



House of Commons  
CANADA

# **Standing Committee on Access to Information, Privacy and Ethics**

---

ETHI • NUMBER 023 • 1st SESSION • 38th PARLIAMENT

---

**EVIDENCE**

**Tuesday, May 3, 2005**

—  
**Chair**

**Mr. David Chatters**

All parliamentary publications are available on the  
"Parliamentary Internet Parlementaire" at the following address:

**<http://www.parl.gc.ca>**

## Standing Committee on Access to Information, Privacy and Ethics

Tuesday, May 3, 2005

• (0905)

[English]

**The Acting Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Good morning, ladies and gentlemen. I call the committee to order. This is the Standing Committee on Access to Information, Privacy and Ethics.

Today we are meeting with Mr. Reid, from the Office of the Information Commissioner of Canada, pursuant to Standing Order 84(4), main estimates 2005-06, vote 40, Office of the Information Commissioner of Canada, under Justice, referred to the committee on Friday, February 25, 2005.

Mr. Reid, good morning. You have with you Dan Dupuis, who is the director general of investigation and reviews; and Ruth L. McEwan, director general of corporate services. Good morning to all of you.

Mr. Reid, perhaps you could say a few words to the committee. Thank you.

**Hon. John Reid (Information Commissioner, Office of the Information Commissioner of Canada):** Thank you, Mr. Chairman.

I want to first of all thank the committee for its ongoing support on the financing problems of officers of Parliament in the work you have been doing. I think when these come to a resolution, a lot of the problems we have had in the last three or four years will evaporate and disappear.

I also want to acknowledge the work done by the President of the Treasury Board, who was able to change the original draft decision from Treasury Board into something that was more useful to us and allowed us to proceed apace in the last while. We received three months of that money in the last fiscal year, and we will have all of that money for the coming fiscal year.

I don't have a statement as such, because the estimates in part III basically give you everything I have to say. They provide you on page 2 with my basic message. On page 4 they provide the departmental plans and priorities. If you go to the analysis section, you will find the breakdown for where the moneys come from and how they will be spent.

On that basis, Mr. Chairman, I'm prepared to answer any questions members have.

**The Acting Chair (Mr. David Tilson):** Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you very much, Mr. Chair. Good morning, Mr. Reid.

During your appearances before this committee and in a number of your annual reports, I believe you raised some concerns about your office's relationship with Treasury Board. You just finished commenting in your opening remarks about how pleased you were that the President the Treasury Board has accommodated the new budget. I guess I'm wondering what steps you are taking or have taken to ensure that you will continue to have a productive relationship with the officials of Treasury Board for funding in future years.

**Hon. John Reid:** On the status right now, the funding package we received was for 15 months. So about six months into this fiscal year we will go back to Treasury Board and enter into discussions again with them on a continuation of that package. To be able to do that, we are in the process now of hiring three additional investigators. We will probably have sufficient money to ask some of our employees, some of our current investigators, if they will undertake some overtime to help clear up some of our backlog. So we'll be directing that money explicitly toward our growing backlog.

**Mr. Tom Lukiwski:** Perhaps a little later, if I have the opportunity, I'll ask some questions about the investigators you're hiring and the length of time that's apparently required for them to be fully up to speed in performing all of the functions within your office.

But if we can go back to budgeting again, are you saying you're currently negotiating an increase in the base funding with Treasury Board?

• (0910)

**Hon. John Reid:** If you look at our figures for the past years, we have been subsisting on supplementary estimates (B) for the last number of years. This is very unsatisfactory, because the amount of work and effort, from an organizational point of view, that we have to put into that is very expensive. It's expensive for us as a small organization, and it's also expensive for Treasury Board.

When we go with our presentations and budget proposals to Treasury Board, generally speaking they give us anywhere from 40% to 50% of what we ask for. It seems to be a long-running thing. When we had A-base reviews, where they went back, stripped us down, and did zero-based budgeting, they typically gave us about 50% of what they agreed we required to discharge our mandate. So that figure hasn't changed much in the six years I've been going to Treasury Board looking for funds.

**Mr. Tom Lukiwski:** I guess the question is, are you satisfied that this is actually a negotiation? And are you satisfied with the relationship between your office and Treasury Board, or is it more the fact that Treasury Board is unilaterally making all the decisions regarding funding within your office?

**Hon. John Reid:** Treasury Board unilaterally makes the decisions regarding the funding in the office. They do not give us the reasons why those decisions are taken. We simply get a fiat that this is what we're being provided. I understand this is the common way that Treasury Board operates.

**Mr. Tom Lukiwski:** Again, I don't want to pose a question that you may consider unfair, but I'm trying to examine the relationship you have with Treasury Board. Do you think it's a satisfactory one with respect to the method in which you establish funding on a yearly or ongoing basis, or would you like to see that relationship altered in some form?

**Hon. John Reid:** It is not a satisfactory relationship. I think it's most unfair, and it puts Treasury Board in a conflict of interest when they are expected to fund the investigator who investigates them and the government. So the relationship is not satisfactory for me or for any other of the officers of Parliament. There should be, has to be, a different way of doing this.

We've suggested over time a number of models. The current one I'm looking at is that we should still go through Treasury Board, because I like the rigour of the examination that you get when you go through Treasury Board, and it's a form of accountability that I find valuable. However, should there be a discrepancy between what we think we need and what Treasury Board is prepared to grant us, we suggest there be a form of mediation between the Office of the Information Commissioner and Treasury Board. If that fails, then my suggestion to Treasury Board has been that all of their documents and all of our documents will go to a parliamentary committee, and the committee can have its staff go through them and determine what those appropriate levels of funding for the Office of the Information Commissioner or other parliamentary officers should be.

