



Information  
Commissioner  
of Canada

Commissaire  
à l'information  
du Canada

# 2018–19 annual report



# CONTENTS

- 3 Message from the Commissioner
- 4 Addressing the inventory
- 15 Preparing to implement Bill C-58
- 17 Ensuring transparency and openness in operations
- 20 Collaborating for compliance
- 24 About us
- 25 Annual report of the Information Commissioner Ad Hoc



*Many thanks to all the OIC employees who appear in this report, and a special thank you to OIC's Steve Tran who produced all the photographs.*

# MESSAGE FROM THE COMMISSIONER

I am very pleased to present this annual report—a review of the activities of my office during my first full year as Information Commissioner.

It would be an understatement to say that it was a busy year. It was certainly a successful one, with my team completing significantly more investigations than the year before and finishing them more quickly.

I set four clear priorities at the start of my mandate. Exemplary work by my staff and valuable input from institutions and other stakeholders led to considerable progress on all of them.

The consistent focus of my office's work was on ensuring institutions meet their obligations under the *Access to Information Act*. So, whether it was investigating complaints, meeting senior institutional officials, making recommendations to improve institutional or system-wide practice, taking matters to court or improving the investigation process, my goals were the same. I sought to increase compliance with the legislation, enhance government transparency, and ensure Canadians receive the information to which they are entitled in a timely manner.

As I enter the second year of my seven-year term, I have a clear vision of where I would like to be when I issue next year's annual report. My office will be making every effort to conclude the most investigations possible. Ideally, implementation of the government's proposed amendments to the Act will be well under way, and Canadians will be benefiting from the reforms. My team will be transparent in all its dealings with complainants and institutions, and will be working collaboratively with all parties to resolve complaints.

I have an excellent and innovative team in place to achieve these results. But more remains to be done, requiring the involvement of institutions and the government.

Institutional leaders must step up. I will be continuing to meet with deputy ministers and other executives, looking for evidence of concrete actions they are taking to ensure their organizations are meeting their obligations under the Act.

Importantly, the government must follow up on its previous commitments to provide sufficient permanent funding to my office. While I welcome the additional temporary resources announced in Budget 2019 for reducing the inventory, operating year-by-year is inefficient and unsustainable. Ultimately, it jeopardizes access rights, particularly given the large number of complaints my office has received in recent years.

For my part, I have taken significant steps to put the Office of the Information Commissioner on a firm footing, by restructuring the investigations group and assembling an experienced senior management team. My office will continue to conduct high-quality investigations and improve its processes to conclude investigations as efficiently as possible. Positive actions by institutions and increased permanent funding is required to enhance these results for Canadians seeking information from their government.



Information Commissioner Caroline Maynard



# ADDRESSING THE INVENTORY

The [Access to Information Act](#) gives Canadians the right to file complaints with the Information Commissioner about how institutions have handled their access to information requests.

## BUILDING THE FOUNDATION

In the early months of her mandate, the Commissioner made it her first priority to take action to reduce the inventory of complaints, which stood at nearly 3,500 files on April 1, 2018.

The Commissioner sought to understand the make-up of the inventory and reviewed with staff and institutions what aspects of our investigative process could be improved. We then structured our investigations group to respond effectively to the various types of complaints in the inventory, considering their age, subject matter and complexity. We also streamlined the investigation process.

We created smaller investigations teams—each with integrated members of our legal staff. Legal counsel are now involved with files from their earliest stages to identify any legal concerns or avenues for resolution. We are in the process of assigning portfolios of institutions to the teams to allow us to develop specialized expertise on the organizations and their programs. This approach will also limit the number of our staff with whom institutions interact at any one time.

We have begun to manage files more diligently from the day we receive complaints to the day we conclude investigations to ensure they advance more efficiently and meet a high standard for quality. A new team is now quickly validating complaints upon arrival, staying on top of the progress of files, ensuring better consistency in investigation-related correspondence and reports, and closing files promptly.

With \$2.9 million in temporary funding secured through Budget 2018, we hired and trained new investigators and re-hired experienced consultants to concentrate on reducing the inventory. We also created a development program to give mid-level investigators the training, mentoring and experience they need to move up to working on more complex files.

We have been innovating for efficiency. For example, over the year, we worked on improving the online complaint form, including developing the capability for complainants to upload electronic copies of documents when they submit their complaints online. When this is rolled out in 2019–20, it will not only remove much of the time and effort associated with the first steps of the complaint process but will also move us in the much-desired direction of paperless investigations. We are also improving the way we receive notices from institutions when they take certain time extensions under the Act. This will result in much less work for institutions.





## OUTSTANDING RESULTS

By the end of the year, we had completed our investigations into 2,608 complaints—76 percent more than in 2017–18—and decreased the median turnaround time for all types of complaints. Of the investigations we concluded, two thirds resulted in complainants receiving more information from the institution or receiving a faster response to their request.

In addition, we improved the quality of investigations through improved processes, increased involvement of legal staff in files from the earliest stages and vigilant quality assurance checks as the investigation progressed.

