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

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**EVIDENCE**

**Wednesday, October 25, 2006**

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**Chair**

**Mr. Tom Wappel**

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

Wednesday, October 25, 2006

• (1530)

[English]

**The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)):** I see quorum, so I'm calling the meeting to order. This is pursuant to Standing Order 108(2), a briefing on the new process for funding officers of Parliament.

Just before we start, I want to thank Mr. Martin and possibly even Mr. Tilson—I'm not sure—for chairing the meetings in my absence. Thank you very much, colleagues.

Today we have, from the Treasury Board of Canada Secretariat, Mary Chaput, assistant secretary, government operations sector, welcome; Carol Bradley, executive director, government operations sector, services directorate; and Rosemary Robertson O'Reilly, principal analyst, government operations sector. Welcome to you all.

Ms. Chaput, I understand you have some opening remarks. Welcome, and please proceed.

**Mrs. Mary Chaput (Assistant Secretary, Government Operations Sector, Treasury Board of Canada Secretariat):** Thank you.

Mr. Chair and honourable members, I'd like to thank you for giving me the opportunity to appear before the standing committee today to discuss the new funding and oversight mechanism for officers of Parliament.

[Translation]

Accompanying me today is Ms. Carol Bradley, Executive Director in the Government Operations Sector, and Ms. Rosemary O'Reilly, Principal Analyst, who has worked extensively on establishing the new funding and oversight pilot project and who was present at all Panel meetings that have occurred to date. For the purpose of this pilot project, participants include the offices of the Auditor General, Chief Electoral Officer, Privacy Commissioner, Commissioner of Official Languages and Information Commissioner.

[English]

Let me quickly recap the developments that have ultimately led to the establishment of the original or first parliamentary panel for funding and oversight of officers of Parliament in the fall of 2005. In response to concerns flagged by the Auditor General, as well as recommendations formulated especially by this committee and recommendations of the Standing Committee on Public Accounts and the Senate Committee on National Finance, the Treasury Board Secretariat and the officers of Parliament have engaged in significant dialogue and consultations on the appropriate funding and oversight mechanism for their offices.

[Translation]

These consultations and committee reports underscored a growing unease with the traditional budget determination process for Officers of Parliament. The consultations also called for the development of a mechanism that recognized the special relationship that Officers of Parliament hold with Parliament and with Canadians.

• (1535)

[English]

More specifically, this committee recommended that:

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.

In responding to the recommendations of the parliamentary committees, a new funding and oversight mechanism for officers of Parliament was launched as a two-year pilot project, beginning last fall with the 2006-07 budgetary cycle. In this context I would like to point out that the new government, recognizing the vital role played by the officers of Parliament, is committed to the collaborative approach that has characterized this endeavour to date and is supportive of the continuation of the pilot project.

To ensure a successful launch of the pilot project, last fall Treasury Board Secretariat and the offices of the officers of Parliament engaged in discussions regarding the modalities of the pilot project. Together we focused on developing an approach that would fit within Canada's constitutional and statutory framework and be broadly applicable to all officers of Parliament. We were also conscious of the need to strike a balance, recognizing the independence of the officers of Parliament, the critical role of Parliament, and the responsibility of government for the sound stewardship of public resources.

[Translation]

Likewise, the Officers of Parliament — given their independence and role in relation to Parliament and Canadians — were conscious of the special duty of care they owe in managing their offices. The Officers indicated support for the funding and oversight mechanism that would ensure that their respective resource requests and their management practices were subject to scrutiny and a rigorous challenge process. Related to this, the Officers noted their obligation to uphold the highest standards of leadership excellence and management confidence.

[English]

We worked closely to ensure that the pilot project was implemented smoothly, and it was. This was due at least in part to the implementation framework developed by Mr. Robert Marleau, former Clerk of the House of Commons, with over three decades of experience in positions related to Canadian parliamentary procedures, and at one time an interim officer of Parliament. This implementation framework described the process and the modalities to assist the panel in the initial stages of its deliberations. The officers of Parliament and the previous panel agreed to this framework, and we intend to recommend the same framework to the new panel.

[Translation]

I would now like to take the opportunity to outline the process as detailed in the framework, and as we foresee it playing out on relaunch of the Panel.

[English]

In brief, the officers' presentations and budgetary submissions would be made directly to the panel. These may include broad outlines of their mandates, resources, and priorities, as well as specific requests for new resources. Treasury Board Secretariat would provide, as advice to the panel, an overview of the budgetary parameters and an assessment of the officers' budgetary requests. This advice would be based on a thorough analysis of the proposals, including the legal and policy contexts that govern the officers' activities. The panel may wish to call relevant officers to explain their requests and the Treasury Board Secretariat to explain its assessment. This was our experience last fall with the funding requests from the Office of the Information Commissioner and the Office of the Privacy Commissioner.

In preparing its assessment, the Treasury Board Secretariat would assess the consistency of the budget proposals with the officers' mandates, would review the proposals against prior spending and performance information from the previous estimate cycles, and would determine whether the resource requests were aligned with the proposed activities and the anticipated results. The committee should note that as a matter of course, in performing its challenge in advisory functions, the Treasury Board Secretariat would engage in active dialogue with the offices of the officers of Parliament to ensure a full understanding of the nature and rationale for the request and explain the Treasury Board Secretariat's concerns and recommendations, if any.

• (1540)

[Translation]

In assessing Officers' budgetary requests and management practices, the Panel may choose to draw on a range of different perspectives — including the advice of both independent subject matter experts and auditors. In addition, the Panel may launch reviews or call for third-party assessments.

[English]

As required under the Financial Administration Act and as outlined in the framework, officers continue to adhere to Treasury Board policies and directives. Consistent with other public service entities, officers of Parliament are required to submit annual reports

on plans and priorities and performance reports to Parliament as part of the estimates process. In addition, the office of the Auditor General continues to exercise audit responsibilities with respect to officers of Parliament.

[Translation]

The committee should note that, should the application of Treasury Board policies and directives, in the view of any Officer of Parliament, be incompatible with an Officer's statutes or in some way hinder the independence by the Officer to carry out its mandate, the Panel can consider the issue and make recommendations for adjustments or exceptions to the Treasury Board.