But I would think for officers of Parliament, it should be parliamentary committees and Parliament itself that makes the final determination as to what those spending levels should be.

**Mr. Tom Lukiwski:** I noticed at the last committee meeting when Mr. Bryden was here answering questions, you were also in the room as an observer. I'm wondering if you have any comments to make on Mr. Bryden's bill and whether or not you would find that to be something you could live with if in fact that were brought forward to the House and finally approved.

**Hon. John Reid:** We have had a lot of discussions with Mr. Bryden over time, and what Mr. Bryden attempted to do in his bills was to find the happy way between the Information Commissioner and the community that uses the act and the government. So his bill is a series of trade-offs and, I think, is very well done from that point of view.

However, there are a number of areas where I have some disagreements with him. You may recall at the last meeting I suggested that I would undertake to provide you with a model bill. I have now looked to see if I have the resources to do that. I have decided that I will make them available in my office, and I will shift

resources to do that, and I will bring down a bill to you in the fall that will be my version of what a reform bill would look like. I warn you that it will be based upon my report to the House in the year 2002, with a couple of additions that have come up in that time; for example, a clause that deals with the problems that some parliamentary officers have with respect to their information coming out prematurely.

• (0915)

**Mr. Tom Lukiwski:** Just of our curiosity, Mr. Reid, how often does your office meet with officials from Treasury Board?

**Ms. Ruth McEwan (Director General, Corporate Services, Office of the Information Commissioner of Canada):** I would say at least a couple times a year. We're in touch frequently—actually, at least weekly.

**Mr. Tom Lukiwski:** Okay. Would you consider, then, the relationship you have with the TBS to be amicable, to be a good relationship, adversarial? I'm just trying to get a sense of it.

**Hon. John Reid:** I think I should be clear. It's very amicable at Ms. McEwan's level. It's not always amicable from my level, for obvious reasons.

**Mr. Tom Lukiwski:** Sure, okay. If I may—

**The Acting Chair (Mr. David Tilson):** You're finished.

Just before we get to Monsieur Laframboise, I would like to ask, in your discussions with Treasury Board, did you get into the issue of confidentiality? We've discussed cabinet confidentiality with you before. Have you had further discussions about that? Because as you know, the committee is about to present a report on this whole topic.

**Hon. John Reid:** They hold very tightly to the idea of confidentiality, and so when I suggest to them that all their documents should be made available to the committee, they're not very impressed with that idea.

**The Acting Chair (Mr. David Tilson):** What about you?

**Hon. John Reid:** I believe that when it comes to parliamentary officers, at least, cabinet confidentiality should be waived, because an officer of Parliament is a creature of Parliament, not a creature of the government. There's another argument to be made if you're dealing with a department, which is a creature of government.

**The Acting Chair (Mr. David Tilson):** I have one further question on your remarks about a draft bill.

Have you had discussions with Minister Cotler about that?

**Hon. John Reid:** I have asked for a meeting with Minister Cotler to talk about that and some other items.

**The Acting Chair (Mr. David Tilson):** Thank you.

Monsieur Laframboise.

[Translation]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** Thank you, Mr. Chairman.

Before talking about the Estimates for next year, I'd like to come back to the report you submitted about budgets for previous years.

In 2003-04, your budget was \$5,064,000, and you received in the Supplementary Estimates \$526,000, for a total of \$5,590,000. In 2003-04, you had 25 investigators and you received 1,332 complaints. You dealt with 971 of those. I don't have all the figures for 2004-05. You have been given an additional amount of \$411,000, to be added to your Main Estimates of \$5,169,000, which gives us a total of \$5,580,000. That was almost the same budget as in 2003-04. The fiscal year ended on March 31. How many investigators did you have in 2004-05? How many complaints did you receive and how many were dealt with? Are you in a position to tell me that today?

**Mr. J.G.D. (Dan) Dupuis (Director General, Investigations and Reviews, Office of the Information Commissioner of Canada):** You are right, Mr. Laframboise, our fiscal year has just ended. I cannot give you the accurate figures but I can have them sent over to you. It is true we received more complaints than during the previous year, and we also processed more. I think that we processed about 1,200 complaints, with 21 to 24 investigators—some people have retired, etc.—and the additional funds we were given by Treasury Board. If we have more money, we can process more complaints.

**Mr. Mario Laframboise:** Yes, but we can see that in 2003-04 and 2004-05, you received more complaints than you could deal with.

**Mr. J.G.D. (Dan) Dupuis:** Yes. When analyzing the figures in the annual reports, we note that we received more complaints than we can deal with. Besides, by studying these on a constant basis, we can see that with 21 or 24 investigators, we are able to do between 1,000 and 1,100 complaints a year. Independently of the investigator's level. Three levels of investigators may act, depending on the type of complaint. However, 98 per cent of our work is done by a level 5 investigator. If we have many complaints at level 1, there is always one or two investigators who can deal with the complaints coming in. There can be some variation for those. On a constant basis, historically we're in a position to complete approximately 1,000 complaints with that number of investigators.

• (0920)

**Mr. Mario Laframboise:** So, in spite of the Supplementary Estimates (B) which you have received since 2003-04, you have not been able to complete all the complaints that have been filed. There is always a surplus and you obviously lack staff and money. I can understand that.

**Mr. J.G.D. (Dan) Dupuis:** I agree with you. Dealing with complaints takes more time, because we are completing the backlog investigations. Instead of completing investigations in four or five months, we do it in seven or eight months.

**Mr. Mario Laframboise:** So that takes more time. I can see that you are no longer receiving Supplementary Estimates but that your Main Estimates have been increased for 2005-06. If I understood correctly, you receive \$5,556,000 in the Main Estimates, but you're not getting Supplementary Estimates. Your basic budget has been increased. Is that right?

