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## **Standing Committee on Public Accounts**

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**EVIDENCE**

**Monday, November 16, 2009**

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**Chair**

**The Honourable Shawn Murphy**



## Standing Committee on Public Accounts

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• (1530)

[English]

**The Chair (Hon. Shawn Murphy (Charlottetown, Lib.)):** At this time I'd like to call the meeting to order.

I want to extend a very warm welcome to everyone here.

This meeting is on chapter 2, "Intellectual Property", of the spring 2009 Report of the Auditor General of Canada. It's very much a horizontal issue, colleagues, so we have a large number of witnesses here from various government operations dealing with the issue, which is the management of intellectual property on a pan-government basis.

First of all, from the Office of the Auditor General, we have Auditor General Sheila Fraser. She's accompanied today by John Affleck, principal. From the Treasury Board Secretariat, we have Daphne Meredith, chief human resources officer. From the Department of Industry, we have Paul Boothe, senior associate deputy minister. From the Department of Health, we have the deputy minister, Morris Rosenberg. From the Department of Fisheries and Oceans, we have the deputy minister, Claire Dansereau. From the National Research Council of Canada, we are very pleased to have the president, Pierre Coulombe.

Again, welcome to each of you.

We have opening remarks from six witnesses; we're going to start off with you, Madam Fraser, for five minutes, please.

**Ms. Sheila Fraser (Auditor General of Canada, Office of the Auditor General of Canada):** Thank you, Mr. Chair.

We thank you for this opportunity to meet with the committee today to discuss the chapter on intellectual property in our May 2009 report.

As you mentioned, I'm accompanied today by John Affleck, the principal who is responsible for this audit.

Intellectual property is important, and the federal government needs to pay attention to how well it is managed. The creation, development, and protection of intellectual property are critical early steps in the innovation process. The 2007 federal science and technology strategy, entitled *Mobilizing Science and Technology to Canada's Advantage*, recognizes that intellectual property is a critical component of the overall innovation system. Ongoing monitoring of the federal intellectual property regime is important to ensure that the intellectual property arising from federal investments in research translates into value for Canadians.

The federal government creates intellectual property in two distinct ways. It is created either internally by federal government employees during the course of their work or externally by contractors during contracting activities. This audit examined both of these aspects.

Our audit looked at how intellectual property is managed in three federal science-based organizations: the National Research Council, Health Canada, and Fisheries and Oceans Canada. We also looked at the roles played by Industry Canada and the Treasury Board of Canada Secretariat. The audit work was substantially completed by the end of September 2008.

In terms of the intellectual property that is generated internally, we found that the National Research Council had mechanisms in place to adequately manage its intellectual property assets, including an entity-wide intellectual property policy and mechanisms to identify intellectual property, while Health Canada and Fisheries and Oceans Canada did not.

[Translation]

We also looked at the Treasury Board of Canada Secretariat's Award Plan for Inventors and Innovators Policy, which is an important policy that provides incentives to government employees and encourages the commercialization of internally generated intellectual property. We found that the federal government did not know how effective the policy was nor whether it had the appropriate financial incentives in place. For example, the entities we audited did not give financial incentives for inventions used by the government. In addition, we looked at intellectual property that is generated by contractors during contracting activities.

In the past, the federal government retained ownership of all intellectual property resulting from crown procurement contracts. However, this changed in 1991, with the introduction of the Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts, which allowed the contractor to keep ownership of the intellectual property developed through contracting activities. The rationale was to increase the potential for commercialization of intellectual property developed by a contractor.

This policy also provided exceptions for the Crown to retain ownership of the intellectual property, but only under specific circumstances. These exceptions were intended to ensure that the Crown's interest was protected. In 2000, the policy was revised to expand its application and to include greater reporting requirements in an attempt to monitor compliance with it.

We found that National Research Council Canada, Health Canada, and Fisheries and Oceans Canada did not accurately identify or report their intellectual property resulting from crown procurement contracts. For Health Canada and Fisheries and Oceans Canada, we found that these departments did not accurately justify when the Crown took ownership of the intellectual property and that they were not fulfilling their obligations as contracting authorities.

● (1535)

[English]

The federal government does not know if the objective of the policy is being realized. Industry Canada and Treasury Board of Canada Secretariat have not adequately monitored the application of the policy, with a focus on cases where exceptions were invoked.

In addition, Industry Canada and the Treasury Board Secretariat have not yet evaluated the policy on title to intellectual property. Preparations for an evaluation of the policy in 2011 are ongoing. Our audit work in the National Research Council, Health Canada, and Fisheries and Oceans Canada found that there were significant errors in the data due to a lack of understanding of intellectual property management. These errors will undermine a future evaluation of the policy unless data validity is established at the entity level.

We are pleased to report that all the entities have agreed with our recommendations. Health Canada has shared their action plan with us, and we believe it will address the issues raised in our chapter. The committee may wish to inquire about the actions taken by the other entities to respond to our recommendations.