[English]

In undertaking its work during the last session of Parliament, the panel considered two submissions for increased funding, one from the Office of the Information Commissioner and one from the Office of the Privacy Commissioner. The advisory recommendations of the panel to Treasury Board ministers reflected deliberations of panel members at meetings held on November 17 and 24, 2005. The 2006-07 main estimates reflect the panel's advice regarding the funding requests.

In their recommendations to Treasury Board ministers, the panel noted:

Members of the Panel believe that this new decision-making process, incorporating and reflecting advice from Parliament, can achieve the central objective sought by the Committee on Access to Information, Privacy and Ethics.

Judging from the experience to date, we tend to agree. We're looking forward to the re-establishment of the panel, which we understand may happen in a matter of days, and the continuation of this important work, which will hopefully lead to a permanent mechanism upon the successful conclusion of the pilot.

In conclusion, I would like to note that the Treasury Board Secretariat and the officers have been anticipating the re-establishment of the panel, which will mark the continuation of a new and innovative approach to the funding and oversight of officers of Parliament.

Thank you.

**The Chair:** Thank you very much.

We'll begin questioning.

Mr. Peterson, would you like to start?

**Hon. Jim Peterson (Willowdale, Lib.):** Thank you, Mr. Chairman.

Thank you for being here.

It was the committee's recommendation that the Ethics Commissioner be included in this project. Why is it not?

**Mrs. Mary Chaput:** Yes, sir. In fact, the Ethics Commissioner is set up differently from a machinery point of view. Hard-coded into the legislation is the fact that the funding considerations of that body will be considered by the Board of Internal Economy, which is a separate track from the one that's envisaged by the panel. It's because of that, by virtue of that legislation, that we're precluded from including the Ethics Commissioner in this process.

**Hon. Jim Peterson:** Is it your feeling that this pilot project is working well and that it will become the norm?

**Mrs. Mary Chaput:** It's very definitely my feeling that this process is working very well. I would never want to presume the outcome of the considerations of people that go beyond myself, but certainly the experience and the advice the secretariat is offering is that the panel is working very well. We recognize the fact that we may not have it perfect, because we have only lived through one cycle with the panel, and with that in mind, we are working on an evaluation framework to ensure that, as we go forward and make recommendations regarding permanency—presuming that's where we go—we have also ferreted out any improvements that might be brought to the process.

• (1545)

**Hon. Jim Peterson:** Have there been any criticisms to date?

**Mrs. Mary Chaput:** There have not been criticisms to date, but we have identified in the work of last year, in discussions with agents, two potential areas, at a minimum, that we might take a look at. One has to do with the synchronicity between the panel process and the fiscal cycle, the estimates cycle. You may or may not be aware that the estimates cycle has been pulled forward in the calendar this fiscal year for the first time, and by virtue of that, right now the panel process and the estimates cycle are somewhat out of synch. We would want to doctor the timetable to make sure we bring those two things together.

The second thing is that the panel makes recommendations, but in looking over the process, it occurred to us that we don't have an official feedback loop into the panel as to what have been the outcomes of the deliberations around the panel recommendations, and we think that's owed to the panel. If they offer recommendations, there should also be a mechanism to feed back to them as to the results.

**Hon. Jim Peterson:** Thank you very much.

**The Chair:** Any other questions from the Liberals?

May I ask a question? The panel is an informal mechanism, and my notes indicate that it's made up of the Speaker and various other people. Who makes it up?

**Mrs. Mary Chaput:** My understanding, Mr. Chair, and I'm learning as I go here, is that the makeup of the panel is determined through a somewhat collaborative process. It begins with contact with the office of the House leader, who in turn contacts counterparts, and then it's up to the whip in each party to identify potential members. The secretariat, for example, does not have input into who the panel members are; rather, it's determined through that combination of people I just described.

**The Chair:** We know it's not in the rules of order, but there's nothing, as far as you know, set down in writing that would indicate who gets to be on this panel?

**Mrs. Mary Chaput:** No. To my knowledge, it is not predetermined.

**The Chair:** Okay.

Do you have any explanation for why a panel has not yet been struck?

**Mrs. Mary Chaput:** I have perhaps a partial explanation for it.

Certainly when the government first took office, as we know, their top priority was the Federal Accountability Act. That took a tremendous amount of effort at the front end, and concentration. But even during that period, the President of the Treasury Board, in introducing the action plan related to the proposed Accountability Act, signalled his interest in re-establishment of the policy.

That work then folded into research we were doing at the secretariat around how the panel would be reconstructed. Was there any new advice we wanted to offer? Basically, it was seatwork we did inside the secretariat so that we could brief officials within the secretariat, to the effect that we felt re-establishment of the panel was the right thing to do.

The next occasion when the president spoke about it was, I believe, in June at one of the standing committees—on legal affairs, I think it was—where again he indicated his ongoing interest.

The period of time, though, that has elapsed—to come to your question more directly—has had to do with our briefings internally and our discussions with the agents around their ongoing interest. We wanted to be sure we got their input as to how they felt this had gone to date and whether indeed they were interested in re-engaging.

So while there was a bit of, I would call it, a slow ramp-up, I understand that things have hit a bit of a steep incline over the past week or two, where calls have now been made at a political level. The whips are, I understand, currently engaged in looking at the membership issue.

• (1550)

**The Chair:** As I understand it, this committee wanted Parliament to be more involved. I haven't got a clue, as a member of Parliament, who the thirteen members were—not a clue—of the last panel. Do you know?

**Mrs. Mary Chaput:** Of the previous panel?

**The Chair:** Yes.

**Mrs. Mary Chaput:** I may have that here.

**The Chair:** If you don't, maybe you could just provide it to us.

**Mrs. Mary Chaput:** Sure. We'd be happy to get that back to you.

**The Chair:** It would be nice if members of Parliament knew that. I don't know if an information circular was sent around by somebody at some point, but if it's supposed to reflect on members of Parliament and on the House in general, then I would think it should be a well-publicized panel.