**Mr. J.G.D. (Dan) Dupuis:** We are given temporary funds. We were given \$475,000.

**Mr. Mario Laframboise:** That's what you received in 2004-05, but in 2005-06, it is not presented as Supplementary Estimates. Unless I'm wrong, the next Main Estimates have been increased.

[English]

**Ms. Ruth McEwan:** Sorry. Could you repeat the question, please?

[Translation]

**Mr. Mario Laframboise:** In 2003-04 and in 2004-05, you were given Supplementary Estimates (B), whereas in 2005-06, your Main Estimates have been increased. Do I understand correctly?

[English]

**Ms. Ruth McEwan:** Yes, you are right. I actually found that unusual myself. The additional moneys that were given to us to deal with the backlog for this fiscal year, 2005-06, were added to our main estimates. It is one-time funding. It is sunsetted and ends after this year.

There will be a review at the end of this year. In a TB decision letter, we were told to basically make another case and Treasury Board would re-examine our situation towards the end of this fiscal year.

[Translation]

**Mr. Mario Laframboise:** So it's again Supplementary Estimates which you are given. This is additional.

[English]

**Ms. Ruth McEwan:** Exactly.

[Translation]

**Mr. Mario Laframboise:** This is what you have been told. It is described as an increase in your Main Estimates. This has not been explained to you this way. You were told that you would receive an increased budget for 18 months, which means additional funding for 2005-06.

You just started the 2005-06 fiscal year. Are the complaints coming in at the same level as in 2004-05? Was there some reduction? Is the figure still increasing?

**Mr. J.G.D. (Dan) Dupuis:** There are more complaints than last year.

**Mr. Mario Laframboise:** It has increased over the last few months.

**Mr. J.G.D. (Dan) Dupuis:** We have no reason to believe that complaints will not increase by 5 to 8 per cent compared to last year.

**Mr. Mario Laframboise:** All right.

How much did you ask the government for your 2005-06 budget? You had prepared projections. What was the amount requested?

[English]

**Ms. Ruth McEwan:** Do you mean for ongoing funding?

**Mr. Mario Laframboise:** Yes.

**Ms. Ruth McEwan:** We haven't actually prepared our next TB submission, but we will be doing that to again appeal to the Treasury Board for ongoing funding.

[Translation]

**Mr. Mario Laframboise:** You didn't request \$5,556,000 for 2005-06. You most probably asked for more.

[English]

**Ms. Ruth McEwan:** You're exactly right. This represents approximately 40% of what we asked for 2005-06.

• (0925)

[Translation]

**Mr. Mario Laframboise:** What was the figure?

[English]

**Ms. Ruth McEwan:** For 2005-06, we asked for approximately \$2 million.

**Hon. John Reid:** That's in addition.

**Ms. Ruth McEwan:** No, that's in total. That includes EBP, O and M, and accommodation.

[Translation]

**Mr. Mario Laframboise:** You asked for \$2 million more than in 2004-05, \$2 million that would have been added to \$5,580,000. You asked for \$7,580,000. Is that right?

[English]

**Ms. Ruth McEwan:** That's correct. Sorry, that's less the \$411,000 that we show as having been received.

**Hon. John Reid:** It would be \$1.6 million extra, because you have to subtract the \$411,000 that we show in the estimates figure.

**Ms. Ruth McEwan:** That was part of the \$2 million.

**The Acting Chair (Mr. David Tilson):** Mr. Laframboise, you're well over your time, so you'll have to wait until another round to pursue any further questions.

Ms. Jennings.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you, Mr. Chair.

Thank you very much for your presentation. I'd like to share my time with Mr. Lee. I only have one question.

Mr. Reid, you were asked by one of my colleagues, Tom Lukiwski, about whether or not decisions about your office's funding are taken unilaterally by Treasury Board, and you said yes, the decisions are unilateral. And then subsequent to that, you talked about ongoing discussions with Treasury Board about funding, at least two or three meetings a year, in which I presume funding is talked about, and a sum of supplementary money—over \$400,000—that was approved for your office. So I'm confused.

In my view, when I'm told it's a unilateral decision, it means there's absolutely no discussion that takes place and a decision is simply made. It's another thing to say that there are discussions, that you are in a position to put forward what you believe your needs are, to give your justification as to why you're asking for a specific amount, and to be told that once those discussions go on, this is the amount you're going to get. It means that the ultimate authority rests with, in this particular case, Treasury Board.

I think of it as with my daughter when she asks for an allowance. Sometimes she's able to convince me to increase her allowance. It may not be the amount she asks for, but she is able to convince me. Other times she's not able to convince me, and sometimes I withhold her allowance for what I believe to be justified reasons.

I'm just concerned about your terminology when you say that it's a unilateral decision by Treasury Board. The decision lies with Treasury Board, but there appears to be ongoing discussion. And I agree, I think you're underfunded, but I'm just concerned about the way in which you portray it when subsequently you talk about ongoing discussions and you talk about meetings that take place, etc.

That's it, and the rest of my time is Mr. Lee's.

**Hon. John Reid:** Let me tell you what happens. When you're running an organization like this, there is a whole range of Treasury Board rules, regulations, and what not, and there is ongoing e-mail traffic, ongoing telephone traffic, to make sure we conform to all of those things we have to conform to. It's a working, businesslike arrangement, because Treasury Board changes, and we have things we need to do in terms of those things. So that's an ongoing businesslike relationship, and I think that's done properly, professionally, at the level where it takes place.

When we go and make our presentations to them as to what we require, that is where we run into difficulties. We have ongoing meetings, in which we do that, to make sure the person who is assigned to understand our needs is fully informed, and those meetings all take place and they are explanatory and they're very cordial as well.