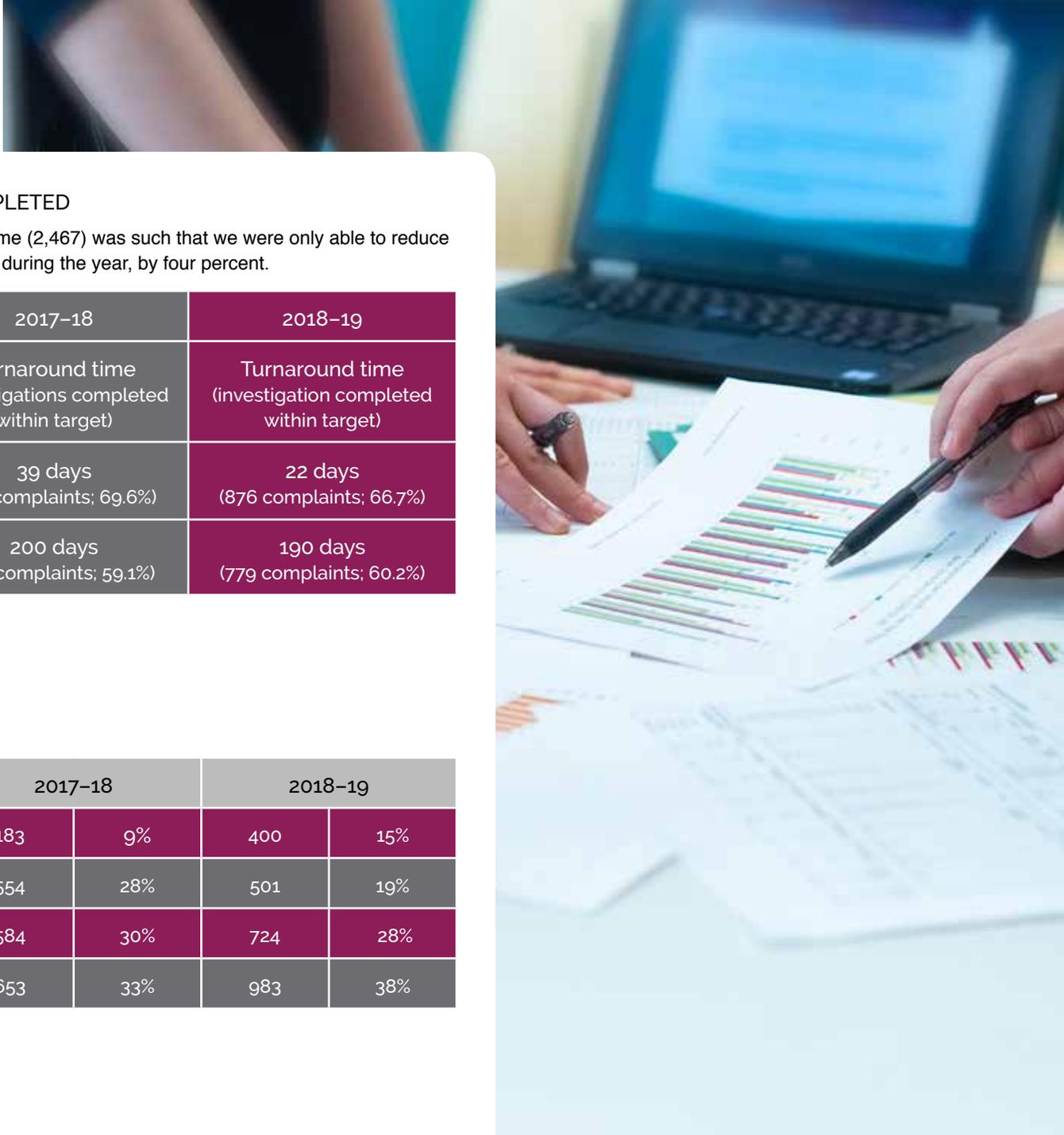
Inventory, as of April 1, 2018			Inventory, as of March 31, 2019
3,489 complaints	2,467 new complaints received	2,608 investigations completed	3,346 complaints

  
 5% less than  
 in 2017–18

  
**76% more than in 2017–18**

“The OIC’s number one priority is to address our inventory of complaints while continuing to investigate new complaints as they arrive.”

Information Commissioner Caroline Maynard, presentation to access to information coordinators, Ottawa, January 23, 2019



## TURNAROUND TIME FOR INVESTIGATIONS COMPLETED

Despite these notable efforts, the incoming complaint volume (2,467) was such that we were only able to reduce the inventory of open complaints, including those received during the year, by four percent.

		2017-18	2018-19
	Target*	Turnaround time (investigations completed within target)	Turnaround time (investigation completed within target)
Administrative complaints	90 days	39 days (727 complaints; 69.6%)	22 days (876 complaints; 66.7%)
Refusal complaints	270 days	200 days (545 complaints; 59.1%)	190 days (779 complaints; 60.2%)

\*Median turnaround time from date files were assigned to investigation.

## OUTCOMES OF COMPLETED INVESTIGATIONS

	2017-18		2018-19	
Not well founded	183	9%	400	15%
Discontinued	554	28%	501	19%
Well founded	584	30%	724	28%
Resolved or settled	653	33%	983	38%

## USING THE COMMISSIONER'S POWERS TO RESOLVE COMPLAINTS

The *Access to Information Act* gives the Commissioner strong investigative powers, including the following:

- obtaining and reviewing records required for an investigation
- summoning witnesses to appear before the Commissioner and to produce documents
- compelling witnesses to give evidence under oath
- entering institutions' premises
- issuing recommendations to institutions to take particular steps to resolve complaints
- self-initiating complaints, including launching systemic investigations.

The Commissioner may also take the following actions in the context of her investigations:

- She may disclose information to the Attorney General of Canada when she has evidence that an offence under the Act may have taken place (e.g. records were destroyed, falsified or concealed with the intent to deny access). The Attorney General then decides how to proceed. The Commissioner has no mandate to conduct criminal investigations and may not refer the case to a law enforcement agency directly. Commissioners have referred matters to the Attorney General seven times over the years. None has resulted in prosecution.
- She may apply to the Federal Court for review of institutions' refusal to disclose information.





“Going forward, then, we are really going to be focusing on investigation quality and institutional co-operation. In order to close a file, I won't hesitate to issue orders under the new legislation, or recommendations under the current Act, if an agreement clearly cannot be reached.”

Information Commissioner Caroline Maynard,  
House of Commons Standing Committee  
on Access to Information, Privacy and Ethics,  
Ottawa, May 8, 2018

## ISSUING RECOMMENDATIONS

While we use mediation and negotiation to bring most investigations to a satisfactory conclusion, there are occasions when the Commissioner chooses to issue written recommendations to the head of an institution or their delegate to take specific steps to resolve a complaint. For example, she might recommend that an institution release information it had previously decided to withhold or propose a plan to respond to the original request earlier than it had said it would.

She may also issue recommendations in order to improve practices across an institution or the government (e.g. enhancing records management systems to make finding records easier or encouraging employees to submit emails electronically to the access office rather than hard copies that access officials then have to scan).

The Commissioner issued written recommendations at the conclusion of 29 investigations in 2018–19, including the following:

### ACCESS OFFICIALS MUST BE ALLOWED TO CHALLENGE PROGRAM AREAS WHEN RESPONDING TO REQUESTS

National Defence told a requester that it had searched for a requested report but could find no related records. In the same response, it also noted that the report in question was still being drafted.