**Mrs. Mary Chaput:** Yes.

**The Chair:** By the way, I should say that I agree there should be feedback to the panel, obviously, about what ultimately happened with their recommendations.

Okay, thank you.

*Madame Lavallée, s'il vous plaît.*

[Translation]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** I turn the floor over to my colleague Mr. Laforest.

**Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ):** As regards this pilot project, from what I understand, a neutral committee has been established consisting of representatives of the Officers of Parliament and of the government, here represented by the Treasury Board.

Is it a new concept for an independent committee to support, or at least study, the requests submitted by senior government officials? Otherwise, they would have no other way of asserting their views. Am I reading the situation correctly?

[English]

**Mrs. Mary Chaput:** Yes, sir, that would be a correct interpretation. This is somewhat of a novel undertaking for the Government of Canada. There are a number of other jurisdictions that have models that are somewhat, though not precisely, the same, but it is new to us. It's for that reason, the newness of it, that we've initiated a pilot before going to a permanent structure, because we did not want to presume at the outset that we would get it perfectly right on the first go.

[Translation]

**Mr. Jean-Yves Laforest:** Is this initiative being taken under the authority of the Treasury Board Secretariat, or as a result of an express wish of Parliament?

[English]

**Mrs. Mary Chaput:** The initiative, the conception of the initiative, and some of the analysis and research that went on were led by the secretariat, yes, sir, but I'd be wrong to say that it's fully and utterly within the sphere of control and influence of the secretariat, because obviously there are many players, not the least of whom are the parliamentarians who have agreed to sit on the panel. As well, there are the agents of Parliament.

If I may, Mr. Chair, I'll go back a little bit in history to give the honourable member a bit more information.

The conception came about by virtue of the fact that for some time there had been discussions between the secretariat and the agents of Parliament about the tension that existed between the secretariat and agents in those scenarios in which the very body that was audited by the AG was also an influential voice in determining what the budgetary levels of that organization would be.

It was thought that to deal with any potential or perceived conflict of interest in that relationship, it would be wiser to bring, first, more neutral parties to the considerations at hand and a broader set of interests. In that way, the agents and the secretariat could be assured that there was a very careful and measured consideration of the budgetary requests of the agents of Parliament.

**The Chair:** Mr. Dewar is next.

**Mr. Paul Dewar (Ottawa Centre, NDP):** Thank you, Chair, and thank you to the panel for your presentation.

Being new, I have a lot to learn here.

I had a chance to look over the May 2005 report on the process. Just to kick things off for me, at any rate, I understand the philosophy here. You described the importance of independence from government but not from Parliament. That makes sense, since these are officers of Parliament, if you will.

When I looked through the paper, I noticed that you touched on reference to other jurisdictions—the U.K., for example. Looking back, you mentioned that you've had the pilot and that it seemed successful. Have we mirrored that process? Have we really forged our own process, or have we relied more on another jurisdiction? Is it the U.K. model to which you suggested it's closely aligned?

● (1555)

**Mrs. Mary Chaput:** Yes. The one we have relied most closely on is the U.K. model, but it is not a perfect mirroring, because the U.K. model is, I would say, weighted a little differently from ours. We therefore brought a particularly Canadian approach to the model we have here. Certainly as we go forward, as I said, there will be an evaluation of how it's working from a process point of view. We will evaluate if the model is correct and if the weights and counterweights are correct; it's quite possible that in the course of that evaluation we'll conclude yes or no, but we want to leave scope for that kind of conversation to happen.

If you'll indulge me, Mr. Chair, I'm going to ask my colleague here, Rose O'Reilly, if she'd like to add anything on the differences between the Canadian and the U.K. model.

**Mrs. Rosemary Robertson O'Reilly (Principal Analyst, Government Operations Sector, Treasury Board of Canada Secretariat):** Mr. Chair and honourable members, I believe the only piece of information I would add on the U.K. model is that to my understanding, it really covered their equivalent of the office of the Auditor General. It didn't focus on a broader group of agents. Because of that slant, and because of different types of legislation that are governing the country, the model that was developed and that we're piloting right now is partially that model and partially in response to recommendations made by the report this committee provided a year or so ago, and, I believe, to pieces of recommendations from two other standing committees as well. It really is, as Ms. Chaput has mentioned, a Canadian-made version.

**Mr. Paul Dewar:** You mentioned that there had been success with the pilot. Could you elaborate a bit more, again for someone who's new, on how that was measured and why you suggest that it was successful? Once Bill C-2 is through the Senate, we'll have new officers. So certainly it would be important to know how the evaluation was done of the pilot. When we're looking ahead and looking at new officers and how they're going to be set up, we can maybe forecast challenges and recommendations in terms of how they set things up.

**Mrs. Mary Chaput:** Mr. Chair, I would preface my comments by noting that my declaration of victory is in advance of the evaluation having been conducted. Our experience to date has been positive.

**Mr. Paul Dewar:** Fair enough.

**Mrs. Mary Chaput:** We want to confirm that with the evaluation. The reason we feel it has been quite successful is based on a couple of things: informal feedback from those agents who have had the opportunity to appear before the panel, as well as, I would suggest, the time that was required to get to some fruitful and positive outcomes. Typically when the agents bring forward Treasury Board submissions to the Treasury Board Secretariat, there is a highly iterative process, just as with any other department or agency, but because of the independence of the agents, there's a greater unease in that change of information on their part, which is quite understandable. And that tends to slow us down, frankly. Last year, when we had the benefit of the panel, I think there was a greater degree of confidence and comfort and ease around the exchange of information, and we were able to get to bottom-line recommendations much faster.

**Mr. Paul Dewar:** I have one last quick question. Who is doing the evaluation and when can we expect that?

• (1600)

**Mrs. Mary Chaput:** The evaluation is not yet under way. We want to talk a bit more to the agents of Parliament about the framework for the evaluation to ensure that we all agree we have the right components being measured in there. It's quite likely we'll have that conducted by an independent third party to ensure there's no bias, even in the way the evaluation rolls out. It's not a highly scientific evaluation. We didn't feel that we needed a very weighty and heavy empirical process here. Rather, it's more like a confirmation or a validation exercise. We did have a framework that was quite sophisticated and scientific, and in conversation with the agents, we have agreed that it's likely more than what we need for this purpose at this juncture.