That's the end of our meetings. Once the analyst takes her work to the Treasury Board, we no longer have a clue as to what goes on. We have no idea as to what conditions, what principles are applied. All we see is what comes out the other end. We get a document that says that we get so much, and when we ask for an explanation, we are told that is the explanation contained in the document we received. It's at that point that the relationships break down. There is no relationship once the analyst has gone away and taken her stuff.

For example, we have a very cordial relationship with Treasury Board in the discussions that are going on as to how we might go about finding a new funding formula, and that's appropriate, but we do have this problem that it is a unilateral decision as to what our budget will be. We have no way of sitting at that table, because we basically have no minister at the table to speak up for us at that table, as many others do.

• (0930)

**Hon. Marlene Jennings:** Thank you.

**Hon. Ed Broadbent (Ottawa Centre, NDP):** [Inaudible]

**Hon. John Reid:** I acknowledge that somebody has to say no, but if somebody is going to say no, I'd prefer it to be members of Parliament.

**Hon. Marlene Jennings:** Mr. Chair... Come on.

Mr. Reid, I'm sure the chair is going to tell you that Mr. Broadbent's intervention was inappropriate, given that he did not have the floor, and therefore you should not have responded to it.

**The Acting Chair (Mr. David Tilson):** Well, Ms. Jennings, I would ask Mr. Lee to pursue his line of questioning.

**Hon. Marlene Jennings:** Thank you.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** All right, let's move on from mothers and daughters and family feuds.

Mr. Reid, I want to again, from my own personal perspective, acknowledge your number of years of service here and the really great work you've done pushing the envelope, fortifying the function of access to information in our government.

By the way, I regret that Mr. Leadbeater is not here today. Mr. Leadbeater has been coming by at estimates ever since I've been elected to this place, I think, back in 1988. Wherever he is, I should acknowledge his continuing career work.

I want to acknowledge that there has to be within government some structural financial push-back around this place. We have the Ethics Commissioner, who will say ethics is most important; the Auditor General says the audit is most important; the elections commissioner says the elections are most important; this committee says our work is most important. And Parliament is more important than the courts; and the courts are more important than Parliament. If we didn't have the structured financial push-back, this place would be just rolling in money, and we wouldn't have the kind of financial discipline we need and have acquired over the last number of years.

Do you acknowledge that? I'm sure you do. But having acknowledged it, it must impact in some way on your financial resources.

**Hon. John Reid:** Mr. Chairman, I certainly acknowledge that, and I have no problems in saying that what I would like to have is different from what I need to discharge what I'm doing. We have always been very careful when we go to Treasury Board to make sure we only ask for what we need to deal with the work that's coming in. But I acknowledge that the cloth has to be cut according to what we have.

My question has always been, who should do that? And I've always argued that you should not have the people who are being investigated determine the amount of investigation that can go on. In other words, Treasury Board is an inappropriate organization to fill this function. Who should fill it? Parliamentary officers are servants of Parliament; clearly, in my judgment, the final decision ought to be up to parliamentary committees and Parliament itself as to how we are funded. Then Parliament takes that kind of direct responsibility. That's my argument.

**Mr. Derek Lee:** Okay, and I'm sure we all understand the conflict of interest element of it.

Can I move to something more specific?

**The Acting Chair (Mr. David Tilson):** Mr. Lee, we have a problem. We're well over your time and we'll have to wait.

**Mr. Derek Lee:** I'll come back to it, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** Indeed.

Mr. Broadbent.

**Hon. Ed Broadbent:** Thank you.

I wanted to pursue mother and daughter, but I guess I can't do that.

• (0935)

**Hon. John Reid:** It's better than trucks.

**Hon. Ed Broadbent:** It's better than trucks, marginally—no, I'm not sure.

I'd like to get back to this issue of your proposing regularly a certain level of, in your judgment, necessary funding, and then Treasury Board coming back and agreeing on plus or minus 40% to 50% without giving any reason for that decision. I readily say I didn't know that Treasury Board, not only with you but with other agencies, performed in that manner—that they simply make a decision and inform whatever branch of government or agency that this is what the decision is.

I want to get back to your mandate. When you make your submission, presumably you're laying out as a creature of Parliament what you think is necessary to do in terms of what Parliament has mandated you to do if you're to serve the public in the way you see is appropriate. As I understand what you're saying, I find it disturbing in terms of even accountability reasoning. If one is monitored by someone on the use of public funds, I would have thought—and this is a kind of statement, but it's a question at the same time, if I could put it this way—that it would be much better for you, as an institution, to be able to get an explanation by Treasury Board as to why they thought your proposal was inadequate. For example, were you going beyond your mandate, or were you, in some X, Y, or Z category, being sloppy with your spending and in need of improvement there?

I'm really.... The word "shocked" is used much too often in political life, but let me just say I'm totally surprised, because I don't know how this relationship with Treasury Board really exercises substantial accountability pressure on you. If you're just turned down—and I won't repeat the whole argument—you don't know why you're turned down. So you don't know if you're performing efficiently or inefficiently, or if you're spending more in a way that is deemed to exceed your mandate.

Would you comment on this?

**Hon. John Reid:** We know we're operating very efficiently, because we have gone through the experience of two A-base reviews with Treasury Board. The result of those A-base reviews is that Treasury Board officials and our officials who conducted those reviews agreed that we needed to be funded at a particular level. As a result of those reviews, Treasury Board decided to fund us at 50% of those levels, and they did this twice. So we seem to be stuck in this area where we can get the officials to agree that we require a certain amount of funding to discharge our obligations under the act, but Treasury Board, when it comes to making the allocations, has only given us approximately 50% of that amount.

To go back to Ms. Jennings' questions, there is no discussion at that level. It simply is a decision taken by Treasury Board.

