



HOUSE OF COMMONS  
CANADA

**A NEW PROCESS FOR FUNDING OFFICERS OF  
PARLIAMENT**

**Report of the Standing Committee on  
Access to Information, Privacy and Ethics**

**David Chatters, M.P.  
Chair**

**May 2005**

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## CHAIR'S FOREWORD

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My colleagues on the Committee, representing all parties in the House of Commons, have demonstrated what a Standing Committee can accomplish when its Members focus on an area of shared concern. In this fashion, Parliament worked and worked well. We began the 38th Parliament as a new Standing Committee with no mandate; however, we quickly saw eye-to-eye on a number of issues, the first of which was the need for an alternative funding mechanism for Officers of Parliament.

The Committee began its work on the funding issue with the realization that there was a conflict of interest (if not real, certainly perceived) with Canada's Parliamentary Officers seeking budget approval from the very government which they investigate. We shared a belief that Parliamentarians must have a greater role in determining the budgets of its Officers, and we have made recommendations in this report to that end.

All Members knew that this was a step toward restoring public confidence in Parliament and its Officers. I am very pleased with this report and how we were able to very quickly come to a consensus, once we heard from our various witnesses. I look forward to continued involvement and future studies with the dynamic membership of this Committee.

A Parliamentary Committee could not function without a very large number of people who work to ensure that we are able to do our jobs. From the security guards who make sure we are not disturbed, to the messengers and assistants who run errands, the translators, interpreters, proceedings monitors, all of whom work quietly, often unnoticed, ensuring that we are able to keep going. In particular, I would like to mention our Clerks, Jean-Philippe Brochu & Bernard G. Fournier, and our Library Analysts, Kristen Douglas, Nancy Holmes & Lydia Scratch. They have made our jobs so much easier. I would also like to thank David Tilson who stepped in very capably as Acting Chair during my absence. I am deeply indebted to all of you.

The Standing Committee on Access to Information, Privacy and Ethics is less than a year old and has already learned so much. However, we have so much more to do.

It is truly an honour to be your Chair.

David Chatters, Chair  
Member of Parliament for Westlock — St. Paul  
May 2005





# **THE STANDING COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS**

has the honour to present its

## **FOURTH REPORT**

In accordance with its mandate under Standing Order 108(3)(h), your Committee studied the funding mechanism for the offices of the Officers of Parliament and agreed to the following report:



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# INTRODUCTION

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This Committee, established by all-party agreement at the beginning of the 1st Session of this Parliament, held its first meeting in October 2004. The Committee's mandate gives it responsibility for matters related to Canada's Information and Privacy Commissioners, and the Ethics Commissioner, with respect to his responsibilities under the *Parliament of Canada Act* relating to public office holders. In launching our deliberations in the fall of 2004, the Committee began by holding meetings with these three Commissioners on their Main Estimates. In the course of those meetings, the Committee was made aware of a fairly long-standing concern about the manner in which Officers of Parliament are funded.

The Hon. John Reid, Information Commissioner of Canada, reported to the Committee that he was hindered in meeting his statutory obligations by inadequate resources. He indicated that both the investigatory and non-investigatory staff groups in his Office are significantly understaffed, and that a backlog of cases has resulted. Also, his Office has had to give up its public affairs, research, and education and training capacities.

We are in a financial crisis. The cause of that has been that resources have not kept pace with the workload that is imposed on the office. ... Despite repeated attempts to convince Treasury Board to properly fund the full range of the Commissioner's mandate, including several exhaustive reviews by independent, outside consultants, taken jointly with the Treasury Board Secretariat, emergency and partial funding has only been forthcoming. (3 November 2004)

The Privacy Commissioner, Jennifer Stoddart, explained that her Office currently relies on two streams of funding, one under the Main Estimates, providing the Office with funding for its operations under the *Privacy Act*, and another relating to its responsibilities under the *Personal Information Protection and Electronic Documents Act* (PIPEDA). The Office originally received \$6.7 million to fund its operations relating to PIPEDA, but that funding ceased at the end of the 2003-2004 fiscal year, and has since been renewed on an annual basis under the Supplementary Estimates. The need to reconcile these two streams of funding and ensure that the Office's long-term financial needs are met is the subject of ongoing negotiations between her Office and the Treasury Board Secretariat. Ms. Stoddart indicated that her Office would make a submission to the Treasury Board Secretariat for long-term permanent funding in 2005.

In the case of the Privacy Commissioner, her concern about funding had less to do with the adequacy of funds, and more to do with the mechanism by which the Office is funded. She argued that it lacks the financial independence from government that would be appropriate given its functions.

In addition to the fact that [the Office is] an Officer of Parliament, we must consider the very nature of our ombudsman role on privacy issues for the public and private sectors. As an ombudsman and oversight agency of government for Parliament, we investigate and audit other federal departments and agencies. The necessary independence of our role as an ombudsman has been recognized by the Supreme Court of Canada in the 2002 *Lavigne*<sup>1</sup> decision which states that we are "... independent of the government's administrative institutions." (10 February 2005)

The Committee is concerned about the issues raised by these Officers of Parliament, and launched this study to investigate concerns about the funding of their offices.

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<sup>1</sup> *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, available on-line at [http://www.lexum.umontreal.ca/csc-scc/cgi-bin/disp.pl/en/pub/2002/vol2/html/2002scr2\\_0773.html?query=%22Lavigne%22&langue=en&selection=&database=en/jug&method=all&retour=/csc-scc/cgi-bin/srch.pl?language=en~~method=all~~database=en%2Fjug~~query=Lavigne~~x=8~~y=10](http://www.lexum.umontreal.ca/csc-scc/cgi-bin/disp.pl/en/pub/2002/vol2/html/2002scr2_0773.html?query=%22Lavigne%22&langue=en&selection=&database=en/jug&method=all&retour=/csc-scc/cgi-bin/srch.pl?language=en~~method=all~~database=en%2Fjug~~query=Lavigne~~x=8~~y=10).

