77,118 to \$88,764	
Business Analyst	1	AS-05	\$76,002 to \$82,171	
Manager Administrative Services	1	AS-05	\$76,002 to \$82,171	
Communications Advisor (Fr Ed)	1	IS-04	\$76,002 to \$78,892	
New Media Officer	1	IS-04	\$76,002 to \$78,892	
Reference Librarian	1	LS-03	\$72,844 to \$82,201	
Human Resources Programs Officer	1	AS-04	\$63,663 to \$68,793	
Media Analyst	1	IS-03	\$63,363 to \$68,793	
Public Education Officer	1	IS-03	\$63,363 to \$68,793	
Financial Officer Corporation Account Policy & Budget	1	FI-02	\$62,721 to \$58,085	
Human Resources Advisor (Programs & Policy)	1	PE-02	\$62,657 to \$69,545	
Technical Analyst	3	CS-02	\$62,065 to \$81,222	
Correspondence Officer	1	AS-03	\$58,281 to \$62,794	
Executive Assistant	4	AS-03	\$58,281 to \$62,794	
Information Management Officer	3	AS-03	\$58,281 to \$62,794	
Senior Compensation & Benefits Advisor	1	AS-03	\$58,281 to \$62,794	
Financial Officer Account & Operations	2	FI-01	\$57,528 to \$72,282	
Financial Officer Plan & Budget	1	FI-01	\$57,528 to \$72,282	
Financial Project Officer	1	FI-01	\$57,528 to \$72,282	
Administrative Assistant	2	AS-02	\$54,374 to \$58,586	
Coordinator Administrative Services	3	AS-02	\$54,374 to \$58,586	
Financial Services Coordinator	1	AS-02	\$54,374 to \$58,586	
Human Resources Services Coordinator	1	AS-02	\$54,374 to \$58,586	
Senior Administrative Assistant	1	AS-02	\$54,374 to \$58,586	
Junior Communications Officer	1	IS-02	\$54,374 to \$58,586	
Human Resources Assistant	2	CR-04	\$45,189 to \$48,777	
Procurement Officer	1	PG-02	\$53,990 to \$60,890	
Help Desk Officer	1	CS-01	\$53,611 to \$69,088	
Library Technician	1	EC-02	\$50,122 to \$60,026	
Research Analyst (development)	1	EC-02	\$50,122 to \$60,026	
Administrative Assistant	10	AS-01	\$48,796 to \$54,575	
Information Management Analyst	2	AS-01	\$48,796 to \$54,575	
Administrative Clerk	1	CR-04	\$45,189 to \$48,777	
Complaint Registration Clerk	3	CR-04	\$45,189 to \$48,777	
Receptionist, Administrative Assistant	2	CR-04	\$45,189 to \$48,777	
Records and Mail Clerk	2	CR-04	\$45,189 to \$48,777	
CORE FUNCTION: Investigators (70)				
Director, ATIP	1	PM-06	\$89,112 to \$101,892	
Manager (Complaint)	2	PM-06	\$89,112 to \$101,892	
Manager, Investigations PIPEDA	1	PM-06	\$89,112 to \$101,892	
Manager Privacy Risk Analysis	2	PM-06	\$89,112 to \$101,892	
Manager, Investigations PA	4	PM-06	\$89,112 to \$101,892	
Privacy Audit & Review Manager	4	PM-06	\$89,112 to \$101,892	
Review Officer	1	PM-06	\$89,112 to \$101,892	
Senior Advisor, Investigations	1	PM-06	\$89,112 to \$101,892	
Senior Advisor, Investigations PA	2	PM-06	\$89,112 to \$101,892	
Senior Advisor, Investigations PIPEDA	4	PM-06	\$89,112 to \$101,892	
Manager, Information Centre	1	PM-05	\$76,002 to \$82,171	
Senior ATIP Officer	2	PM-05	\$76,002 to \$82,171	
				35.9%

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Senior Audit & Review Officer	2	PM-05	\$76,002 to \$82,171
Senior Privacy Analyst	3	PM-05	\$76,002 to \$82,171
Senior Privacy Investigator	24	PM-05	\$76,002 to \$82,171
Case Analyst	1	PM-04	\$63,663 to \$68,793
Privacy Investigator	4	PM-04	\$63,663 to \$68,793
Senior Information Officer	1	PM-04	\$63,663 to \$68,793
Complaint Intake Officer	3	PM-03	\$58,281 to \$62,794
Information Officer	7	PM-03	\$58,281 to \$62,794