I was particularly disappointed the first time, because we put a lot of time and effort into it. I might say we also found it very useful, because we changed some of our systems as a result of the experience we went through. I thought we'd go for a second one when it was offered to us, and I thought this time they would bring us up, but instead we got the same result.

That's my point. My point is that there do not seem to be any criteria that they use when it comes to making the allocations. If they had come back to us and said, "We're only giving you 50% because we're cutting back expenditures, and that's what you have to bear", I think that's acceptable. I could live with that.

**Hon. Ed Broadbent:** Mr. Reid. I appreciate that, and I learned some information that in fact because of an earlier assessment by Treasury Board at a different level they have acknowledged you were operating quite efficiently, so from your point of view there's no question of inefficiency being the explanation for your not getting what you want.

That comes to my point, and it seems to me to justify everything.... Most members of this committee, if I understand the arguments, want to change the funding relationship in a profound way, because here we have an executive branch of government that has accumulated in the last six budgets or so some \$61 billion in surpluses, and you've asked for, what, a couple of million dollars more? You asked for a couple of million dollars more for what Parliament deems to be a very essential function for the public of Canada, and they couldn't come up with an extra \$2 million. It seems to me to be a precise illustration of this absurd relationship between an institution like yours and the Treasury Board. You're set up to be a critical, in a sense, institution and there you have the body that you're supposed to be critical of passing judgment on how much money you get. No wonder they don't want to give you money. That's to put it pejoratively. I'm not going to say they don't want to give it to you because you're going to be criticizing them, but it leaves that implication.

But the arbitrariness of it I think should concern us all as parliamentarians, that you're being cut back, not getting the money you want, not because you're inefficient—Treasury Board has confirmed that you're efficient—but simply because they don't want to give you the money. I repeat, with a \$61-billion surplus in the last few years, they can't afford \$2 million so that you can serve the people of Canada? I think it's absurd.

That's all.

• (0940)

**The Acting Chair (Mr. David Tilson):** I see.

On that point we will conclude the first round, and I have Mr. Lee to lead the second round. Just to clarify it, as I understand it, the committee is being asked to approve \$4,813,000 for the 2005-06 fiscal year, and the balance of the \$5,556,000 is for the benefit plans. From what I understand you've been telling committee members, you're going to need a lot more. That's only temporary.

**Hon. John Reid:** That funding runs out at the end of this fiscal year—\$411,000 of supplementary estimates.

**The Acting Chair (Mr. David Tilson):** That's \$411,000.

**Hon. John Reid:** The \$411,000 runs out, so you subtract the \$411,000 from the \$5,746,000 and that gives you the sum of \$5,556,300.

**The Acting Chair (Mr. David Tilson):** Yes. I'm sorry, I want to be clear.

Continuing on with what was just asked, how much more do you think you're going to need? And why?

**Hon. John Reid:** What we did is this. In our presentation to Treasury Board, which generated the \$500,000 for 18 months, we estimated approximately \$2 million would bring us up to snuff. That would allow us to tackle the backlog. It would allow us to tackle the

extra 8% that comes in the door every year, and that would bring us up to where we want to be.

What we got was about 40% of that. So it means that my backlog continues to grow because I can't keep up with what's coming in the front door, and I can't significantly attack the backlog to get rid of it. I now have a backlog that for one year equals 23 investigators. It means that under the best—and you wouldn't want to do that—scenario that I can think of, using the investigators that we wanted to acquire with the \$2-million increase, it would take about four years to eliminate the backlog, while stopping the increase coming in the front door from going to the backlog.

**The Acting Chair (Mr. David Tilson):** Is Mr. Broadbent's interpretation correct? There is really no reason given as to why—

**Hon. John Reid:** We have never received a reason for the decision on our funding from Treasury Board. What happens is we have good relationships at the analyst level, so that the analyst will understand where we're coming from and why, and they do have the work of the two A-base reviews, so that they know very well where we are in terms of our workload and in terms of our funding. After the analyst, who's very open and very helpful, it disappears into Treasury Board and then out comes the decision.

**The Acting Chair (Mr. David Tilson):** Yes.

Mr. Lee.

**Mr. Derek Lee:** Thank you.

I'll resist the impulse to get into expenditure review and how budgets are cobbled together. I just want to go to two specific items.

One is your section IV, "Other Items of Interest", in the estimates. You don't have to turn to it, I just wanted to compliment the succinctness and the relevance of that in part III. It was really quite good.

There are two items here I want you to comment on. First is the area of Federal Court litigation. Your review of this on page 6 of the English version shows that you spend over \$1 million a year, and over the last five years there have been approximately 250 pieces of litigation with which your office has been involved in some fashion. That strikes me to be an awful lot of litigation.

I'll put two questions.

Isn't there a way to manage that in a more cost-effective way? Is the act itself too litigious? As we look at reform, is there not a way we could reduce the amount of Federal Court litigation? This is costly stuff. This is three, four, or five lawyers going at it at \$200 to \$300 an hour, ad infinitum, with paper up the yingyang and who knows what. It's 250 pieces—that's 50 pieces of litigation per year.

That's the first question. Would you comment on that?

Secondly, you have regretted, I think, the loss of economies of scale that were there when you shared administrative functions with the Privacy Commissioner. Would it be your view that we should re-engage on that and urge a consolidation of that administration to achieve those economies of scale?

• (0945)

**Hon. John Reid:** Let me answer the legal question first.

We take, on average, two cases a year to court. Those are cases that we have been unable to come to a compromise or an agreement on with the department. They tend to be cases where there is an interesting legal question. So that is our legal burden that comes from that.