# **CHAPTER ONE — OFFICERS OF PARLIAMENT AND CONCERNS ABOUT THE FUNDING OF THEIR OFFICES**

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## **OFFICERS OF PARLIAMENT**

The term “Officers of Parliament” has been used in different contexts to mean different things. It is not a term of art, and has not been legally defined. For the purposes of this Report, we refer to the three Commissioners to which our mandate applies as Officers of Parliament — as they do themselves — and we also apply the term “Officer of Parliament” to the Auditor General of Canada, the Commissioner of Official Languages, and the Chief Electoral Officer.

The significance of the term quickly became apparent. Officers of Parliament are responsible directly to Parliament rather than to the federal government or to an individual minister. This emphasizes their independence from the government of the day. They carry out duties assigned by statute, and report to one or both of the Senate and House of Commons, usually through the Speaker(s). The appointment of such Officers usually — although not necessarily — involves the House of Commons and/or the Senate.<sup>2</sup> While for the most part their independence is safeguarded by reporting and removal procedures, fixed terms of appointment and general control over the operations of their offices, concerns have been raised that the current budget determination process may not be the best method for ensuring the independence and functional integrity of these offices. Indeed, because of their accountability and reporting structures, the Officers of Parliament, for the most part, feel that the current funding mechanism raises the possibility of a conflict of interest between them and the government, or at least the appearance of one.<sup>3</sup>

Although this Committee and most of the witnesses who testified as part of this study referred to them as Officers of Parliament, these officials are referred to by the Privy Council Office and within the public service as “Agents” of Parliament. Calling them “agents” emphasizes that they carry out work for Parliament and are responsible to Parliament. Moreover, the term is used as a means of distinguishing them from other parliamentary officers, such as the Speaker or the Clerk of either House, the Sergeant-at-Arms, the Law Clerk and Parliamentary Counsel. Whereas the latter group are part of, and assist, Parliament in procedural and administrative matters, the former group perform a “watchdog” function or check on government that supports Parliament in its accountability and scrutiny function.

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<sup>2</sup> It is important to note, however, that the appointment procedures for such Officers of Parliament are not consistent, despite a 2001 recommendation of the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons that the appointment processes be the same. See the report of the Committee at <http://www.parl.gc.ca/infocomdoc/37/1/SMIP/Studies/Reports/SMIP/page18-19-E.htm>

<sup>3</sup> Neither the Ethics Commissioner nor the Chief Electoral Officer felt that this concern applied to his office.

Other bodies, such as the Canadian Human Rights Commission and the Public Service Commission, are occasionally considered in the same category as Officers of Parliament because they have a degree of independence and perform a similar “watchdog” function, and in some cases, their members are also appointed or ratified by Parliament. The Committee has not included these bodies in this study.

## CONCERNS ABOUT FUNDING OF THE OFFICERS OF PARLIAMENT

This study was initiated in response to concerns raised by both the Information and Privacy Commissioners about the process by which their Offices secure funding each year. Their Offices submit budget projections to the Treasury Board Secretariat, and only to the extent approved by the Treasury Board do their Estimates proceed to the House of Commons, and then to this Committee for review. The Ethics Commissioner, Dr. Bernard Shapiro, whose Office is in its first year of operation, is funded under a different mechanism, making its funding more independent of government.

The funding procedure for the Ethics Commissioner and his Office, which was endorsed as one worthy of consideration for the other Officers of Parliament by the Information Commissioner in his Committee appearance in November 2004, is provided for under section 72.04 of the *Parliament of Canada Act*. It specifically excludes any involvement of the Treasury Board Secretariat in the development of the budget proposal.

72.04(8). The estimate referred to in subsection (7) shall be considered by the Speaker of the House of Commons and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons with the estimates of the government for the fiscal year.

The Committee is aware that the issue of funding for Officers of Parliament has been before other parliamentary committees over the last several years. In June 2003, in its report on the Radwanski affair,<sup>4</sup> the House of Commons Standing Committee on Government Operations and Estimates identified a need for a comprehensive review of the structure and functions of Officer of Parliament positions, including the accountability regime that governs their relationships with both the government and Parliament.<sup>5</sup> That

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<sup>4</sup> In June 2003, the previous Privacy Commissioner, George Radwanski, resigned during investigations of his financial and human resources practices.

<sup>5</sup> *Matters Relating to the Office of the Privacy Commissioner*, June 2003, available on-line at <http://www.parl.gc.ca/infocomdoc/37/2/OGGO/Studies/Reports/oggorp05/03-cov2-e.htm>



Committee recommended that a House of Commons committee study and report back on the role and functions of Officers of Parliament, their independence, the Estimates process, and “other items in their accountability to Parliament.”<sup>6</sup>

In addition, concerns about funding for the operations of the Office of the Auditor General, and related matters, motivated the House of Commons Standing Committee on Public Accounts to make its Seventh Report in February 2005.<sup>7</sup> At that time, the Public Accounts Committee reported that it had been aware of issues regarding funding for the Auditor General’s Office for four years. Its Report notes that discussions between the Auditor General and the Treasury Board Secretariat regarding a new funding mechanism had been prolonged far beyond what could be considered a reasonable time limit. The Committee recommended that a new funding mechanism be established, prior to the end of October 2005, for the Office of the Auditor General that “safeguards the independence of the Office and ensures that it will be able to meet the expectations of Parliament.”<sup>8</sup>

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<sup>6</sup> Recommendation No. 1: That the House instruct a standing committee, or a special committee, to study and report back on the role and functions of Officers of Parliament, including but not limited to:

- the process by which Officers of Parliament are appointed;
- the independence and authorities required by Officers of Parliament and related practical proposals;
- applicable salary and benefits, and how these should be determined;
- the annual estimates process in respect of the Offices of Officers of Parliament, and other elements in their accountability to Parliament; and
- appropriate provisions for their removal.