We investigated the complaint about this response, while the Canadian Armed Forces' National Investigation Service conducted a professional misconduct investigation into the processing of the original request.

We concluded that the response, which was based on recommendations from the Office of the Judge Advocate General, was inappropriate, since, as the response itself highlighted, a document did exist. In addition, the fact that the document was in draft form at the time of the request did not exclude it from the Act.

Our investigation and the Canadian Armed Forces' internal inquiry led to several changes to the structure, staffing, training and oversight of the access to information function at National Defence.

While these steps signalled the institution's intention to meet its obligations under the Act, the Commissioner recommended that National Defence undertake additional measures. These included carrying out an annual review of the access function, offering specific training and guidance on the duty to assist and the Act's offence provisions, and raising access to information performance at senior management meetings.

The Commissioner also recommended that the performance agreements of certain key executives feature a requirement to comply with the Act, including to provide timely, accurate and complete responses when tasked for records. In the Commissioner's view, this would encompass ensuring that program areas are responsive to enquiries from the access office and that, in turn, access officials are allowed to challenge decisions and recommendations made by program areas about how to respond to requests.

In her response to this recommendation, the Deputy Minister of Defence said that the institution would implement the Commissioner's recommendations in full. In addition, the Deputy Minister indicated that she had consulted the Chief of the Defence Staff and the Judge Advocate General about how to improve compliance with the Act across the institution, even though not all senior officials report directly to her.

The Commissioner asked National Defence to report back in August 2019 on its progress implementing the recommendations. We will also monitor the situation through future investigations, especially those involving the Office of the Judge Advocate General. Should we find indications of non-compliance, the Commissioner would not hesitate to use her powers to ensure the institution meets its obligations under the Act.

## PUBLICLY AVAILABLE INFORMATION ON EXEMPT STAFF TRAVEL SHOULD BE DISCLOSED

We investigated eight complaints about the decision by the Privy Council Office (PCO) to refuse to disclose travel expenses for members of the Prime Minister's staff who are not part of the regular public service (known as "exempt staff"). PCO claimed that the records constituted personal information.

During the investigation, we learned from PCO that, when any records that fall within the scope of a request related to exempt staff contain personal information, it treats all the records as personal information.

The Commissioner was not satisfied with this approach for several reasons:

- Parts of some of the withheld records in one of the complaints contained no personal information.
- PCO did not consider disclosing any information it could reasonably sever from the exempted information under [section 25 of the Act](#), a mandatory requirement.
- PCO had already released some information in response to each of the requests, which conflicted with its stated approach of treating the records as a single whole when the request concerns the personal information of exempt staff.

- PCO's approach failed to take into account the purposes of the Act, including that exceptions to the right of public access to information should be limited and specific.

The Commissioner was also not satisfied with PCO's refusal to disclose the requested information. Some of the information in one of the complaints did not meet the definition of "personal information" in the *Privacy Act* (based on which institutions may withhold information). As for the information that did qualify as personal, much of it was publicly available and should have been disclosed.

Moreover, PCO did not provide sufficient details to show that it had sought the consent of the individuals to whom the personal information belongs to disclose that information or had considered disclosing some or all of it in the public interest.

The Commissioner determined that these eight complaints were well founded. She formally recommended that PCO disclose the information that she considered not to be personal information. She also recommended that PCO reconsider whether it could disclose any publicly available personal information.

Despite having been granted an extension, the Commissioner did not receive a response to her recommendations. Consequently, we concluded all eight complaints were well founded, but not resolved, and closed them without the benefit of a response. As a result, the complainant did not receive the information the Commissioner recommended PCO release<sup>1</sup>.

---

<sup>1</sup> On May 28, 2019, the Office of the Information Commissioner received a letter dated May 1, 2019, from PCO advising that, overall, it disagreed with the Commissioner's findings and recommendations. Nevertheless, PCO confirmed that some additional personal information had been and would be released with the consent of the individuals to whom the information relates.

## INITIATING SYSTEMIC INVESTIGATIONS

[Subsection 30\(3\) of the Act](#) gives the Commissioner the discretion to investigate any matter related to requesting or obtaining access to records. This includes initiating investigations into access-related concerns that may be the result of systemic issues at one or more institutions.

By integrating key information, observations and conclusions drawn from our own experience and that of our stakeholders, investigations of this type can result in greater compliance across institutions and reduce the number of complaints we receive.

In December 2018, the Commissioner began a [systemic investigation into National Defence's processing of access requests](#) further to allegations that the institution had inappropriately withheld information.

The Commissioner also launched a systemic investigation into how the RCMP is meeting its obligation to provide timely access in light of information gathered during various investigations.

The Commissioner will report on the results of both these investigations through reports to Parliament.



## PURSUING MATTERS BEFORE THE COURTS

Under the Act, the Commissioner may appear in court in three circumstances:

- as the applicant for a review of an institution's refusal to disclose a record at the conclusion of an investigation, with the consent of the complainant
- on behalf of a person who has already applied for a review of an institution's refusal to disclose a record
- as a party to any review a complainant or third party applies for, with the permission of the court.

The Commissioner bases her decision to go to court on a variety of factors, including the public interest in the matter and whether the case presents an opportunity to advance or clarify access law and practice.

The Commissioner was involved in 13 legal proceedings in 2018–19.

### FIREARMS SERIAL NUMBERS ARE NOT PERSONAL INFORMATION

At the conclusion of two separate investigations in 2018–19, the RCMP refused to disclose the serial numbers on firearms. The institution stated that the numbers were personal information that had to be protected under [section 19 of the Act](#), because they made it possible to identify the owners of the firearms.

During the investigations, the RCMP also argued that the serial numbers should be protected because they could be cross-referenced with law enforcement databases to identify the firearms' owner. The Commissioner did not agree with this argument because the databases in question are not available to the public.

The Commissioner recommended that the RCMP disclose the serial numbers, having determined that a serial number is information about the firearm itself, not the person who owns it, and could not possibly identify the owner.

The RCMP did not accept this recommendation in either case, so the Commissioner applied to the Federal Court for review, with the consent of the complainants.

Both cases are currently before the Federal Court.

## BOMBARDIER INC. V. CANADA (ATTORNEY GENERAL), 2019 FC 207

The Federal Court released its decision in this case in February 2019.