There is another legal burden that we don't fully discharge, and that is looking at cases that come under section 44. This is where third parties and departments have a legal obligation. We try to monitor that and we try to intervene in some of the cases, but we really don't do a good job at it because we don't have the ability to do that.

We are also involved in a whole series of other cases that are sort of outside, where we're being asked to participate by one of the parties. We normally go to court to ask to be discharged from that obligation. Generally speaking the court always agrees with us, and we don't get caught up in any of those. But it is a motion, and it is time.

Then there are the cases where the government and others sue us. For example, the court cases that we had to deal with when the former Prime Minister sued the Information Commissioner resulted in an awful lot of motions and a lot of legal activities. Those cases have all been settled in favour of the Information Commissioner. But now that we are starting to work our way through the actual documentation and make recommendations, we are told that the Department of Justice will be taking us back to court on some of the judgments we have made. So either we will go to court to defend those or they will take us to court.

Most of the costs in the last three years have been caused by the fact that we have been under a lot of legal attack from the Department of Justice and from the former Prime Minister's actions. That has been the big cost. If you look at our legal costs over time, this has been a really big, sharp peak in terms of our costs. Our hope is that when the current cases are resolved, we will go back to being dull normal and dealing only with the two cases a year that we take to court.

There's also one other group of cases, and that is where often somebody is dissatisfied with what we have done, has the right to sue us, and does, and we have to defend ourselves. Usually we try to find a compromise to avoid that.

I should remind members that we settle about 99.9% of all our cases by mediation and negotiation. So for us to go to court is an exception. The pattern of the last eight years or so has been that people are taking us to court, and the big litigators in that have been the Department of Justice and the Government of Canada against the Information Commissioner.

• (0950)

**The Acting Chair (Mr. David Tilson):** Thank you, sir.

**Hon. John Reid:** There's another. Mr. Lee asked a second question.

**The Acting Chair (Mr. David Tilson):** You're well over, but that's all right.

**Hon. John Reid:** I apologize.

The second question is the unification of the corporate offices of the Information Commissioner and the Privacy Commissioner. What I discovered after the office had been broken up and separated was that in fact I had very little control over what went on down there, as did the other commissioner. What had happened was the two previous commissioners had been unable to cooperate and the corporate affairs department had basically gone off on its own. If we were to go into any kind of joint organization, its design would have to be completely different, to make sure each commissioner had total control and total responsibility for the work being done on his or her books.

We are now entering a new area; Public Works has indicated there will be a vast centralized bookkeeping organization, and that is in progress at the present time. How this will work out and what its cost will be at this stage we have no idea. Our experience has been, however, that when we've had to buy services from central agencies, they have tended to be significantly more expensive than those services we buy or provide for ourselves. We'll be watching this experiment with a great deal of interest. The first round is apparently to start in the new fiscal year, and it will be a pilot project for us all to watch carefully.

**The Acting Chair (Mr. David Tilson):** Thank you.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you, Mr. Chair.

Mr. Reid, I've got a couple of questions on the operational side of your office. Looking at your report on plans and priorities, I see a chart that seems to—if I'm reading it correctly—indicate you plan to complete more investigations in 2005-06 than you have in previous years. Could you explain that to me a little?

First, would that be as a result of more staff you were able to hire because of the additional \$411,000 out of supplementary estimate (B)? Subsequent or consequential to that, you stated, I think in February when you appeared before the committee, that it takes about three years to fully train an investigator. Even if you have hired additional staff—and I'd like you to confirm whether or not that's true—how can you reconcile the fact that your level of completed investigations will go up, when the staff you may have hired is still going to take about three years to fully train? How do you get to that level? I'm very pleased to say that if you are completing more investigations, that's obviously a good thing; I'm just a little curious as to how that's going to happen.

**Hon. John Reid:** I have a contract on that with Mr. Dupuis, so I'm going to ask him to make the response.

Thank you.

**Mr. J.G.D. (Dan) Dupuis:** Projections are just that, sir. When we were projecting the next year, we looked at the figures we already have—that is, how much time we have already invested in those investigations that have been going eight or nine months a year. I can project pretty well that those are near their finalization. It's being upfront and transparent to say that since I've invested  $x$  number of hours in those, and we have a projection of how many hours we take per investigation because we've carried them for so long, obviously what we're going to do is look at the real figures. Those are what's coming in and what's going out, and there are more coming in than going out.

From the investigative point of view, you're absolutely correct, you bring in new people and you're out looking for people. Access and privacy is an emerging profession throughout government and throughout provinces. That being said, if you bring in someone who has made the competition or has come from a government priority list but has never worked in access and privacy, then you get into your phase of from zero to three years before that person is providing the same efficiency as the person you've had for many years. If you bring in someone from another department with other experience, again, you're able to project that person may be able to do 20 files, while the person who's been there is able to do 50. It's a combination...it's not just throwing a dart at it; it's really done on figures and based on the historical past.

Every one of our files for investigators is accounted for, just as is the case with an accountant. Investigators have  $x$  number of hours to put in and to account for in a month. All their work is accounted for, and those are the types of figures we use to project what's going to close and what we believe we need to produce on a regular basis. I think I've said in answer to Mr. Laframboise that we have proved over the years that we've been good at doing 1,000 files with anywhere from 21 to 23 investigators.

Returning to your numbers of projecting more, I'm saying yes, because I've been carrying files that have an enormous number of hours invested and I can pretty well take a figure that 50% of the time has already been allocated for them. The new ones are going to fall backwards and are not going to get attention.

• (0955)

**The Acting Chair (Mr. David Tilson):** Monsieur Laframboise.  
[Translation]

**Mr. Mario Laframboise:** Thank you, Mr. Chairman.

I come back to my first intervention. You asked for \$2 million in additional funding and you were given \$411,000. Is that right? So you would still need \$1,589,000 to absorb the backlog. That was the initial request.