<sup>7</sup> Available on-line at <http://www.parl.gc.ca/committee/CommitteePublication.aspx?COM=8989&SourceId=100377>.

<sup>8</sup> Recommendation No. 2: That a new funding mechanism be established for the Office of the Auditor General, prior to the end of October 2005, that safeguards the independence of the Office and ensures that it will be able to meet the expectations of Parliament.



## **CHAPTER TWO — WHAT THE COMMITTEE HEARD**

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In the course of this study, the Committee held a series of meetings to gather information from all of the Officers of Parliament, from academics in the field, and from officials of the Treasury Board Secretariat, which provides advice to the government's management board, the Treasury Board. We note that, concurrent with the Committee's work, a consultation process is underway between the Treasury Board Secretariat and the Officers of Parliament, aimed at the development of a pilot project to test a new funding mechanism for their offices. That process will likely continue beyond the publication date of this report.

Issues about the current funding mechanism for Officers of Parliament include the adequacy of funding levels, timeliness of the process, transparency, and the capacity to respond to changes in funding needs due to technological change, mandate expansion and rising demand for an Officer's services.

### **INDEPENDENCE FROM GOVERNMENT, BUT NOT PARLIAMENT**

Officers raised the discomfort they feel with a funding mechanism which requires that those who scrutinize government's performance in several important areas, seek approval for budgets from the very government which they investigate. As Information Commissioner John Reid described it,

With all due respect, it's very difficult for the government to play both roles as the funder and as the people who are being investigated. I think there's a certain friction that must take place under those circumstances. On balance, therefore, I prefer to have members of Parliament take on the responsibility of funding, rather than have it in the hands of the government. (10 February 2005)

The possibility of a conflict of interest for the government as both source of funding and subject of investigation arises with all the Officers of Parliament that we examined, with the possible exception of two. The Ethics Commissioner, as described in Chapter One, is already funded under a mechanism managed by Parliament. The Chief Electoral Officer receives most of his funding by statutory authority, under parameters set out in strict detail by the *Canada Elections Act*. Only the salaries for his permanent staff are paid from an annual appropriation vote through the Estimates process.

Unlike most other Officers of Parliament, the Chief Electoral Officer is not an ombudsman. He is responsible for the delivery of two fundamental democratic rights: the right to vote, and the right to be a candidate in an election. In accordance with this unique role, the independence of his Office from political influence is safeguarded in a number of ways, including the funding mechanism, but more importantly, the appointment and removal processes. He also reports publicly and appears annually before the House of

Commons Standing Committee on Procedure and House Affairs on his Estimates. The two sources of funding for his Office, and the need for the statutory draw funding mechanism in particular, were explained in the following manner by Chief Electoral Officer Jean-Pierre Kingsley.

There are two budgetary authorities that fund the activities of the Office of the Chief Electoral Officer: the statutory draw and an annual appropriation vote. Both are authorizations from Parliament to expend money and reflect the constitutional principle that public funds cannot be accessed without the approval of Parliament. ... The various functions and duties relating to the delivery of elections could not be performed in an effective, efficient, independent, and impartial manner without the statutory draw. That is because the timing of elections is not known, making the use of annual appropriation votes unsuitable. It is also imperative for the conduct of an effective, fair, and impartial electoral process that funding be insulated from executive control or political agenda. (15 February 2005)

For the Ethics Commissioner and the Chief Electoral Officer, existing mechanisms may already contribute to a level of independence from the government of the day. For the other Officers of Parliament, an enhanced role for Parliamentarians in the establishment of their budgets is seen as a key remedy to the perceived conflict that exists when a government department is both funder and object of scrutiny. The Commissioner of Official Languages, Dyane Adam, alluded to the sensitivity she saw as inherent in seeking budgetary approvals from the same government that she is called upon to criticize. Canada's Auditor General, Sheila Fraser, agreed that whatever new mechanism was developed, there must be a strong role for Parliamentarians.

There is a legal basis for a need for independence for the Officers of Parliament, argued Professor Craig Forcese of the University of Ottawa. As Professor Forcese explained, based on the *Rowat* case,<sup>9</sup> in order for the Information Commissioner to validly exercise his investigative and contempt powers under the *Access to Information Act*, he must be independent of the government. Professor Forcese extended his argument to all of the Officers of Parliament as well.

[A]t least five Officers of Parliament are obliged to meet court-like standards of independence. These five officers — the Access, Privacy, Official Languages, and Ethics Commissioners, and the Auditor General — have the powers of a court of record to compel the attendance of witnesses and the giving of evidence. They therefore have the power to punish for contempt in response to acts committed in their presence. Because they possess this power, the Constitution requires that these officers be sufficiently independent of the government. (8 March 2005)

The importance of independence from government was also emphasized by Professor Paul Thomas, of the University of Manitoba, in a written submission to the Committee. He argued that the budget-setting process for Officers of Parliament should

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<sup>9</sup> *Rowat v. Canada (Information Commissioner)* [2000] F.C.J. No. 832 (F.C.T.D.).

reflect the primacy of their relationship with Parliament. He also stated that, as Officers charged with tasks designed to assist Parliament in its scrutiny and accountability functions, these independent parliamentary agencies should not be subject to unilateral executive control of their budgets and staffing. However, Professor Thomas recognized that such agencies should not be sheltered from government-wide financial realities of the day, either, and argued that they must be held accountable for the “economy, efficiency and effectiveness of their spending.”<sup>10</sup>

In making its recommendations in this report, the Committee is aware of the importance of protecting the Officers of Parliament from conflict that might arise from their functions as watchdogs who scrutinize the government’s performance in meeting various statutory responsibilities, and their dependence on that same government for funds. Inadequate funding threatens to undermine the Officers’ abilities to discharge those statutory obligations created for them by Parliament. However, as Auditor General Sheila Fraser stressed, the Officers’ concern goes well beyond the adequacy of budgets.