Bombardier Inc. sought to prevent Innovation, Science and Economic Development Canada from disclosing information related to government funding it had received and was repaying. Bombardier—the only one of more than 10 firms that refused to consent to this information being released—argued that disclosing the information could damage its competitive position.

The Commissioner had recommended the disclosure in the wake of a complaint investigation, and participated in the court proceeding as an added party supporting disclosure.

In dismissing Bombardier’s application, the Federal Court clarified a number of points about the application of the exemption in the Act dealing with third-party information. In particular, it provided the following guidance on demonstrating the harm that could result from disclosing information that otherwise could be protected:

- When an argument for harm depends on calculations, evidence on how to do those calculations is necessary.
- When harm to upcoming bids is alleged, evidence about those upcoming bids must be provided.
- When harm from disclosure is alleged, real consequences must be demonstrated in light of publicly available information.
- When the court is evaluating the risk of harm in disclosure, it will look at the harm in disclosing the information at the time of its decision—in this case, 2019—and consider that the commercial value of financial information diminishes over time.

As the government seeks, with proposed amendments to the *Access to Information Act*, to increase the amount of information being proactively disclosed, institutions should be mindful to disclose records Canadians have shown they are interested in through their access requests.

## WITHHOLDING INFORMATION UNDER SECTION 35

In its decision in *Rubin v. Canada (Clerk of the Privy Council)*, [1996] 1 SCR 6, the Supreme Court of Canada found that the *Access to Information Act* contains protections for information that institutions provide to the Office of the Information Commissioner during investigations (called “representations” in the Act).

The Supreme Court found that, while [section 35](#) is not considered an exemption under the Act, institutions may rely on it when declining to disclose representations.

This year, we investigated a complaint that the Canada Revenue Agency (CRA) had withheld in their entirety the records related to the processing of two access requests and had relied on section 35 to do so.

Our investigation led to the institution releasing more information, but we were satisfied that CRA had properly invoked section 35 to protect the rest—which comprised representations access officials had provided to us during a complaint investigation—under the terms the Supreme Court had established.



## THE DUTY TO ASSIST AND USE OF DISCRETION

In [\*Canada \(Information Commissioner\) v. Canada \(Transport\)\*, \[2016\] 4 FCR 281, 2016 FC 448 \(CanLII\)](#), Transport Canada had decided to withhold information relying on [subsection 15\(1\)](#). This exemption gives institutions the discretion to protect information that could, if released, harm international affairs, the defence of Canada or efforts to counter possible subversive or hostile activities.

The Federal Court, while agreeing that section 15 did apply to the information in question, found that the institution had not reasonably exercised its discretion to withhold it. The Court returned the matter to Transport Canada and ordered the institution to exercise its discretion again taking into consideration specific factors. Transport Canada did exercise its discretion a second time and decided once more to withhold the information.

We received a complaint about Transport Canada's second decision, in which the institution relied on its original decision to withhold the information and failed to show that it had considered the factors set out by the Federal Court. Over the course of the investigation, we obtained convincing evidence that Transport Canada had, in fact, exercised its discretion reasonably at the time of its second decision. Nevertheless, we closed the complaint as well founded, given that the new decision was written in such a way that it was impossible for the requester to have understood that Transport Canada had exercised its discretion properly. The Commissioner also concluded that, in providing such a response, the institution had contravened its obligation to make every reasonable effort to assist the requester.

The *Access to Information Act* contains “discretionary exemptions.” These allow institutions to disclose information when the factors in favour of doing so outweigh those in favour of withholding it, even when it could otherwise be protected using an exemption.

Institutions must exercise their discretion reasonably—that is, someone with delegated authority under the Act must have carefully considered all the relevant factors. Among these are the following:

- the general purpose of the Act;
- the facts and circumstances of the case; and
- the nature of the records and whether they are particularly sensitive or significant.

More information:

[Interpretation: Exercise of discretion](#)



## EVIDENCE ESSENTIAL TO JUSTIFY LENGTHY TIME EXTENSIONS

The *Access to Information Act* sets out the response time for requests of 30 days, but acknowledges that processing some requests that quickly may be impossible. Institutions may extend the deadline for their response for a reasonable time in these situations.

Multiple overlapping requests for information about the federal public service pension plan led to Treasury Board of Canada Secretariat (TBS) staff having to locate, retrieve and review more than 500,000 pages. To do so within 30 days would not only have been unreasonable but also implausible. As a result, TBS claimed a total of 2,400 days in time extensions.

In investigating the requester's complaint that these extensions were not reasonable, we examined the circumstances of the requests and the measures TBS had put in place to respond.

For example, we learned that not all of the records were electronic and that they were stored in multiple locations. In addition, TBS had to consult six other institutions about the records. Meanwhile, only a few in-house staff had the expertise to identify records that fell within the scope of the request and to review them to provide recommendations about disclosure.

TBS allocated as many resources within its pensions unit as it could to these requests without unduly disrupting operations. By the time we concluded our investigation, 10 program officials had spent more than 1,600 hours, on a rotating basis, searching for and retrieving records. In addition, executives (including an assistant deputy minister) have been heavily involved in reviewing the records and making recommendations for disclosure. For its part, the access office developed a plan to respond to the requests, dedicated a significant amount of resources to processing the records, and has been regularly issuing interim responses as information becomes ready for release. TBS has assured us that these releases will continue until the request is completely processed.

In the end, we were satisfied that TBS had provided us with sufficient information to justify the length of the extensions, taken all necessary steps to ensure it would be able to respond to the request by the extended deadline and demonstrated its commitment to processing these large requests despite the challenge they represent. In light of these circumstances, the Commissioner found the unusually long extensions to be reasonable.