It's important that we understand each other clearly because the number of files is increasing. In 2003-04, you went from 986 to 1,332 files, and there is 4 to 8 per cent increase per year. Is that true?

**Mr. J.G.D. (Dan) Dupuis:** That's right. This is based on the month of April.

**Mr. Mario Laframboise:** For the people who are listening to us today, it is clear that the number of complaints has increased since the sponsorship scandal. Given that the Liberals are desperately

clinging to power, complaints will keep pouring in and will not diminish.

Finally, last year, with the Supplementary Estimates, you had \$5,580,000 and now you receive \$5,556,000. This represents a 4 per cent decrease; at the same time, the number of complaints has increased by 4 to 8 per cent. I'm trying to find the logic in all that.

Mr. Reid, you said earlier that no explanation was given. Is that the case? No one explained why your requests were not accepted whereas there are obviously many more complaints since 2003-04, since the sponsorship scandal has become public. Is that true?

[English]

**Hon. John Reid:** You're absolutely correct, and it's one of the frustrations.

It would be easier to live with that frustration if I could find a detailed explanation as to why the decisions are made by Treasury Board in the way they are, but we do not get that explanation.

I want to say one thing, too. We are very efficient in what we do. We probably have the best electronic system of case management anywhere in the government, and we are used as a model by Treasury Board for other departments. So we are very efficient in what we do, but we are trying to cope with an onslaught of work, and we don't have the resources to carry out our responsibilities. That is my concern.

[Translation]

**Mr. Mario Laframboise:** I appreciate that. People from Treasury Board have tried to show us that file management in your department could be improved whereas you're used as an example everywhere. They say that you've been given notice and that you are going to be replaced. They seem to think that the innate knowledge of a new Commissioner will solve everything whereas you need investigators to solve the problem. It is not because you are replaced tomorrow morning that the complaints are going to be dealt with. As you mentioned, your case management system is used as a model elsewhere. In fact, the problem lies with Treasury Board.

[English]

**Hon. John Reid:** It may be that there will be a nicer person who comes in after me.

**The Acting Chair (Mr. David Tilson):** Mr. Lukiwski, please.

**Mr. Tom Lukiwski:** Thank you, Mr. Chair.

Mr. Dupuis, I suppose I should direct my comments to you. I want to return for a moment to the number of investigators you have working for you and the level of investigations.

Thank you for your answer enlightening me as to why your level of investigations in 2005-06 might be more than previous years. But it also speaks to the problem you have with the lack of staff, I suppose, to fully deal with the workload that you have coming in the front door and to deal with the backlog that you already have sitting like a big lump on your desk.

Your chart seems to indicate that you're going to increase the number of investigators over the course of the next two or three years. It's around 25 investigators now, and I think you want to get it up to around 32 within two or three years. I see a shake of the head from Mr. Reid. How many investigators, in a perfect world, do you think you need in your office to fully deal with the level of investigations currently coming in, let alone cleaning up the backlog that you already have?

• (1000)

**Mr. J.G.D. (Dan) Dupuis:** I believe we're projecting—and we're going through another exercise—that the number of files over the next few years will be 1,200. That's probably a good figure. I agree with Mr. Laframboise that as issues come up in government, there is a surge, perhaps, or an increase up and down. So 1,200 is probably a decent figure in terms of what will come in over the years, but it will go up and down.

I think 27 investigators is a good figure, based on A-base reviews of how many investigations you should carry at any given time. The A-base reviews have given us satisfaction that carrying anywhere from 20 to 25 investigators, you become efficient. When you're carrying 35, 40, 50, or 60 files, you're not as efficient; you're spending time answering your complainants and requesters.

You have to get rid of your backlog before you can address that, and in fairness, I believe the backlog has to be looked at on its own. That's why, I believe, temporary funds have been allocated to look after backlogs, and that's how we're going to deal with backlogs, with temporary people for one year—three people, plus overtime. Overtime, for those who wish to work...and we have a good turnout of people who've indicated that they do. They already have the experience. So you don't have to hire accommodations, you don't have to buy other equipment, etc. These people will cost you less than someone you bring in. So to find three investigators is already a good task, and then with overtime, that attacks the backlog.

From there, Treasury Board has said to come back and report, see how that works, and if that works, they'll probably give us some more money.

As Mr. Reid has reported to you, the backlog is not something you can attack overnight. If you want to attack it in one year and throw 23 investigators in there, sure, it should basically go away. That's the theoretical one. The practical one is that probably...

Once you level off, I'm saying to you that our office, with 1,200 files and 27 investigators, could make service standards that are suitable to Canadians, with a reasonable turnaround time, based on various committees, which Mr. Lee alluded to, in terms of how long it should take a file to close.

**Hon. John Reid:** Right now we have about 23 investigators on staff. The current proposal is that we hire an additional three. We've begun the interviews for that. We will try to accomplish the rest, using the money allocated, by inviting our current investigators to work overtime.

**Mr. Tom Lukiwski:** You've referenced a couple of times, I think, Mr. Dupuis, that when you're hiring investigators, some come perhaps a little bit more experienced than others. What challenges do you have there? What's the level of difficulty in finding experienced, qualified people to come onto your staff? How difficult a task is that?

**Mr. J.G.D. (Dan) Dupuis:** That's something I could speak to all day. From that point of view, I don't believe my difficulty is different from that faced anywhere else in the public service.

Personal suitability is enormously important. These people have varied experience, as I believe it's an emerging profession. The act has been around 20-some years. There are people in the public service who are making this a career.