We have not asked for more money. What we are asking for is a rigorous review of the Office, which in fact might even save money, and as well a process where we do not have to negotiate with an analyst at the Treasury Board Secretariat to have us put in a submission and have the Secretariat refuse to put it to the Treasury Board. I find that, quite frankly, unacceptable. I can't go and lobby a minister to say, “Minister, we have this submission that has been put in and your people are blocking it”, and then have my budget cut by 15%. That's what almost happened to us last year. I'm not asking for more money. I'm asking for a process that would give us an independent, rigorous challenge and that would make us accountable to Parliament. That's who we should be accountable to.  
(24 February 2005)

## **OTHER OBJECTIVES**

In addition to establishing a funding mechanism that maintains the Officers’ independence from government, witnesses also urged the Committee to consider a number of other criteria in developing a new process. For example, the process should include the elements of the government-side budget design and approval process that ensure accountability to the public for expenditures of public funds. Primarily, the components of that process are now found in the challenge function performed by the Treasury Board Secretariat. Stephen Wallace, Acting Assistant Deputy Secretary, Government Operations Sector, Treasury Board of Canada Secretariat, argued that the best funding mechanism for Agents of Parliament would be one that strikes “the right balance between a degree of independence of Agents, a critical role for Parliament, and the responsibility of government for sound stewardship of funds.” (17 February 2005)

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<sup>10</sup> Paul G. Thomas, “Notes for Submission to House of Commons’ Standing Committee on Access to Information, Privacy and Ethics on the Topic of Funding Mechanism for Officers of Parliament,” 5 March 2005, page 1.

The Treasury Board Secretariat challenges Officers of Parliament, and all other departments, agencies and Crown corporations, to ensure that the impacts of program proposals are thoroughly analysed in the context of the priorities of the Officer and the government of the day. In addition, program proposals must be examined against relevant Treasury Board policies. Generally, a new policy or initiative needs government approval before it can be implemented.

Officers' proposed budgets are reviewed by Treasury Board Secretariat staff, who make recommendations to Treasury Board ministers to approve, not approve or approve with conditions the proposals contained in an Officer's submission. Once the Treasury Board Secretariat receives an Officer's submission requesting incremental funding, it must ensure that the new spending has a source of funds. This funding can come from the Budget, the fiscal framework, internal reallocation, or through other means. Once a source of funds has been confirmed, a program analyst reviews the submission guided by the following questions:

- Authorities — Does the proposal conform to legislation, government regulations, departmental mandate, and current policy approvals?
- Priorities — How does the proposal affect the broader set of government priorities?
- Affordability — What are the costs and who should pay?
- Effectiveness — Will the proposal achieve the desired policy outcomes?
- Program delivery — Could the proposal be delivered better in a different way?
- Prudence, Probity and Equity — Are there appropriate safeguards to protect public funds?
- Performance Measurement — Is there a clear understanding of the results to be achieved and an ability to measure or evaluate the success of proposals?

Beyond the fiscal considerations applied by the Treasury Board Secretariat, funding decisions for Officers of Parliament could also involve the consideration of technical and professional input from outside the offices of the Officers of Parliament. In some cases, the Officers of Parliament argued that experts in various fields could shed important light on technological or other changes that expand the field in which the Officer functions, assisting decision-makers in the assessment of any requests for adjustments to expenditure levels. Both the Auditor General and the Privacy Commissioner stressed this particular need, and it informed their recommendations as to how the funding mechanism should be re-shaped.

Sheila Fraser, in her appearance before the Committee, stressed the need for the Office of the Auditor General to be subject to an effective challenge from people who are knowledgeable about audit offices. (24 February 2005) In her own field, Privacy Commissioner Jennifer Stoddart identified the international circulation of personal information and related technological developments as necessitating the input of experts

who could properly assess her budget requests in their ever-changing context. (10 February 2005)

The desirability of having the House of Commons standing committees to which the Officers currently report become more involved in funding decision-making was also discussed. While some, such as the Commissioner of Official Languages, argued that their expertise would qualify these committees to become involved in the budget-setting process, others argued that their role in reviewing, overseeing and supporting the work of “their” Officers of Parliament should be continued, with the funding matters going to another parliamentary body. Specialized parliamentary committees would continue to receive reports from the Officers of Parliament, hear their concerns, and deal with their Estimates in the normal course of events.

Expanding the fiscal period covered by the funding process so that resources could be allocated for a longer period of time was also recommended by several witnesses. The annual Estimates process is seen as a great consumer of resources in itself, and a longer-term planning cycle could enhance Officers’ effectiveness. This option was advanced by Professor Forcese:

A more cost-effective system that would address concerns about independence is multi-year formula funding; meaning funding pre-established to grow according to an objective benchmark like inflation, the size of government, the number of complaints received by the officer, or other similar measures. Obviously even with this system, some sort of review would have to be conducted to set the starting level budget for Officers. Further, periodic update reviews would have to be held to make sure that the formula mechanism is operating appropriately. Here, however, reviews of officer budgets by Parliament, the government, or some blue ribbon panel would be relatively infrequent, minimizing the perception that officers are beholden to any of these groups. (8 March 2005)

The Committee heard from a number of witnesses that the effort to secure a new funding mechanism has been underway for some time, as outlined earlier in this report, and that there is some consensus that the new mechanism, at least in the form of a pilot project, should be in place for the next funding cycle. For example, Auditor General Sheila Fraser expressed her concern that the issue should move beyond the study and consideration stage in fairly short order.

