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# Federal body a bottleneck to access to information, House of Commons inquiry told

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INCLUDES CORRECTION

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Michel W. Drapeau, one of the country's leading experts on federal access-to-information laws and practices, prepares to appear before the Standing Committee on Access to Information, Privacy and Ethics, in Ottawa, on Oct. 24. JUSTIN TANG/THE GLOBE AND MAIL

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A federal body that is supposed to help Canada's delay-plagued access-to-information system function better has become a bottleneck instead, a House of Commons committee has heard.

Lawyer Michel Drapeau, one of the country's leading experts on federal access-to-information laws and practices, on Monday told the standing committee on access to information, privacy and ethics that the Office of the Information Commissioner has become a "top-heavy" organization that has strayed from its primary function of investigating complaints.

"Today the access process is increasingly bogged down in impermissibly long delays. Not so much at the federal institution level, but at the Office of the Information Commissioner, whose sole purpose in life is to investigate complaints involving possible contravention of the act," Mr. Drapeau said.

The hearing marked the second day of testimony in a parliamentary study of the federal access-to-information regime. Earlier this month, the committee heard from Federal Information Commissioner Caroline Maynard, who warned that her office was on track to receive 10,000 complaints this year – a new record.

Every level of government in Canada has access-to-information laws, which allow people to formally request records from public entities that are not otherwise released. But if a person is denied access to documents that they believe they are entitled to, their only recourse is to submit an appeal with the Information Commissioner. (The provinces each have their own version of this office.)

However, this process is slow, and it is not uncommon for the OIC to take at least two years, and as many as eight years, to render a decision. At that point, even if the applicant wins, the information may no longer be useful, Mr. Drapeau told the committee.

"For the 'right to know' to have meaning, timing is everything."

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Mr. Drapeau said the American system is a better model in this sense, as it does not have an information commissioner. Any complaints are submitted to the agency that has the records, and if an applicant doesn't like the response, they can go directly to court.

"In Canada, you have to line up and wait until the Information Commissioner provides you with a report of its finding," the lawyer said. Only then – if an applicant is still unsatisfied – is a person able to take their fight to the court system.

One fix to the country's beleaguered access-to-information regime would be to change the laws around these appeals, Mr. Drapeau said. He suggested forcing the OIC to

provide a report within one year. If they are unable to meet this deadline, applicants should have the right to go directly to court. He also questioned how the OIC has been using its resources. For example, fewer than half of the commission's 90 staff members are investigating complaints, he said.

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In a statement provided to The Globe and Mail, Ms. Maynard said they have 103 employees out of 135 working on investigations.

In addition, in a small organization like the OIC, senior leaders are actively involved in investigations," the statement says, adding that they closed 70 per cent more files than usual in the 2021-22 fiscal year.

"In spite of closing a record number of complaints, the Commissioner acknowledges that much still remains to be done. All available resources have been directed towards investigations, but the number of complaints continues to increase, affecting our ability to make progress."

During 90 minutes of testimony earlier this month, Ms. Maynard told the committee that long delays, excessive redactions and outdated legislation are hampering Canada's access-to-information system.

"We need more resources, we need more innovation, and we definitely need more leaders that believe in access," she said.

Mr. Drapeau spoke for about an hour on Monday. In addition to discussing issues with the OIC, he recommended making adjustments to how access-to-information requests that are related to immigration status are processed.

He also suggested boosting the standard \$5 application fee, which hasn't increased in decades. Many provinces have already done so. In Alberta, a person submitting a freedom-of-information request – as it's called in some jurisdictions – must pay \$25.

Editor's note: Incorrect information provided by the Office of the Information Commissioner referred to the number of files closed in 2020-2021 when in fact it should have been 2021-2022. This version has been corrected.

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