In terms of timing, I'd suggest that likely it will be within the next six months, but we want to be careful to have enough experience to base the evaluation on. We don't want to rush the evaluation and have insufficient experience and end up with either a false positive or a false negative.

**The Chair:** Well, you've only had two.

**Mrs. Mary Chaput:** Exactly.

**The Chair:** And that's it. So I can see your point there.

Mr. Tilson.

**Mr. David Tilson (Dufferin—Caledon, CPC):** Thank you, Mr. Chairman.

My recollection, of course, is that all the members of this committee were unanimous in this process. As you indicated, the principle of it was when the various commissions, and others, I guess, such as the Chief Electoral Officer, would approach Treasury Board for generally an increase in their budget, the remarks made, of course, were that they would go cap in hand. They had to be careful because the Treasury Board would have control over their funding, even though—let's say it was the Information Commissioner—the Information Commission could be examining the principles of the Treasury Board in providing information. That's why it was. The committee felt it was a faulty process.

Now this panel is advisory only. That's all it is. There's no official mandate, no legislation, or no legality to it. It's simply, let's try it out.

This panel will make recommendations to the Treasury Board and the same thing still exists. Do you know what I'm saying? It's as if it's doomed to failure because the Treasury Board—and I know we're all honourable people—could say in its wisdom, no, we don't think so, Mr. Information Commissioner, or Mr. Whoever-you-are; we don't like what you're doing to us. I'm not suggesting that happens, but it was suggested in principle that it could happen.

So really nothing's changed. In fact, if I were one of these thirteen members of the House of Commons, why bother? Can you comment on that?

**Mrs. Mary Chaput:** Yes. I hear exactly what you're saying, and certainly the panel is not a guarantee of any particular outcome.

But there is a difference, in that by virtue of the panel process, when the Treasury Board Secretariat assessment is put to Treasury Board—the cabinet committee—that Treasury Board Secretariat assessment has been enriched by the panel deliberations and the panel recommendations. And when the Treasury Board ultimately makes its decision, instead of two lines of input—the Treasury Board submission and the TBS recommendation—it has the benefit of three. It has the benefit of the TBS recommendation, which is informed by the panel process, of the Treasury Board submission from the responsible minister, and of the panel recommendation.

While I grant you that this does not guarantee there will be respectful and fully considered deliberations in every scenario, I feel it at least ensures that what the Treasury Board gets is a very comprehensive picture of the issue from a number of angles.

**Mr. David Tilson:** Is there anything wrong with this panel having the final say?

• (1605)

**Mrs. Mary Chaput:** I don't think it's an issue of right or wrong. Right now it's more a matter of what we're bound with by law. Right now—

**Mr. David Tilson:** Oh, I appreciate that. I have to tell you, I seem to recall—I think Mr. Zed and I are the only ones who were here—that the committee was recommending that it be permanent, that it be final, and that Treasury Board obviously have a say, but really, that we were trying to solve a problem. But we haven't.

**Mrs. Mary Chaput:** It may be that decisions have been taken to the effect that before we run, maybe we should walk. Maybe this is a first step on a journey that will take us somewhere else. But certainly at this stage the Treasury Board obviously still holds the authorities that are conferred on it by the FAA, and until the FAA is changed and there is a head of steam to provoke that, we are where we are.

**Mr. David Tilson:** Mr. Chairman, can I continue?

**The Chair:** Sure.

**Mr. David Tilson:** Through you, Mr. Chairman, your comment was—and I recall the committee recommending it—that the panel had an opportunity, if it felt it should, to request independent experts, independent auditors, as you've said in your opening statement.

Did the panel do that?

**Mrs. Mary Chaput:** I'm going to defer to Rose on that. My recollection is that they did not last year. That's not to say they may not next year.

**Mr. David Tilson:** No. Mr. Chairman, the committee hopefully will have an opportunity to look at the estimates of the information, ethics, and privacy commissions in particular.

How do you foresee that process fitting in with this process you've described to us?

**Mrs. Mary Chaput:** That process should unfold in much the same way as it would otherwise. The review of the estimates by the committee, with or without the panel, should unfold in the same manner.

I think what might be a little different is some of the conversation you might have with the agents at that point in time around the development of their estimates and the degree to which they feel their resource requirements have been met or not met.

They may bring to you a different kind of view on that issue. Of course, I wouldn't want to speak on their behalf, but in that there would be a different dynamic leading up to the creation of the estimates, you may find a different kind of conversation in your review of the estimates.

**Mr. David Tilson:** You see, Mr. Chairman, my recollection of it was that when the committee reviewed the estimates, we had all three commissions here in one afternoon, for two hours, and that was it. The panel held three meetings in the fall of 2005. The first one was simply an overview meeting to discuss things, and the other two were to hear specific requests from the Information Commissioner, the Auditor General, the Chief Electoral Officer, the Official Languages Commissioner, and the Privacy Commissioner. There's not much time.

I'm recalling the former clerk, Clerk Marleau, who came to the accountability committee and talked about the process of estimates. He said that we as parliamentarians don't spend enough time reviewing the estimates of ministries, commissions, and all sorts of things. He was certainly right regarding this committee reviewing the estimates, but I question, still, whether we're spending enough time looking at what's going on at those commissions. They're almost going to be up to about \$10 million each, the three commissions.

I guess I'm looking for some assurance on the effect of this panel. I believe it has great potential, and I think we're all in agreement on its coming about, but I believe there needs to be more work done with it.

Could you comment on that?

**Mrs. Mary Chaput:** Certainly, as I said, we don't feel that we've necessarily got it perfect on the first run. As for room for further discussion of the estimates, there's always one more question that could or should be asked and would be informative and helpful. I guess it boils down to the availability of people in this room, panel members and others, as to whether that questioning takes place.