In 2001, Treasury Board decided that a mechanism should be put in place by December 2002. It is now February 2005 and we are still talking. I can understand that this is not a top priority for the Secretariat, but the fact remains that very little progress has been made and there has been very little reaction from officials in this regard. ... It is still being discussed. Studies of all the possible models have been done, and now they are starting to say that they would like to do them all over again. In my view, we have had enough studies. (24 February 2005)





## **CHAPTER THREE — FUNDING MODEL OPTIONS**

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Over the course of its hearings, the Committee was presented with a number of alternative approaches to the funding of Officers of Parliament. Essentially, four funding model options emerged from discussions with our witnesses: the Ethics Commissioner Model; the U.K. Model; the Blue Ribbon Panel Model; and the Multi-Year Formula Funding Model.

### **ETHICS COMMISSIONER MODEL**

As referred to earlier in the report, the Ethics Commissioner model would have the budgets of Officers of Parliament considered by the Speaker(s) of the House of Commons and/or the Senate, who would transmit them to the President of the Treasury Board for tabling along with the government Estimates for that fiscal year. The budgets would not, therefore, be subject to vetting by the Treasury Board Secretariat or approval by the Treasury Board.

The Information Commissioner was a strong proponent of the Ethics Commissioner model. One of the reasons John Reid gave for supporting this model is that it would grant him an advocate, in the form of the Speaker, who would have an interest in his Office's "administrative well-being."

We have no minister, in effect, who goes before us to defend us at Treasury Board. Nominally we go through Treasury Board, through the Minister of Justice, but he is not an advocate for us. ... It is important, because in the Treasury Board operation there are certain kinds of trade-offs that take place, but we have no Minister in Cabinet who basically feels that he has a responsibility to make sure we are looked after in the normal course of events. (10 February 2005)

The suitability of this model for other Officers is less clear. The Information Commissioner did acknowledge that while he prefers a simple and transparent funding mechanism that would be compatible with the nature of his Office, he does not have the same broad range of policy issues to be considered as, for example, the Privacy Commissioner. In any event, John Reid stressed that as an Officer of Parliament, his budget should be set by Parliament and not the Executive in the form of the Ministers of the Crown who sit on the Treasury Board.

The Ethics Commissioner, Bernard Shapiro, is happy with his current funding arrangement, particularly as it would be completely inappropriate, in his case, to have a government body exercising a budget decision-making function. The Commissioner was, however, cognizant of the need for some oversight or challenge mechanism to assist the Speaker of the House of Commons and to that end, he felt that his funding model should be supplemented by annual external and internal audit programs. He also suggested that a

post-hoc review by the appropriate parliamentary committee would be acceptable to address any issues of accountability.

Officials from the Treasury Board Secretariat raised concerns about the Ethics Commissioner model being applied to other Officers of Parliament. In particular, they felt it lacked the necessary government input with respect to government responsibility for sound stewardship of public resources. They also raised the issue of applying this simple process to other Officers with broader mandates and larger budget implications. In those instances, issues of oversight, budget challenge, and accountability become more complex.

Officials from the Treasury Board Secretariat presented the Committee with a couple of modified versions of the Ethics Commissioner model. One modification would have the budget proposals of Officers of Parliament examined through the management machinery of Parliament, possibly through the Internal Economy review mechanisms of the House of Commons and the Senate, with the results transmitted through the Speakers' offices to the Treasury Board for tabling with the government Estimates. This budget review process would involve parliamentary input in the form of appropriate parliamentary committees and the Treasury Board Secretariat, who would be responsible for setting broad budget parameters and for performance review.

Another variation on the Ethics Commissioner model would combine the budgets of Officers of Parliament in a larger parliamentary envelope. Estimates would then be prepared for Officers in the same manner as is currently the case for the House of Commons, the Senate and the Library of Parliament. Officials from the Treasury Board Secretariat cautioned that in extending the parliamentary envelope, provision would have to be made for budget challenge and administration machinery, and consideration would have to be taken of some legislative, and perhaps even constitutional, issues. Moreover, Professor Paul Thomas, in his submission to the Committee, felt that such an "appropriate shares" approach could be problematic during periods of budgetary restraint, when high profile offices might "out muscle" smaller, less high profile agencies.

## **U.K. MODEL**

As noted earlier in this report, for the past four years, the Auditor General has been seeking a funding mechanism that would be independent of the Treasury Board Secretariat, a department that she audits. In her quest for an alternative budget determination process, the Auditor General has put forward a number of options, one of which is modelled after the funding mechanism of the United Kingdom's National Audit Office.

In the U.K., an all-party Commission of Parliament, created by statute, examines the proposed Estimates of the National Audit Office and tables a report to Parliament with any modifications it sees fit. Known as the Public Accounts Commission, this body is comprised

of the Chair of the Committee on Public Accounts, the Leader of the House of Commons and seven other Members of Parliament appointed by the House, none of whom may be a Minister of the Crown. Commission members hold office until they either fail to run for election, are defeated in an election, or another Member of Parliament is nominated or appointed in their place. The Commission normally meets twice a year and is required to receive advice from the Committee on Public Accounts and the Treasury (the equivalent of our Department of Finance).

One of the principal concerns raised by witnesses with respect to this model is the fact that money paid out to the U.K. Comptroller and Auditor General stems directly from the Estimate laid before the House of Commons by the Commission. Our constitutional framework, however, requires that the initiation of spending resides with the Crown and Parliament's role is limited to approving, rejecting or reducing spending proposals. Reference may be had in this regard to sections 53 and 54 of the *Constitution Act, 1867*.<sup>11</sup>

Officials from the Treasury Board Secretariat suggested that the U.K. model could be adapted to work within our constitutional and conventional framework for the Estimates process, perhaps in the same way as the budget process for the House, Senate and the Library of Parliament. These budgets are reviewed and determinations are made through the internal machinery of Parliament, and the Estimates are then submitted to the Treasury Board for tabling as part of the government Estimates process. The Treasury Board simply tables the budgets with the rest of the government Estimates: the budgets are not subject to scrutiny and challenge by the Treasury Board.