COMPLAINTS ACTIVITY FOR 24 INSTITUTIONS REPRESENTING 91 PERCENT OF THE INCOMING COMPLAINT VOLUME IN 2018–19

Institution	Inventory			Investigations completed in 2018–19			Outcome			
	Complaints registered before April 1, 2018	Complaints registered April 1, 2018 to March 31, 2019	Total	Complaints registered before April 1, 2018	Complaints registered April 1, 2018 to March 31, 2019	Total	Well-founded	Not well-founded	Settled, or resolved	Discontinued
Royal Canadian Mounted Police	407	369	776	223	138	361	72	30	189	70
Immigration, Refugees and Citizenship Canada	128	557	685	90	477	567	35	34	446	52
Canada Revenue Agency	485	183	668	131	55	186	78	40	38	30
National Defence	164	144	308	90	63	153	56	13	58	26
Canada Border Services Agency	142	156	298	96	69	165	54	16	65	30
Privy Council Office	188	82	270	60	21	81	36	11	16	18
Global Affairs Canada	192	59	251	47	16	63	17	6	13	27
Health Canada	74	123	197	36	30	66	22	14	15	15
Library and Archives Canada	39	142	181	15	23	38	19	2	11	6
Department of Justice Canada	123	41	164	41	11	52	16	17	8	11
Parks Canada	133	21	154	16	4	20	12	5	3	0
Canadian Broadcasting Corporation	146	4	150	83	1	84	10	29	3	42
Public Services and Procurement Canada	69	59	128	44	23	67	18	14	27	8
Correctional Service Canada	58	56	114	32	28	60	33	11	14	2
Transport Canada	82	30	112	47	7	54	27	5	5	17
Canadian Security Intelligence Service	86	25	111	54	8	62	14	30	6	12
Indigenous and Northern Affairs Canada	85	23	108	39	7	46	15	9	5	17
Department of Finance Canada	61	41	102	25	6	31	12	5	8	6
Canada Post Corporation	92	7	99	18	2	20	9	8	0	3
Innovation, Science and Economic Development Canada	46	38	84	23	10	33	10	7	9	7
Natural Resources Canada	73	10	83	31	3	34	11	12	1	10
Employment and Social Development Canada	43	38	81	30	11	41	21	6	4	10
National Energy Board	67	5	72	29	2	31	5	9	1	16
Public Safety Canada	28	27	55	6	6	12	2	4	2	4
<b>Sub-total</b>	<b>3,011</b>	<b>2,240</b>	<b>5,251</b>	<b>1,306</b>	<b>1,021</b>	<b>2,327</b>	<b>604</b>	<b>337</b>	<b>947</b>	<b>439</b>
Others institutions (71)	478	227	705	212	69	281	124	63	36	62
<b>Total</b>	<b>3,489</b>	<b>2,467</b>	<b>5,956</b>	<b>1,518</b>	<b>1,090</b>	<b>2,608</b>	<b>724</b>	<b>400</b>	<b>983</b>	<b>501</b>

# PREPARING FOR BILL C-58

The House of Commons and the Senate continued to consider [Bill C-58, An Act to amend the \*Access to Information Act\* and the \*Privacy Act\*](#) and to make consequential amendments to other Acts, throughout the year.

## APPEARING BEFORE PARLIAMENT

The Commissioner followed Bill C-58 closely as it worked its way through Parliament and was studied by the Standing Senate Committee on Legal and Constitutional Affairs. Office of the Information Commissioner officials provided an informal briefing on access to information to the members of that committee in September 2018, prior to the [Commissioner's appearance before the committee in October](#).

During her appearance, the Commissioner raised four concerns about the Bill.

Notable among these was the requirement that requesters provide the specific subject matter of their request, the type of record being requested and the period for which the record was being requested or the date of the record. Among the factors that prompted the Commissioner's concern were the views of Indigenous groups that these stipulations would limit their ability to request records related to residential schools, land claims and other important issues.

During its detailed review of the Bill, the Senate committee passed all four of the amendments recommended by the Commissioner:

- The detailed requirements for making a request were removed. The committee agreed with the Commissioner that demanding this level of specificity when submitting a request would be detrimental to access.
- The Commissioner and complainants would be allowed, after the Commissioner issued an order to have an institution take specific action to resolve a complaint, to file a certified copy of that order with the Registrar of the Federal Court in certain circumstances. Doing so would make the order enforceable as an order of that court, such that an institution could not disregard it.
- The majority of the amendments in the Bill, including the Commissioner's new order-making powers, would become operative at the same time the Bill comes into effect. Previously, a one-year transition period had been proposed for some amendments.
- The Privacy Commissioner's involvement in access investigations was clarified to appropriately balance Canadians' rights to both privacy and timely access.

In addition, the Commissioner was asked to [appear before the committee](#) on April 3, 2019, on the issue of whether and how the Federal Court of Canada should review the Commissioner's findings and orders.



"I am pleased that the government is taking concrete steps to modernize the *Access to Information Act*. While we may have different opinions as to what this modernization should look like, we should all agree that 35 years is too long to wait for a legislative update and recognize that the Act has failed to keep pace with the times. The *Access to Information Act* is not reflective of our reality in 2018, which is the world of digital government."

Information Commissioner Caroline Maynard, [remarks before the Standing Senate Committee on Legal and Constitutional Affairs](#), Ottawa, October 17, 2018

“As the Information Commissioner, it is my responsibility to ensure the appropriate application of the *Access to Information Act*. With these four key amendments I have recommended to you today, I believe that Bill C-58 will give me better tools and authority to ensure the right of access is respected and that government institutions are complying with the Act.”

Information Commissioner Caroline Maynard, [remarks before the Standing Senate Committee on Legal and Constitutional Affairs](#), Ottawa, October 17, 2018



## PREPARING FOR IMPLEMENTATION

In anticipation of the Bill’s passage, we continued to prepare to implement a number of measures that would have a direct impact on our operations.

In particular, we focused on how we would receive, process and make decisions on applications from institutions for the Commissioner’s permission to decline to process requests as being vexatious, having been made in bad faith or otherwise being an abuse of the right to make a request. Recognizing that efficient communication would be crucial to this process being effective, we tested a platform that would allow requesters and institutions to submit their views on such applications through a secure server.

We are also reviewing other amendments the Senate committee put forward, with an eye to efficient implementation.

We also continue to monitor the progress of Bill C-71, *An Act to amend certain Acts and Regulations in relation to firearms*, through Parliament. This Bill is significant because it contains provisions that repeal retroactive amendments to the Ending the Long-gun Registry Act. We are currently involved in litigation related to the constitutionality of some aspects of that law. The Bill was introduced in the Senate in September 2018 and, as of March 31, 2019, was being studied by the Standing Senate Committee on National Security and Defence.