Rose is signalling that she has more to say on this.

• (1610)

**Mrs. Rosemary Robertson O'Reilly:** Mr. Chair, if I could, I would like to add a little bit of perspective to the two meetings that did take place, that the panel had to study the estimates. I want to make sure we're saying the same thing.

**Mr. David Tilson:** They had two meetings to discuss five commissions.

**Mrs. Rosemary Robertson O'Reilly:** No. They had two meetings and they discussed two funding submissions—one for the Office of the Privacy Commissioner and one for the Office of the Information Commissioner.

**Mr. David Tilson:** Oh, they didn't discuss the others, the Official Languages—

**Mrs. Rosemary Robertson O'Reilly:** No. What I wanted to impress upon you, which, from a due diligence perspective, from the panel's perspective, and from that of the Treasury Board Secretariat, was that at these meetings there was a substantial discussion about one funding request, which is a small piece of the full, main estimates. I would not argue, but I would indicate that there was some good discussion from panel members on a small piece of the full, main estimates. Should the panel continue, each time there's a new request, that will come in through the panel and a picture will be built over a period of time. Probably in another five years the panel will have assessed and affected the full estimates of that office, and that would be the outcome of the value of the panel.

**Mr. David Tilson:** Could I have one more question?

**The Chair:** No. You're already over ten minutes on a seven-minute round.

On your point, Mr. Tilson, we will have a discussion of the main estimates of the Ethics Commissioner on Wednesday, November 1, the main estimates of the Information Commissioner on November 6, and the main estimates of the Privacy Commissioner on November 8. There will be one meeting for each of them, as opposed to one meeting for all three of them, so we're making some progress. The more the members are prepared, the more the two hours will be of benefit to everybody.

We'll now go to Mr. Dhaliwal.

**Mr. Sukh Dhaliwal (Newton—North Delta, Lib.):** Thank you, Mr. Chair.

Continuing with what Mr. Tilson was saying, there are only two members, Mr. Tilson and Mr. Zed, who were here when this panel was established, if I'm right. When I look at this, we're saying that it's very successful and is an innovative approach to funding. I don't see clearly where it is successful and what measures are there to say that it's successful. Continuing with what Mr. Dewar was asking, can the panel explain why this is an innovative approach, and are there any shortcomings that this committee can look at as well to make this a successful project?

**Mrs. Mary Chaput:** Certainly in the course of doing the evaluation that we've talked about, inclusion of the view of the committee, discussion with the clerk of the committee, etc., would be part of the evaluation process. So we would hope to have the benefit of the input of committee members as we move forward.

As to whether it is truly innovative or not, for Canada it is indeed, to the degree that it steps away from the traditional process and brings parliamentarians' views to bear on the decision-making around the estimates for these particular agents of Parliament.



On the point about success or its lack, as I said, I hope I haven't declared victory too early. But I can tell you that among those who work in these areas at the secretariat—and if I can speak on behalf of the agents, just in this one scenario—we agree that this is certainly a more constructive way to have a dialogue; it perhaps brings down frustration levels a bit. I think having a more constructive and a more suitable funding mechanism for the agents of Parliament is a precursor to success.

•(1615)

**Mr. Sukh Dhaliwal:** I'm still confused, Mr. Chair.

Could you elaborate maybe two or three perspectives of this panel that you see from a Canadian perspective are new, compared with how the funding was done earlier?

**Mrs. Mary Chaput:** Certainly. Prior to the establishment of the panel, an agent of Parliament—take the Auditor General—would prepare a Treasury Board submission duly signed off by the Minister of Finance. Under the traditional process, it would have gone directly to Treasury Board—the cabinet committee. In between those two steps, yes, there would have been some conversation with the secretariat, but it would likely have been limited to brief exchanges.

The secretariat would then provide, based on that limited exchange with the agent of Parliament, a recommendation to the Treasury Board cabinet committee. Parliamentarians would not have been part of that deliberation process, would have had no view, first of all, into what that recommendation to the cabinet committee was going to be, and would not have had the opportunity to hear from the agents in their own words.

In effect, parliamentarians, except those who sat on the Treasury Board cabinet committee, would have been outside this process. By virtue of the panel process, parliamentarians are engaged at the outset of this exercise. They hear directly from the agents of Parliament; they hear from the secretariat as well; and they're given an opportunity to get their views on the table in an official way.

From that point of view, it's very different in the way the people in this room are engaged, and we feel that's highly appropriate, given the special relationship the agents have with Parliament.

**Mr. Sukh Dhaliwal:** Would it be advisable that this panel act as more than an advisory panel? What is the view of the panel?

**Mrs. Mary Chaput:** The role this panel is able to play at this point in time is circumscribed by the Financial Administration Act. The authorities and powers of Treasury Board are vested in that cabinet committee, and therefore for the panel to be afforded more than an advisory role would require an adjustment to the Financial Administration Act as it describes the authorities of Treasury Board.

**The Chair:** Thank you.

Mr. Stanton.

**Mr. Bruce Stanton (Simcoe North, CPC):** Thank you, Mr. Chair.

I'll direct my question through you, Mr. Chair, to our witnesses today.

I noted that this committee's recommendations back in May of 2005, prior to the establishment of a panel, specifically mentioned at

that time the three commissioners who fell within the mandate. Specifically included were the Information, Privacy, and Ethics Commissioners. At that time the recommendation was to use the Board of Internal Economy as the forum for this.

Some time between May of 2005 and the fall of 2005, when the first meetings of the panel were developed, changes were made. We now have five offices, in fact, that would appear before this independent thirteen-member panel, but the Ethics Commissioner stayed with the Board of Internal Economy.

Could you tell us a little about what transpired in going from the initial model that this committee contemplated to where we ended up, and—to go back to Mr. Peterson's point—could you reiterate again why the Ethics Commissioner's reviews are still with the board, rather than with the panel? Could you address that again?

Thank you.

**Mrs. Mary Chaput:** I'll certainly try to do that. I may ask Rose O'Reilly to back me up on this one, because she's likely to be able to bring more information to the floor.