It was also suggested that the U.K. model could be modified by establishing an enhanced parliamentary committee that would allow for all-party membership and include both Houses of Parliament. Indeed, officials from the Treasury Board Secretariat indicated that parliamentary committees could review proposed Estimates submitted by Parliamentary Officers with government input on budget parameters and performance. The committees' review results would then be used by the Treasury Board for the finalization of the Estimates.

In the alternative, Treasury Board Secretariat officials submitted that relevant parliamentary committees could be consulted by the Treasury Board Secretariat on budgets prepared by Officers of Parliament prior to their review and finalization through the normal Treasury Board process. It was acknowledged, however, that this approach might not alleviate the perceived conflict of interest concerns that are plaguing the current funding process.

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<sup>11</sup> **53.** Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

**54.** It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

There was also some discussion of an option whereby a parliamentary committee or committees would receive budget proposals from Officers of Parliament for review and report back its findings to the Treasury Board for tabling in Parliament as part of the government Estimates process. This would appear to be similar to some provincial funding models.<sup>12</sup> The Official Languages Commissioner, in her appearance before the Committee, clearly favoured parliamentary scrutiny of her budget through the official languages committees in the House of Commons and the Senate:

In our case, we believe that it would be logical that issues affecting our independence or budget be submitted to the scrutiny of Parliament through the official languages committees. These committees are thoroughly familiar with the societal issues and the practical consequences of our budget proposals. (15 February 2005)

A note of caution was expressed by Professor Thomas in his submission to the Committee with respect to the use of parliamentary committees in the budget determination process for Officers of Parliament. He pointed out that where it might appear that the government is not directly involved in the process, indirect government pressure could be brought to bear on a committee in a majority government situation. Presumably, the leadership of the governing party could instruct Members of Parliament to rein in a free-spending parliamentary agency or one which was causing it political embarrassment.<sup>13</sup>

## **BLUE RIBBON PANEL MODEL**

Another budget determination model proposed by the Auditor General involves the use of a panel of experts to review and to challenge the budget proposals of Officers of Parliament. The panel would report on the level and details of each Office's Estimates to the Speakers of both the House and the Senate and to the President of the Treasury Board for tabling as part of the Parliamentary review of the Estimates process. As in the case of the Ethics Commissioner model, the Estimates would not be subject to a final vetting by the Treasury Board Secretariat or to approval by the Treasury Board.

Under the Auditor General's proposal, the panel could be comprised of three persons; one appointed by each of the Speakers of the House of Commons and the Senate, and the third appointed by the President of the Treasury Board. The panel could meet several times annually, in line with the regular process for preparation and submission of requests for Main and Supplementary Estimates. It would meet with the

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<sup>12</sup> For example, in Alberta and British Columbia, the Information and Privacy Commissioners submit their annual budget proposals to a committee of the legislature for approval: in Alberta, the Select Standing Committee on Legislative Office; and in British Columbia, the Select Standing Committee on Finance and Government Services. Material provided to the Committee by the Office of the Auditor General also indicated that the majority of the provincial Auditor General statutes provide for the Audit Offices' estimates to be given to a committee of the legislative assembly, which may make recommendations or alterations, with the revised estimates being submitted to the legislative assembly for inclusion in the estimates of the province for approval by the legislature.

<sup>13</sup> Paul Thomas, above, note 10, pp. 2-3.

Officers of Parliament, their senior financial officers, and officials from the Treasury Board Secretariat.

One of the positive elements of this model, according to the Auditor General, is that it could be implemented without statutory amendment by means of a memorandum of understanding among the Speakers, the President of the Treasury Board and the Officers of Parliament. The Privacy Commissioner also liked the fact that this approach would not require legislative change.

While terms of reference and operational modalities have yet to be defined, our Office supports the concept of creating a blue-ribbon panel. The concept of a blue-ribbon panel model is aligned with the need for independence for our Office and, doubtless — although I don't presume to speak for them — other Officers of Parliament. It is designed to provide a well-functioning accountability and transparency regime. Also, this approach does not require legislative changes, and it is an avenue we would favour at this point in time. (10 February 2005)

On the other hand, at least two witnesses expressed concern that this proposal could be construed as a delegation of the budget-setting process away from both Parliament and the executive. Again, there could be constitutional issues if experts were given approval authority on budgetary requests. As well, issues were raised about the cost-implications of such a panel, and the extent to which one panel could deal with all the Officers of Parliament.

The Ethics Commissioner did, however, acknowledge that should it be found necessary to modify his current funding arrangement, the blue ribbon panel model could be a reasonable addition to the Ethics Commissioner model prior to the submission of the Commissioner's budget Estimates to the Speaker of the House of Commons.

If, for whatever reasons, some further modification was deemed necessary, the Blue Ribbon Panel seems a reasonable mechanism to insert prior to the submission of our budget estimates to the Speaker. I am attracted to this alternative for three reasons: first, it maintains the independence of the Office with respect to both the legislature and the government, both of whom are subject to the ethics regimes that we administer; second, if the panel were carefully chosen, truly independent expertise and judgment could be brought to bear in advising the Speaker of the House of Commons; third, it acknowledges the value of a post-hoc review by Parliament through its committee structure.<sup>14</sup>

Indeed, officials from the Treasury Board Secretariat were agreeable to the role of a panel of experts in supporting a budget analysis process steered by Parliament and the government. It was also suggested by other witnesses that such a panel could support a parliamentary committee or work with Officers of Parliament to develop budget submissions.

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<sup>14</sup> Letter to the Clerk of the Committee, 8 March 2005.