Our office is very pleased that we have been a stakeholder in the University of Alberta's certificate program on access and privacy, taught online. It's recognized internationally. That's a two-year certificate program that we work on with the university, and it's being taught now. The University of Alberta is even turning down applicants. The course is bilingual now. It's taught in both official languages. Mr. Reid was the initiator behind this.

From there you have someone who has the basics—that is, an understanding of the fundamentals in information rights, access, and privacy—and who can move into entry level, which we believe is level three to level five.

How do we recruit? I believe we're looked at, like many other organizations in government, as a choice employer. Those who are making this a profession in the public service are looking to our office as one avenue of their career. I have quite a few people who... and it takes two to three years, because our hiring is low. The turnover is small. When I joined the office, we were a much older force. I'm probably one of the oldest ones left. Now we have a younger force, in their mid-thirties and -forties. They spend five to eight years in our office, which is quite advantageous to us, because the investment we put into them does come back to the government. We have to work pretty hard to keep them, from the point of view of interesting work and the stress level, but our office is one of the great places to work in the public service, and those who want to make this a profession come from all walks of life.

We also hire directly from the public, because we get a different expertise that way, and we hire directly from universities. You can afford to do that only when you haven't got a backlog.

• (1005)

**The Acting Chair (Mr. David Tilson):** Mr. Lee.

**Mr. Derek Lee:** I want to get back to this litigation issue here, to be a bit more specific.

Your records show nine cases before the Supreme Court of Canada over five years. I have to suggest that a case that goes to the Supreme Court of Canada has to have some serious legal issues involved in it. That litigation didn't just show up there. It had to go through the other stages—Federal Court, Federal Court of Appeal, some other court—and then to the Supreme Court of Canada.

So we're dealing with very expensive pieces of litigation here, completely aside from the costs your office might bear in retaining counsel or applying human resources to it. I'm surprised that we have an average of two cases a year going to the Supreme Court of Canada. I'm surprised that the Supreme Court of Canada doesn't say that this statute's a pile of garbage, that we can't afford to do two cases a year coming out of the Access to Information Act, and ask Parliament to please get its act together and clarify the law so that the litigants don't have to keep coming all the way to the highest court in the country.

That's why I'm focusing on this litigation thing.

I'm assuming that no one has done an analysis of where the problem is, why we have an average of roughly two cases a year going to the Supreme Court of Canada. There has to be some dysfunction in our statute. Can you help us out here?

**Hon. John Reid:** Yes. The two cases a year that I mentioned are cases we take to the Federal Court, and generally speaking, most of them are settled at the Federal Court level. There's another group that is settled at the appeal court. Going to the Supreme Court is rare, but let me give you two examples.

• (1010)

**Mr. Derek Lee:** Excuse me, but two times a year is not rare.

**Hon. John Reid:** No, no. You're talking about the Supreme Court. I'm saying we take two cases a year, out of my thousand files, to the Federal Court.

**Mr. Derek Lee:** I'm talking about the Supreme Court.

**Hon. John Reid:** We get into the Supreme Court in two ways, but very rarely on our cases. There was a case that determined the privacy rights of civil servants versus the Access to Information Act and the Privacy Act. That was the RCMP case. That was a very important case, but it was the second time that issue had gone to the Supreme Court. The first was the Dagg case and the second was the RCMP case, and that basically settled that whole question of public service rights.

We intervene in a number of cases going to the Supreme Court. For example, the classic one was the Babcock case, and that one dealt with the legal protection of cabinet confidences. We intervened in that because we obviously have an interest in this question. Most of the time when we go to the Supreme Court, it's basically in that form of intervention.

Now, we have another case that is going up to the Supreme Court in which we're involved—we call it the Heinz case—and it has to do with a section 44 third-party matter in which we are again an intervenor. We're not one of the main participants.

So most of our participation there has been in that way.

What I'll undertake to do for the committee is to give you a listing of our cases that have gone, say, beyond the Federal Court level to the Federal Court of Appeal and to the Supreme Court so that you can see what they are, and we can give you a breakdown of what the issues were.

**Mr. Derek Lee:** What would really be helpful—and I don't expect you to crank this out; you have limited resources, as you've already pointed out—is if the Department of Justice did some kind of analysis that would show us where, if we refined or reformed the statute, we would end up with less litigation.

That's my question. I don't expect you to do that, Mr. Reid. I don't expect your office to do that. I may be naively chasing an objective that I can never get to, but that's my line of thought.

**The Acting Chair (Mr. David Tilson):** Someday we're going to be debating the bill—a bill—and that might be a more appropriate time. Whether it's Mr. Bryden or Mr. Reid or someone else, that obviously is a very important topic, and maybe that would be a more appropriate time to do that.

**Mr. Derek Lee:** Someone has to do that homework.

**Hon. John Reid:** Mr. Chairman, it's interesting to me, because that's a new statistic to me. I deal with these cases as they come over my desk and in our discussions. I will have a look, because what we do in our annual report is publish the highlights of all our legal cases each year, and it may be very easy for us to gather that material and make it available.

I will undertake to do that as expeditiously and cheaply as I can.

**Mr. Derek Lee:** Okay.

Thank you, Mr. Chairman.

**The Acting Chair (Mr. David Tilson):** That appears to be all of the questions, Mr. Commissioner. Thank you very much for coming this morning, along with Ms. McEwan and Mr. Dupuis.

Thank you very much.

**Hon. John Reid:** Thank you for a lively discussion.

**The Acting Chair (Mr. David Tilson):** Ladies and gentlemen, at the meeting on Thursday we will be discussing in camera the draft report on the funding mechanism.

Unless anyone has anything else to say, we will adjourn until 9 o'clock on May 5.

Thank you.







**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliamentary Internet Parlementaire at the following address:  
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :  
<http://www.parl.gc.ca>**

---

**The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.**

**Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.**