# ENSURING TRANSPARENCY AND OPENNESS IN OPERATIONS

To help institutions meet their obligations under the [Access to Information Act](#) and ensure complainants understand our role and work, the Commissioner has made it a priority to ensure the Office of the Information Commissioner is transparent and open in day-to-day operations.

## ENHANCING OUR WEBSITE

As a key communications channel for the organization, our website provides important information to institutions, complainants and others, about what we do and how. To ensure it remains a useful tool for all who are seeking to learn more about the Commissioner, the Office of the Information Commissioner and our work, we completed a significant redesign and reorganization of our website in 2018–19. The [new site will be launched in 2019–20](#).

On the new site, we will be providing more information to institutions to clarify how we approach investigations and interpret the Act, building on the “[Information Commissioner’s guidance](#)” content we launched on our current website in October 2018. There, we have made available information on our updated investigation processes, guidance on our expectations for institutions when working with us to resolve complaints, and the Commissioner’s interpretations of regularly applied sections of the Act—including key points taken from cases featured in our annual reports

over the last decade. Together, these tools will help institutions better meet their obligations under the Act.

The website is also an important vehicle for facilitating the complaint process. Since launching the [online complaint form](#) on our site in December 2017, we have been receiving an increasing number of new complaints this way. As part of the work to enhance the website, we developed and tested ways to make the form better and easier to use, in response to feedback from users. In 2019–20, we expect to launch additional features to enhance the value and usability of the form.

We released new visuals on the website that set out step by step how we investigate the various types of complaints we receive. More of these [infographics](#) are to follow in 2019–20. We also developed a simpler set of terms to describe the results of our investigations (called “[disposition categories](#)”). These benefit both institutions and complainants by clearly indicating the outcome of investigations.

In preparation for changes to how we would work should the proposed amendments to the Act that were before Parliament in 2018–19 become law, we have already planned for our website to feature the text of any orders the Commissioner would make to resolve complaints. We also intend to post summaries of the findings of noteworthy and precedential investigations, and guidance for institutions on implementing the new provisions of the Act. In addition, we are exploring other platforms for publishing our reports of findings.

“Institutions and Canadians need to understand not just the complaint process, but also our decisions. It’s very important to me that our office do a better job of publicizing what we are doing so that everyone knows exactly what to expect and is better able to make decisions in response to access to information requests, with the ultimate goal of reducing the number of complaints.”

Information Commissioner Caroline Maynard, [House of Commons Standing Committee on Access to Information, Privacy and Ethics](#), Ottawa, May 8, 2018

The *Access to Information Act* provides requesters with a right of access to records that are “under the control” of a government institution. While the Act does not define “control,” the courts have affirmed that this term should be interpreted broadly.

For example, *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, para. 48, notes that partial, transient or de facto control of a record by an institution is sufficient to constitute control for the purposes of the Act.

The courts have considered a range of factors when determining whether institutions have control over records. Consequently, we examine the issue of control on a case-by-case basis, considering factors such as the substantive content of the records, the circumstances in which they were created, and the legal relationship between the institution and the record holders, as set out in the above-noted case, and other factors drawn from case law.

## ISSUING CLEAR INTERPRETATIONS: CONTROL OF RECORDS

As part of our efforts to increase transparency, we are examining issues that arise regularly in investigations, and developing and communicating consistent and clear approaches to them, including how we interpret the Act. One such issue is the control of records.

Determining who controls requested records is important, since records that are not under institutional control are not subject to the Act. For example, in investigations we completed in 2018–19, we found that records concerning individuals’ involvement with volunteer and professional associations were not in the institution’s control—and therefore not subject to the Act—even though the institution had copies of the

records in their offices. We came to this conclusion for a number of reasons, including these:

- The records did not concern the mandate, obligations, functions or operations of the institution.
- The records were not created as part of the individuals’ duties or functions as employees of the institution.
- The institution did not by law have to create or keep the records.

We will publish new guidance on how we investigate complaints that touch on the control of records on our website in 2019–20.





## UNDERLINING THE NEED FOR TRANSPARENCY WITH STAKEHOLDERS

Over the year, the Commissioner regularly emphasized the importance of transparency during presentations to groups such as the Canadian Access and Privacy Association, the Canadian Bar Association, and at the [University of Alberta's annual access and privacy conference](#).

Similarly, she took questions about her priorities and approach to her work from both federal employees (a panel put on by the Canada School of Public Service) and journalists (FOI Friday, organized by the Canadian Association of Journalists) during Right to Know Week in September 2018.

At the [International Conference of Information Commissioners in South Africa in March 2019](#), the Commissioner had her first opportunity to network with her counterparts from around the world.

She spoke on two panels, one on access to information as a tool to enhance accountability and transparency, and a second on ensuring the establishment of independent, credible and effective access oversight bodies.

The Commissioner played a significant leadership role during the conference, providing advice on implementation of access legislation to colleagues whose countries have less established access systems, and sharing best practices.

The Commissioner was also involved in planning for the [Open Government Partnership summit to be held in Ottawa in May 2019](#). She agreed to moderate a panel on the declassification of government information, bringing together experts from a number of countries to discuss this important topic.

# COLLABORATING FOR COMPLIANCE

In the first year of her mandate, the Information Commissioner stressed the importance of collaborating with institutions. This collaboration, which has taken many forms, has a single and clear goal: to increase institutions' compliance with the [Access to Information Act](#), such that complainants receive the information to which they are entitled in a timely manner.

In meetings with deputy ministers and executive committees of the roughly 20 institutions with whom we have the most complaints, the Commissioner challenged senior leaders to ensure their institutions live up to their obligations under the Act and work with us to resolve complaints. She also sought to understand the challenges these institutions face and the best practices they have developed to provide better service to Canadians.

In each instance, the Commissioner encouraged executives to continue and to initiate specific actions to enhance compliance. To reinforce her expectation that institutions step up, she sent follow-up emails to the individuals she met to track concrete actions they have taken, and their results for requesters and complainants.

Complementing these meetings were two gatherings of access to information coordinators and the Commissioner. These sessions were an opportunity for her not only to introduce herself and her priorities to the community but also to hear from access professionals about their concerns. She shared best practices she had learned about from institutions and reported on her meetings with deputy ministers and other senior leaders.

We sent an email survey to all access to information coordinators in advance of the first meeting and conducted a live survey with attendees at the second. Through these, the Commissioner sought feedback about institutions' challenges and how we could improve our interactions with institutions during investigations.