## MULTI-YEAR FORMULA FUNDING MODEL

The idea of a sustainable and long-term funding formula for Officers of Parliament was thoroughly canvassed by Professor Forcese in his appearance before the Committee:

The thought I had was that a multi-year formula that establishes a baseline for funding for officers, so officers aren't in the present position of being obliged to go to Treasury Board each year, distances officers from at least the perception that their activities in a given year might influence the receptivity of government to funding them fully. It grapples with the independence issue and it also grapples with the cost associated with setting up this blue-ribbon panel. (8 March 2005)

Under this model, funding would be pre-established to increase according to an objective benchmark over a fixed period of time (e.g. five years). Annual increases in funding could be based on objective criteria that are tied to the individual functions of each Officer of Parliament (e.g. the number of complaints received by the Information Commissioner). If the formula were legislated, criteria could be set out in the legislation. Indeed, consideration could be given to other criteria such as the state of the economy at the time of the proposed increase.

The potential disadvantage of the multi-year formula funding model is that a review, either by Parliament, a blue ribbon panel or the executive, would still be required to determine the initial level of funding. Subsequent reviews might also be necessary at the end of every fixed period in order to ensure that the base funding level and the established increase formula is still appropriate.

In their written submission to the Committee, officials from the Treasury Board Secretariat referred to somewhat similar models that could be adopted with respect to Officers of Parliament. For example, it was suggested that a formula funding model could be adopted whereby reference levels could be adjusted, for example, on the basis of government budget growth or restraint, or some other similar benchmark. In the alternative, a cyclical review process could be implemented that would allow for multi-year funding based on resource forecasts prepared by Officers that are validated through resource and management reviews by the Treasury Board Secretariat.

Professor Thomas, in his written submission to the Committee, also recognized the potential for indexing the spending of Officers of Parliament to some reference point (e.g. average increase in government spending, volume increase in their activity levels etc.). He did note, however, that although appearing simple in its approach, this model may have a number of shortcomings, not the least of which is the ability to find the appropriate reference point.

Finding the most appropriate reference point will be controversial and artificial. The approach substitutes calculation for deliberation and judgment. As circumstances change, the automatic nature of the formula could lead to inappropriate windfalls or shortfalls for particular agencies.<sup>15</sup>

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<sup>15</sup> Thomas, above, note 10, p. 3.





## CONCLUSION

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There is no doubt that the current budget determination process for the funding of Officers of Parliament raises serious concerns. The Committee feels that the status quo is unacceptable. At the very least, it raises the perception that the critical functions of these Officers could be impeded by budgetary restrictions imposed by the very body whose actions they are charged with scrutinizing. All of our witnesses, including officials from the Treasury Board Secretariat, had concerns about the present funding mechanism; however, there was a divergence of views over how best to address this issue.

Although not everyone could agree on the particular funding model that should be applied to Officers of Parliament, it appeared to us that there was a general consensus on what should guide the development of an alternative mechanism. Primarily, the budget determination process must be removed from the exclusive domain of the executive; while at the same time, an appropriate performance review, budgetary challenge, and accountability mechanism must be maintained. Parliament must play a greater and more critical role in the budget determination process, and resource-allocation decision-making must be based on objective and expert analysis. The process should be practical, transparent, simple, and expeditious. Finally, the system should take into consideration the differing mandates and reporting requirements of the various Officers.

This Committee feels strongly that some form of parliamentary body must examine the Estimate submissions of Officers of Parliament. This body could be similar to the Public Accounts Commission in the U.K. in that it should be representative of all parties, and it could incorporate the Senate, perhaps by having both Speakers as *ex officio* members of the commission, thereby addressing the fact, for example, that some Officers report to both the House of Commons and the Senate. Like the U.K. Commission, and indeed the House of Commons Board of Internal Economy, this parliamentary body should have a permanent existence, and like the Board, its membership would be equally comprised of government and opposition representatives.

Given the expertise already developed by the Treasury Board Secretariat in the areas of challenging, analyzing and advising on the budgets of Officers of Parliament, we feel that it is imperative that the Secretariat continue this function by assisting the parliamentary body. The Secretariat could provide a separate submission that would accompany the Estimates proposals of the Officers. In other words, the Secretariat would set out budget parameters and comment on the budget proposals in the same manner as it currently does for the Treasury Board. For example, it would assess the consistency of budget proposals with the Officers' mandates, review the proposals against prior spending and performance information from the previous Estimates cycle, and determine whether resource requests were aligned with proposed activities and anticipated results.

While we like the argument for utilizing the appropriate parliamentary committees whose mandates already include the work of particular Officers, we feel that these committees should continue their responsibility and oversight roles in relation to their Officers, rather than taking on this new budget-vetting function. If they were to determine the budgets of Officers of Parliament, we believe that this could compromise their effectiveness, or give the perception of such compromise, in relation to their existing responsibilities. These committees would, moreover, continue to review the Estimates of their respective Officers after those Estimates had been tabled in Parliament. They would also be consulted by the parliamentary decision-making body as part of its budget deliberations.

This Committee also feels that there is a need for in-depth knowledge and expertise in the areas in which Officers of Parliament function. We think that the use of experts to review and challenge budget proposals of Officers of Parliament is a vital component of any new funding model. There are two ways in which this could operate. First, each Officer could pay to have its estimate reviewed by qualified external experts, and the resulting expert report could accompany the Estimates proposal submitted to the parliamentary body. In the alternative, the parliamentary body could itself retain experts in the various areas in which Officers operate, either as witnesses or as staff.