The panel process was expanded to include more agents of Parliament than initially envisaged because of the interest expressed by the agents of Parliament and the fact that the compelling issue here, the conflict of interest issue, was felt to be shared by all of them—shared to different degrees, because of their different levels of interaction, and from different angles, because of their varying mandates. They saw it as a horizontal issue that cut across them as a group. Because we wanted to deal with that issue and all agents of Parliament on a level playing field to the degree that we could, we felt there was merit in including a broader group.

We didn't think the movement to the larger group would be too weighty or more than the panel could handle once this gets to steady state, in that the number is still quite limited, so we weren't worried particularly about volume. We were more interested in ensuring that if this problem existed in more than one relationship an agent of Parliament had with the secretariat, we would be able to resolve it in as many places as possible with one tool.

As for the inclusion of the Ethics Commissioner, it comes back to the legislation setting out the fact that their funding levels and considerations will be dealt with by the Board of Internal Economy.

•(1620)

**Mr. Bruce Stanton:** That is set out specifically then.

**Mrs. Mary Chaput:** Yes.

**Mr. Bruce Stanton:** At this stage of the game, what will be the trigger to have the panel meet again? Would it only be triggered by a request from one of the five commissioners or officers for a substantive increase in their budget?

**Mrs. Mary Chaput:** Once the panel members are identified and the panel is struck, we anticipate that it will be at the call of the chair of the panel. There may be merit in having a few conversations or meetings that are not actual funding requests but contextual sessions during which we could perhaps go over the process, for example, from a Treasury Board Secretariat point of view. It's also quite likely that before the panel has to deal with an actual funding request, various agents of Parliament may seek to appear before the panel to describe their world, so a reciprocal education process would be started up before the panel looked at a true funding request.

**Mr. Bruce Stanton:** Okay, thank you.

**The Chair:** I will follow up on Mr. Stanton's questions.

This committee recommended that there be a new permanent parliamentary body created, that it be representative of both the House of Commons and the Senate, that it function in certain ways, and that until that was set up, the Board of Internal Economy should serve the purpose. Instead, we have this panel.

Did the government ever formally respond to the recommendations of this committee on this matter? Was there a formal response?

**Mrs. Mary Chaput:** I believe there was, but I'm going to ask Rose.

There was not?

**Mrs. Rosemary Robertson O'Reilly:** No, there was not.

**The Chair:** So there was no response to the recommendations of this committee?

**Mrs. Rosemary Robertson O'Reilly:** There was no formal government response, no.

**The Chair:** Why was that? Was it because of the election, or that it ran out of time, or what? Did the committee request a response?

**Mrs. Rosemary Robertson O'Reilly:** I don't believe so.

**The Chair:** Okay. I don't have the report here. Anyway, that's point number one.

Let's assume there wasn't an official government response. Why wasn't the Board of Internal Economy the authority to deal with this, as recommended by the committee? And since a panel has been struck, and since the committee recommended that the Senate be involved, why isn't the Senate involved?

Those are my two questions.

**Mrs. Mary Chaput:** Mr. Chair, I'm going to have to get back to you on that set of questions, because I wouldn't want to mislead you and suggest that I know the answers.

**The Chair:** That's fine. If you wouldn't mind getting back to us in writing on those two specifics, it would be appreciated. Thank you.

We then go to Madame Lavallée, *s'il vous plaît*.

Oh, do we go to Monsieur Laforest?

[*Translation*]

**Mr. Jean-Yves Laforest:** I have no further questions.

[*English*]

**The Chair:** Mr. Dewar.

● (1625)

**Mr. Paul Dewar:** Thank you, Chair.

I think most people would agree with the idea mentioned before of the importance of having independence from government but not from Parliament. I guess the question is, how do we do that? The panel is struck and away we go.

It seems to me that as with any pilot, you evaluate and ask whether this is the permanent way to go. It seems to me there's a little bit of consensus that, save for the need for a little more evaluation and probing, perhaps, this might be the permanent solution, if I can use that term.

Then Mr. Tilson mentioned concerns about having teeth. I guess that's an awkward question for you, because if you're simply following the procedures in place—you mentioned the FAA—there would be a need to amend them to give the panel real teeth.

I guess we can take from that description, as a committee, that this really is something we can recommend, and it wouldn't be for you to suggest that we shouldn't unless there were something egregious about which you'd say, "Well, if you had real teeth, there are a number of problems, and here they are." And if there are, I'd like to hear them.

It seems to me the rationale—and we heard this, and I looked through the Information Commissioner's case—is that you don't want to have an officer of Parliament, or for that matter the government, put into the awkward position when they bring bad news to government that there's a political playoff there and we wanted you to steer away from that.

We need to address that. If this is a pilot, and certainly if we look at ways of improving it, I would suggest we take a look and probe, if the panel is the way to go—and we're hearing that it is—how to give it real teeth, and probe that a bit more. In so doing, we would need to know what mechanisms are required.

I go back to Bill C-2, and Mr. Tilson was chair of the committee on that bill. A number of witnesses pointed to the fact that we're creating more offices of Parliament. There's some peril in that, or the perception was that there might be peril in it, in that you're potentially delegating authority outside Parliament. It seems to me we need to look at the fine balance here between creating new offices of Parliament on one hand, and on the other hand wanting to make sure Parliament has the proper oversight. If we're just talking about this being a suggestion box, then we should take a look at that.

My question, I guess, is what are the tools? One of the tools, I noticed, was this blue ribbon panel of experts. Obviously we aren't experts in the field; we need more time, obviously, to understand the estimates, for instance, and people who have that expertise would be available. Certainly that was one of the recommendations.

Can you describe the concept and whether the blue ribbon panel has been used before, and if it hasn't, conceptually how it would work?

**Mrs. Mary Chaput:** I can describe it in very general terms. Each blue ribbon panel, depending on what it's doing, functions in a different way, depending on that panel's mandate and scope, etc. For example, there's a blue ribbon panel right now looking at grants and contributions and obstacles to efficient delivery of those to recipient organizations.

