

**Day 3 – Wednesday, 28 November 2007**  
**Parallel Sessions – Session 1B 11.00am-12.30pm**

Speaker: Andrea Neill, Assistant Commissioner

Organisation: Complaints Resolution and Compliance, Office of the Information  
Commissioner of Canada

ICIC 2007 - PANEL ON OWN MOTION INVESTIGATIONS INTO SYSTEMIC FOI PROBLEMS

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ABSTRACT ON THE CANADIAN FEDERAL ACCESS TO INFORMATION EXPERIENCE

Complaint resolution mechanisms are built into most access to information régimes. The most common mechanisms provide for a complaint to be made by the access requestor to an independent third party. This independent third party may be an Ombudsman, with no order-making powers, a hybrid Ombudsman/decision-maker with order-making powers, an administrative tribunal or a Judge of an appropriate-level court.

All complaint resolution mechanisms allow for a complaint to be lodged by the person who made the access request or the person who is aggrieved by some other matter relating to requesting or obtaining access to information. Some complaint resolution systems also provide for a complaint to be self-initiated by the independent third party review mechanism. This is the case in Canada. Subsection 30(3) of the Access to Information Act provides that the Information Commissioner may initiate a complaint if satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under the Act.

The Information Commissioner of Canada uses his authority to initiate complaints not just as one of the investigative tools in the complaint resolution process, but also as a way of identifying and reporting on systemic problems and ensuring overall compliance with the Act.

The Office of the Information Commissioner of Canada has used self-initiated complaints to tackle systemic problems such as chronically late responses of unanswered requests and large backlogs of unanswered requests. The Commissioner's report card reviews of institutions' performance under the Act falls within this group of systemic reviews.

Commissioner-initiated complaints have also been used to deal with the problem of complaints involving records covered by claims of Cabinet confidence and to investigate improper destruc-

tion of government records in relation to access requests. As well, individual requestors may cause a systemic review by complaining about the same matter against several government institutions or against the government as a whole.

Generally, federal institutions have been favourably responsive to recommendations made by the Commissioner in these cases.

## Questions

What are the ways in which own motion investigations can be used to monitor and encourage government institutions to comply with both the letter and the spirit of access to information laws? Are such initiatives effective in achieving compliance?

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