Finally, while we appreciate the different mandates of the Ethics Commissioner and the Chief Electoral Officer relative to those of the other Officers of Parliament, we believe that there is still a need for greater scrutiny and accountability in their funding mechanisms. To this end, this Committee feels strongly that both Offices should be subject to the new parliamentary budget determination process. In the case of the Chief Electoral Officer, this would apply only to his Office's annual appropriation vote. The Committee recognizes that all of the Officers of Parliament are to be held to a high standard of integrity and accountability with respect to their important functions and we believe that neither the Ethics Commissioner nor the Chief Electoral Officer would be averse to subjecting his budget proposals to review through a new parliamentary funding mechanism.

Given that the appointment, removal and reporting requirements of a number of Officers of Parliament, including the Privacy Commissioner, the Information Commissioner, and the Commissioner of Official Languages, involve both the House of Commons and the Senate, this Committee recognizes that there must be some form of Senate involvement in the new permanent parliamentary budget-determination body. It is unclear, however, how this involvement should operate in practice. In light of the fact that the Standing Senate Committee on National Finance is apparently examining the issue of funding of Officers of Parliament, it seems premature for us to make specific recommendations concerning a Senate role in a parliamentary funding mechanism. Clearly, discussions will have to take place between the leadership of the two chambers. We would, therefore, urge the House of Commons to initiate discussions to determine how best to structure a parliamentary budget determination process which incorporates a role for the Senate where appropriate.

## RECOMMENDATION ONE

The Committee therefore recommends:

**That a new permanent parliamentary body be created as the budget-determination mechanism for the funding of all Officers of Parliament.<sup>16</sup> The new parliamentary body, and the new funding process established for it, should have the following features:**

- **The membership of this body should be representative of both the House of Commons and the Senate, and equally comprised of government and opposition representatives.**
- **Officers' annual budget submissions would be made directly to this body, along with an accompanying submission by the Treasury Board Secretariat setting out budget parameters and providing analyses, challenges and advice on the feasibility of the Offices' submissions.**
- **The parliamentary funding body may obtain advice from experts, as well as from appropriate parliamentary committees, to assist in its deliberations.**
- **The recommendations of the new parliamentary body should be submitted to each House of Parliament, as appropriate, who will provide the recommendations to the Treasury Board for tabling as part of the government-wide Estimates process.**

In considering how best to formulate a funding model for all Officers of Parliament, we were sensitive to the fact that it is not possible to create a “perfect” system. Nor is it possible to achieve the perfect balance between ensuring the independence of Officers of Parliament from the executive and providing the appropriate measure of accountability for their spending and performances. Therefore, in the interests of moving forward in this area of longstanding concern, we suggest that a pilot project be launched for the next two fiscal years, starting with the fiscal year 2006-2007, using the existing House of Commons Board of Internal Economy as the parliamentary budget-determination body and the three Commissioners within our mandate — the Information, Privacy and Ethics Commissioners — as the initial participants. While the Office of the Auditor General does not fall within the mandate of this Committee, and it may not be appropriate for us to make recommendations specific to this Office, we think that it is imperative that the Office's funding situation be addressed. The Auditor General has been seeking, with little success, progress on the adoption of an alternative funding model for over four years now and we

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<sup>16</sup> We include here the Information, Privacy, Ethics and Official Languages Commissioners, the Auditor General of Canada and the Chief Electoral Officer.

therefore feel that consideration should be given to the inclusion of her Office in any funding mechanism pilot study.

Using existing parliamentary internal economy machinery would allow for the immediate launch of a funding mechanism pilot project. It would also greatly facilitate an assessment of how best to construct a parliamentary budget-vetting mechanism that could be legislatively applied to all the Officers of Parliament. The pilot project should therefore be subject to parliamentary review immediately after its completion.

## **RECOMMENDATION TWO**

The Committee therefore recommends:

**That the Board of Internal Economy serve as the parliamentary budget-determination body for the Offices of the Information, Privacy and Ethics Commissioners on a trial basis in the same manner as proposed in Recommendation One. This project shall be instituted for the fiscal years 2006-2007 and 2007-2008, and shall be subject to parliamentary review immediately thereafter.**

## APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<b>Office of the Ethics Commissioner</b> Bernard Shapiro, Commissioner  Micheline Rondeau-Parent, Director, Communications and Parliamentary Relations  Lyne Robinson-Dalpé, Director, Corporate Services	10/02/2005	10
<b>Office of the Information Commissioner of Canada</b> John M. Reid, Commissioner		
<b>Office of the Privacy Commissioner of Canada</b> Jennifer Stoddart, Commissioner		
<b>Office of the Chief Electoral Officer</b> Jean-Pierre Kingsley, Chief Electoral Officer of Canada  Diane R. Davidson, Deputy Chief Electoral Officer and Chief Legal Counsel  Janice Vézina, Senior Director, Election Financing and Corporate Services	15/02/2005	11
<b>Office of the Commissioner of Official Languages</b> Dyane Adam, Commissioner  Louise Guertin, Director General, Corporate Services Branch		
<b>Treasury Board of Canada Secretariat</b> Stephen Wallace, Acting Assistant Deputy Secretary, Government Operations Sector  Robert J. Mellon, Director, Estimates Production, Expenditure Management Strategies Sector  Wilma Vreeswijk, Executive Director, Government Operations Division	17/02/2005	12
<b>Office of the Auditor General of Canada</b> Sheila Fraser, Auditor General  Jean Ste-Marie, Assistant Auditor General, Legal Services	24/02/2005	13
<b>As an Individual</b> Craig Forcese, Law Professor, University of Ottawa	08/03/2005	14
<b>Treasury Board of Canada Secretariat</b> Stephen Wallace, Acting Assistant Deputy Secretary, Government Operations Sector  Wilma Vreeswijk, Executive Director, Government Operations Division	06/04/2005	17



A copy of the relevant *Minutes of Proceedings* (*Meetings Nos. 10, 11, 12, 13, 14, 17 and 24*) is tabled.

Respectfully submitted,

David Chatters, M.P.  
*Chair*