The coordinators validated new approaches we have undertaken, including developing clear and concise guidance on the procedures we follow during investigations and the Commissioner's interpretation of provisions of the Act. It became clear during these meetings that the community is looking for more guidance on how we consider each section of the Act during investigations.

The coordinators welcomed our introduction of a portfolio approach for all types of complaints, based on our success organizing our work on a subset of files this way. Institutions will interact with a dedicated team of investigators on all complaints against them.

The Treasury Board of Canada Secretariat (TBS), as the administrator of the Act, is another key player in the federal access system. As such, we reached out to senior TBS officials by holding quarterly meetings with them to discuss common issues. In particular, the discussions focused on how to ensure that access staff and employees across government receive regular and up-to-date training on meeting their obligations under the Act.

## ACTIONS FOR INSTITUTIONAL LEADERS

- Demonstrate open and transparent leadership, and communicate the need for such leadership throughout the organization.
- Report regularly to the executive committee on access to information performance, including timeliness and compliance per business unit.
- Dedicate adequate resources exclusively to access (not shared with program areas or other priorities).
- Require regular training for access staff and all employees on their roles and obligations under the Act.
- Permit access officials to challenge access decisions by program areas and, in turn, ensure program areas are responsive to requests from the access office.

Another important topic of discussion has been the lack, as identified by access coordinators and others, of a professional designation for access practitioners—a development that would result in a larger and better qualified pool of access professionals willing to work at institutions and the Office of the Information Commissioner. Ideally, this would reduce turnover in the federal access community, increase stability and continuity, and allow institutions to better absorb increases in workload. For our part, this would help us retain staff and ensure continuity on investigations.



## INVESTIGATIONS SHOWCASED THE BENEFITS OF COLLABORATION

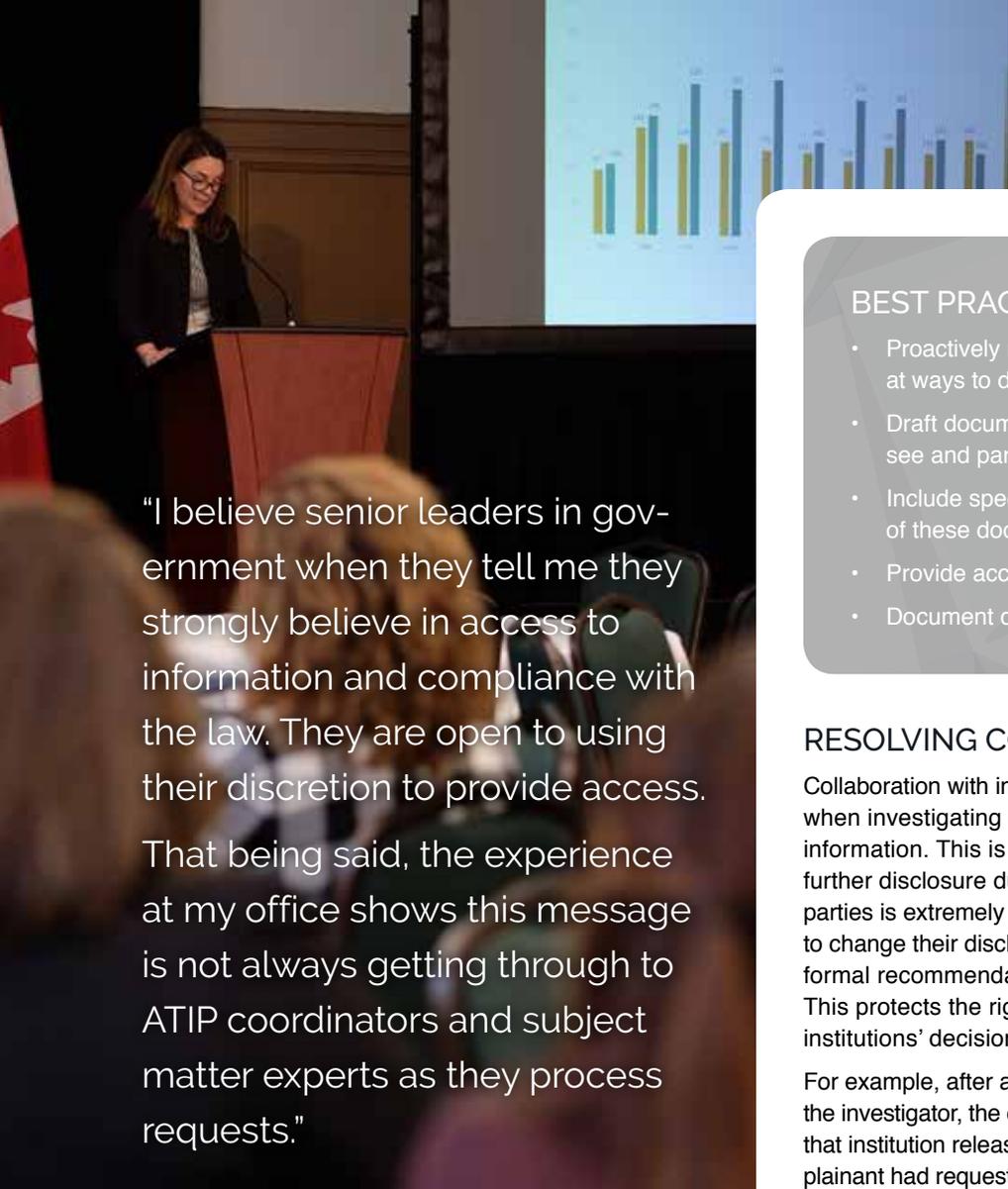
Collaboration between institutions and the Office of the Information Commissioner during investigations can help resolve complaints. For example, as a result of open communication and cooperation between investigators and institutions, complainants received more records from the Canadian Air Transport Security Authority, additional information related to Health Canada regulations on asbestos, and a report on the Canada Revenue Agency's charities program.

Here are a few other notable examples from 2018–19 of how collaboration benefited complainants.

### PROVIDING SUFFICIENT INFORMATION TO MEET REQUESTER'S NEEDS

After discussion with the investigator, Statistics Canada re-examined how it could most effectively respond to a request for specific data items in the database of T2 corporate tax returns. Access officials retrieved information that would help them explain to the complainant what information products it had related to T2 returns. Statistics Canada also accompanied the list with a record that described each product. As a result, the complainant was satisfied with the information they received and agreed to settle the complaint.