When the idea of a blue ribbon panel was thought of in this context, the thought was that the panel would bring together a variety of expert voices, and that by virtue of that combination, decision-making would be enriched, well rounded, and have a degree of neutrality to it that was important.

Of course, in this zone it's all about striking the right balance—the independence of the agents, the relationship those agents have with Parliament, certainly an important element, and the voice of Parliament in that regard as well as the responsibility of the executive for sound stewardship of resources. There was always a view held, at least at the secretariat, that the executive needed to be part of the triad, or whatever it was you ultimately struck.

If I may, in terms of going to a panel with more teeth, certainly that's a concept that merits consideration. The one caution I would issue in that regard is that there is a difficulty in being asked to make these very particular and important decisions around funding and oversight and the application of policy and compliance and risk that makes that a very weighty responsibility. That's not to say that the panel couldn't take that on or wouldn't be up to the challenge, but it requires a lot of careful analysis and input. Certainly, the panel would not want to go there, in my view, in any way, shape, or form without being assured that they were also going to be getting the very technical support that would be important to their decision-making. That would be the first thing.

The second thing is—

• (1630)

**Mr. Paul Dewar:** Sorry—thank you for that—I want to make sure I understand. The blue ribbon panel conceptually, potentially, could be part of that support for a panel with more teeth.

**Mrs. Mary Chaput:** It could be, conceptually, yes, sir.

**Mr. Paul Dewar:** Okay. Thank you.

**Mrs. Mary Chaput:** The second thing I would note is that typically when the secretariat approaches these funding proposals, in our analysis we look across a broad cross-section of government organizations, making allowances for difference in mandate, etc., to determine what are the trends, who are the outliers, what are the emerging issues. It's within that broad scope that is available to us because we look at so many that we're able to make a recommendation that can be nuanced by the knowledge of those broad trends.

I would worry a little bit about the panel being asked to make recommendations on a subset in which perhaps those cross-sectional issues would not be as apparent to you. You would want to be aware of those if you were taking on a toothier function. It can be very important to know what the broad trends are, and certainly those trends could be analyzed for you and brought to your attention and you would not necessarily be working in a vacuum. That's why I'm saying you would want to be certain the supports were in place

before you took on that role, because you would want to exercise it with all the right technical backing.

**The Chair:** I think that's a very important cautionary note that you've brought to our attention. However, I suppose a panel with teeth could always make recommendations that would be subject to Treasury Board review and would not be implemented until Treasury Board signed off that they were legal.

Mr. Tilson.

**Mr. David Tilson:** Mr. Chairman, the report has been referred to several times, and I happen to have a copy. Mr. Chairman, you mentioned that the membership would be made up of representatives from both the House of Commons and the Senate, and equally comprised of government and opposition representatives. As far as experts are concerned, a funding body could obtain advice from experts, as well as from the appropriate parliamentary committees to assist in its deliberations.

It did talk about a pilot project, which we launched for the next two fiscal years, starting with 2006-07, and using the existing House of Commons Board of Internal Economy as the parliamentary budget determination body—I'm getting to my question—with the three commissioners within our mandate, the Information, Privacy, and Ethics Commissioners, as the initial participants. The Auditor General, who of course is part of it, is not part of our mandate, although I think they want her to be part of this process. That was recommendation one, which I just referred to briefly.

The second one had to do with exactly what's happening, that the Board of Internal Economy serve as the parliamentary budget-determining body for the offices of the Information, Privacy, and Ethics Commissioners on a trial basis, in the same manner as proposed in recommendation one. That would go for the 2006-07, 2007-08 fiscal years. Of course, you are now saying only the Ethics Commissioner goes to the Board of Internal Economy; everybody else is part of this other process.

• (1635)

**Mrs. Mary Chaput:** There are a number of bodies that go to the Board of Internal Economy.

**Mr. David Tilson:** Absolutely, but these five groups—Information Commissioner, Auditor General, Chief Electoral Officer, Official Languages Commissioner, and Privacy Commissioner—all go through this process, as you presented it to us.

**Mrs. Mary Chaput:** Yes, sir.

**Mr. David Tilson:** I have to tell you that I certainly recall, as the report confirms...and it gets back to a question Mr. Peterson, Mr. Stanton, and I think Mr. Chair asked, which was, why in the world isn't the Ethics Commissioner part of this? It doesn't matter because that's only advisory anyway. Hopefully it would become more than advisory since this is a pilot project. Quite frankly, I don't know why, and you have explained it, but since it's an advisory panel only, why shouldn't the Ethics Commissioner be put in there?

**Mrs. Mary Chaput:** I can take another try at a somewhat unsophisticated answer for you, Mr. Chair, with your indulgence.

What we were trying to do to a certain degree was group together organizations with a common set of watchdog functions—not that they are completely homogenous. Obviously there are distinctions within the group, but they have a certain kind of relationship with citizens and taxpayers, as well as with parliamentarians and the government organizations over which they watch.

The one distinction that we did draw in talking this out was that the Ethics Commissioner watches over a different group of people or organizations, and from that point of view, to a certain degree, falls into a different bucket than the agents of Parliament, like the AG, who are charged with—

**Mr. David Tilson:** They're all different.

**Mrs. Mary Chaput:** Yes, they're all different.

**Mr. David Tilson:** They're all different, and you can say that about everyone. The Official Languages Commissioner is quite different from any of them.

**Mrs. Mary Chaput:** But the commonality of all of those five, which were included, was that they watch over the manner in which government departments, agencies, and the bureaucracy conduct themselves.

**Mr. David Tilson:** Mr. Chairman, with due respect, this committee may be able to change now that there's a different makeup, but clearly the intention, from the recommendations I've read to you and my own recollections, was that the Ethics Commissioner be part of it. We didn't want to put them off in another little box; we wanted them all to be part of the same system.

You said what you're thinking and I've said what I'm thinking, so I guess we'll call it a draw, Mr. Chairman.

**The Chair:** Why don't we ask one more question?

Since the Ethics Commissioner is still with the Board of Internal Economy, has there been a similar system set-up within the Board of Internal Economy to mirror the panel system, with respect to the Ethics Commissioner's request for increased funding?

**Mrs. Mary Chaput:** I don't know the answer to that. My impression is no, but I would have to check on it for you.

**The Chair:** If the answer is no, then clearly it has gone completely against the recommendations of the committee, which specifically said that the Board of Internal Economy can do it. I could live with the Ethics Commissioner being with the Board of Internal Economy because of the statute, but the idea was that the Board of Internal Economy should become what you've now created, which is this panel. So okay, the Ethics Commissioner is there, within the Board of Internal Economy. But then why not have the Board of Internal Economy go through the same things with the Ethics Commissioner that the Information Commissioner and the Privacy Commissioner went through with the panel? I guess your answer is that it hasn't happened, or you'll check into it.

**Mrs. Mary Chaput:** Yes, I would prefer the "I'll check into it" answer.

**The Chair:** Okay, thank you.

Mr. Zed.

**Mr. Paul Zed (Saint John, Lib.):** I just want to add, at the risk of agreeing with Mr. Tilson on something, that my recollection is

similar to Mr. Tilson's. Perhaps the clerk might want to get that information as to what we had agreed to, but it's clear that this is not what was agreed to.

• (1640)

**The Chair:** There's no doubt that this panel idea does not mirror the committee's recommendations.

You've said that it flowed out of the recommendations of the committee, but I guess it's the bureaucracy's response to the committee's recommendations.

**Mrs. Mary Chaput:** The only other shred of information I can offer on this front is that the Ethics Commissioner was invited to participate in the panel process and declined. That doesn't answer your question. It just adds a little bit of context to it. So what I would like—

**The Chair:** Excuse me, Madam. If that's the case, then Mr. Tilson was right that notwithstanding that the act requires the Board of Internal Economy to do it, the panel was advisory only, and the Ethics Commissioner could have gone before the panel to buttress his request for further funds, with parliamentarians agreeing—one presumes—and then go to the Board of Internal Economy with the recommendations of the thirteen-member panel of the House of Commons. He chose not to do that. Perhaps when he comes on Wednesday, November 1, under estimates, somebody might like to ask him why.

**Mrs. Mary Chaput:** With your agreement, Mr. Chair, we'll undertake to do some research on this and include what we can in getting back to the committee.

**The Chair:** Thank you very much.

Is there anything else, Mr. Zed?

Mr. Stanton.

**Mr. Bruce Stanton:** My comments are along the same lines, and I think I alluded to it in my first question as well. Somehow, between the spring of 2005 and the fall of 2005, we went from the Board of Internal Economy to this panel, and I assume, perhaps, that when you bring this further information forward, it will enlighten us as to what in fact transpired there and who made the recommendations to create this thirteen-person panel. Was it the Treasury Board Secretariat, or was it some other office of the government at that time that in fact created what we now describe as this panel?

I would hope that would be part of the process, because it occurs to me, going back to the recommendations that were provided by this committee last year, that they envision that it would be the Board of Internal Economy that in fact would be the forum for these types of inquiries. Perhaps it's not a question, Mr. Chair, but to add to the information that might be coming forward at a later time, I think it would be worthwhile to have an answer to those questions.

**The Chair:** Indeed, Mr. Stanton, thank you.

We look forward to your doing the research. It may end up being as simple as the government of the day didn't want to do it and they said, come up with something else, or it may be more complicated. Who knows? But if you can find out the answer for us, it would be of great assistance to us.

I have no one else on my list. Does anybody want to raise their hand?

Mr. Dewar.

**Mr. Paul Dewar:** Looking at the report from May 2005—that's the report you're referring to—they had two recommendations essentially. It's pretty clear there in black and white. Recommendation two says, "the Board of Internal Economy serve as the parliamentary budget determination body". Somewhere between then, in May, to when things were enacted.... Notwithstanding that, I think there was some merit, and certainly some arguments made, for the panel, so it's just a matter of ferreting it out.

I think you were touching on this. My question is going to be about how we follow up on recommendations, if we have a body that's making recommendations and the government says, yes, thanks, and maybe, maybe not, and clearly, as in this case, dismissed them. In your presentation you said that one of the things we can perhaps tighten up is how we track the recommendations themselves.

Turning to that, do you have a process in mind? I've worked in other sectors where we do this on a regular basis. We bring forward action items, so that if we did recommend A, we make sure it's followed up by indicating on it a date, who is responsible, and what needs to be done—to make sure if it wasn't done, that it gets done. Can you elaborate on that, or were you just identifying something that needs to be looked at? Do you have some ideas about how we can tighten that up, if there are recommendations that have been made by this committee to be followed up on, or how we might even just track them?

**Mrs. Mary Chaput:** We didn't have a proposal in that regard. It only struck us after the single round we went through last year, where, when we charted it, I said to myself, "This is odd. We get recommendations from this body, and then where is the part that closes the loop?" It was once we started talking about this that we

concluded there needs to be, obviously, more thought put to that question and some kind of proposal brought to the fore.

● (1645)

**Mr. Paul Dewar:** I think I can speak for all of us here that we would encourage you to do so, and that we would have some information we could follow up on so that we could support recommendations that have been made and help you do your job. I think that's the missing link here. Where did it happen—on the way to reform, or to incorporate—that things changed? As was mentioned, perhaps it was just that the government decided no thanks and moved on.

If you come up with something structurally, that would be beneficial, so that we can at least track it and have something in front of us.

Thank you.

**The Chair:** Indeed. Are there any other questions, then, colleagues? All right.

If you haven't noted down exactly what we wanted, you can always ask the clerk or our researcher, or check the transcripts, or whatever the case may be. When you give us back the answers, I'm sure they will enlighten us to a great degree.

May I, on behalf of the committee, thank all three of you for attending today and for giving us the answers you've given us. May I also thank you for saying, when you don't know an answer, that you would like some time to look it over, rather than trying to shoot from the hip. That's much appreciated. Thank you very much.

Our next meeting is Monday, to consider a draft report on the study of the alleged disclosures of access to information requesters.

We're adjourned.

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