"I believe senior leaders in government when they tell me they strongly believe in access to information and compliance with the law. They are open to using their discretion to provide access. That being said, the experience at my office shows this message is not always getting through to ATIP coordinators and subject matter experts as they process requests."

Information Commissioner Caroline Maynard, [remarks at the Information and Privacy Commissioner Forum, Regina, September 14, 2018](#)

## BEST PRACTICES FOR INCREASED DISCLOSURE

- Proactively release information Canadians regularly request. Example: Health Canada is looking at ways to disclose information about the testing of medications as soon as they are approved.
- Draft documents with access in mind, and identify parts of briefing notes that the public could see and parts that should be withheld (with a tick box in the template, for example).
- Include specific and clear disclosure and confidentiality clauses in third-party contracts so most of these documents can be disclosed.
- Provide access officials with access to the entire contents of official document repositories.
- Document decisions in official repositories rather than in long strings of emails.

## RESOLVING COMPLAINTS ABOUT THIRD-PARTY INFORMATION

Collaboration with institutions can be particularly useful when investigating complaints involving third-party information. This is because our ability to negotiate further disclosure during investigations involving third parties is extremely limited. Institutions are not allowed to change their disclosure decisions until after we send formal recommendations on how to resolve matters. This protects the rights of third parties to challenge institutions' decisions in court.

For example, after a great deal of discussion between the investigator, the complainant and Transport Canada, that institution released financial information the complainant had requested related to the maintenance and rehabilitation of the Churchill rail line by OmniTRAX.

In another investigation, Public Services and Procurement Canada's access staff worked diligently with us and disclosed a substantial amount of information regarding the International Organization for Migration and the relocation of Syrian refugees. Access officials also gave us a clear justification for withholding the remaining information.

To further promote institutional compliance with the Act, we published new guidance in April 2019 on [how we investigate complaints that involve the exemption for third-party information](#). We will also be publishing an infographic to explain our process to complainants.

## CANADA POST INCREASING DISCLOSURE TO COMPLAINANTS

The Commissioner met with senior leaders at Canada Post in 2018 to find a way forward on a large number of complaints, many dating from before 2017. The crux of the matter was differing interpretations of [section 18.1 of the Act](#). This provision allows Canada Post to withhold trade secrets, commercial, scientific and technical information that belongs to it and that it has consistently treated as confidential.

Following the meeting, Canada Post executives committed to increasing transparency and resolving the outstanding complaints. Subsequently, there has been a marked improvement in our interactions with the institution. In addition, Canada Post has been disclosing information of the type it had previously withheld.

Due almost exclusively to Canada Post's increased collaboration with us, we resolved 20 complaints against that institution in 2018–19. This is a significant increase over the previous year, when we were able to complete only five investigations, and exceeds other recent totals (12 files completed in 2017–18 and 10 in 2015–16).

## 2018 INFORMATION COMMISSIONER AWARD



In June 2018, the Commissioner presented two access to information coordinators with the inaugural Information Commissioner's Award. Marie-Claude Juneau, Canada Revenue Agency (left photo), and Dan Proulx, Canada Border Services Agency (right photo), were recognized for their efforts to motivate and inspire their colleagues to respect the right of access, and for their leadership in collaborating with us on investigations. The recipients exemplified the four criteria the award is intended to honour: communication, innovation, leadership and service.

## GOING ABOVE AND BEYOND TO HELP A REQUESTER

A requester was interested in learning more about why an individual had been imprisoned in the 1930s and asked for records from Library and Archives Canada (LAC). In response to her access request, the institution had refused to disclose personal information about individuals who were not her family member, a decision we accepted. Ordinarily, that would have been the end of the matter for us; however, we asked the institution to take a second look for other relevant information, in the spirit of their duty to assist requesters. Access staff willingly did so but found no further records. Following our discussions with LAC, the institution suggested other avenues for research to the requester. She expressed her gratitude for this response.

# ABOUT US

The Office of the Information Commissioner was established in 1983 under the [Access to Information Act](#) to support the work of the Information Commissioner.

The Act gives the Commissioner, operating independently of government, the authority to carry out investigations into complaints about federal institutions' handling of access requests. Investigators conduct these enquiries in private, giving complainants and institutions the opportunity to present their positions.

We strive to maximize institutions' compliance with the Act, using the full range of tools, activities and powers at the Commissioner's disposal. These include negotiating with complainants and institutions, carrying out formal investigations, making recommendations to institutions to resolve matters and bringing cases to the Federal Court to ensure the Act is properly applied and interpreted.

We support the Commissioner, who is an agent of Parliament, in her advisory role to the House of Commons and Senate on all matters pertaining to access to information. We also actively support freedom of information in Canada through targeted initiatives such as Right to Know Week, and ongoing dialogue with Canadians, Parliament and federal institutions.

Three deputy commissioners and a staff of approximately 95 employees help the Commissioner deliver her mandate.



Information Commissioner Caroline Maynard began her seven-year term on March 1, 2018. Also pictured are Gino Grondin, Deputy Commissioner, Legal Services and Public Affairs, Layla Michaud, Deputy Commissioner, Investigations and Governance, and France Labine, Deputy Commissioner, Corporate Services, Strategic Planning and Transformation Services.

# ANNUAL REPORT OF THE INFORMATION COMMISSIONER AD HOC

The Information Commissioner ad hoc investigates complaints about how the Office of the Information Commissioner responded to requests it received under the [Access to Information Act](#), since that organization cannot investigate itself.

As Information Commissioner ad hoc since May 2018, I have all the same powers as the Commissioner with regard to investigations and may issue recommendations on how her office should resolve any complaints I receive.

I came to this role having been New Brunswick's Access to Information and Privacy Commissioner from 2010 to 2017. I was also interim Conflict of Interest Commissioner for New Brunswick for one year (2015–16). Prior to that, I was a lawyer in general practice, appearing before all levels of the courts, including the Supreme Court of Canada.

There were no complaints against the Office of the Information Commissioner in 2018–19.

Anne E. Bertrand, Q.C.  
Information Commissioner ad hoc