This concludes my opening remarks. We would be pleased to answer any questions the committee members may have.

Thank you.

**The Chair:** Thank you very much, Ms. Fraser.

We're now going to hear from Mr. Paul Boothe, the senior associate deputy minister of the Department of Industry.

**Mr. Paul Boothe (Senior Associate Deputy Minister, Department of Industry):** Thank you, Chairman.

[Translation]

I will take a few moments to outline our plan to monitor and evaluate the government's Policy on Title to Intellectual Property Arising Under Crown Procurement Contracts.

[English]

That is the policy on title to intellectual property arising under crown procurement contracts—which is quite a mouthful, so I'm just going to call it the policy.

The policy was put in place in 2000 to increase the potential for commercial exploitation of IP developed by contractors involved in crown procurement contracts. It's our belief that the private sector is best placed to turn IP into commercial opportunities. As a result, the government retains the right to use the intellectual property but ownership resides with the contractors.

There are a few exceptions. The government may retain ownership of the IP for reasons of national security; when statutes, regulations, and obligations preclude contractor ownership; when the contractor

isn't interested in owning the IP; when the knowledge will be publicly disseminated; when the knowledge will be combined with other knowledge and then transferred to the private sector; and when the material is subject to copyright.

Departments can retain intellectual property ownership in other exceptional circumstances with the explicit approval of the Treasury Board.

[Translation]

This policy applies to all federal departments and agencies and to all contracts, be they for goods or services. Executive heads are responsible for ensuring that their organizations are in compliance with this policy. The Treasury Board Secretariat and Industry Canada are responsible for monitoring the application of the policy and for its evaluation.

● (1540)

[English]

In 2007, the Treasury Board approved a plan to evaluate the policy. It proposed, as a first step, measures to increase awareness and to collect more accurate data. Shortly thereafter, measures were put in place to ensure that departmental officials were aware of the policy and understood reporting requirements. Actions were taken to ensure more complete and accurate data collection in order to support an evaluation of the policy by 2011.

As a result of the work launched in 2007, data are now available for the 2008 calendar year from 80 departments and agencies. The government invoked its right to own intellectual property in 1,758 cases—that is, in contracts valued at over \$25,000. The most common reason for retaining ownership was to respect a statutory, regulatory, or prior obligation requirement; to ensure the government's ability to disseminate the results publicly; and because of copyright requirements.

So in the first phase of this work, a more robust data collection system was developed. In the second phase, departments will take steps to ensure that they are in complying with the spirit and intent of the policy. For example, Industry Canada will assess each contract that invoked an exception to ensure that it was an appropriate application of the policy. In the third phase, Industry Canada and the Treasury Board Secretariat will engage an expert to evaluate the policy by the end of 2010, one year ahead of schedule, and we'll report the results to the Treasury Board.

[Translation]

Industry Canada and the Treasury Board Secretariat have tabled a management action plan, which provides a more detailed description of the activities we intend to undertake to carry out our responsibility to monitor and evaluate the policy.

We will be pleased to report to the Auditor General on progress annually and to answer any questions you may have on our proposed approach today.

Thank you, Mr. Chair.

[English]

**The Chair:** Thank you very much, Mr. Boothe.

We are now going to hear from Daphne Meredith, the chief human resources officer with the Treasury Board Secretariat.

**Ms. Daphne Meredith (Chief Human Resources Officer, Treasury Board Secretariat):** Thank you, Mr. Chair, and thank you for your invitation to appear before the committee on the issue of the management of intellectual property in the Government of Canada.

I can assure you that the Treasury Board Secretariat and Industry Canada are working together to address the report's recommendations. You have just heard about the joint actions we are taking to monitor the application of the policy governing intellectual property that arises under crown procurement contracts, and its evaluation.

[Translation]

I will focus my remarks today on the role of my office within the secretariat with respect to the Award Plan for Inventors and Innovators Policy, particularly in the context of recommendation 2.33.

Mr. Chair, we have provided you with an action plan, jointly developed with Industry Canada, addressing the two recommendations involving the secretariat. We both agree with the Auditor General's recommendations and have collaborated on our responses. We committed to working together, as well as with other federal organizations, as needed, and we have done so.

[English]

As we stated, we will ensure that accurate data is collected to support the planned evaluation of the policy on title to intellectual property arising under crown procurement contracts, and that our assessments of intellectual property policies are coordinated and comprehensively address common issues, including the effectiveness of awards.

Let me turn to the award plan for inventors and innovators policy. One of the ways the Government of Canada encourages invention and innovation in science and technology in the public service and motivates inventors and innovators to pursue the commercialization of their ideas is to give awards to inventors and innovators.

[Translation]

Deputy heads have the authority to give such awards through the Financial Administration Act, sections 12(1)(b) and 12(2)(b).

Further, any minister may authorize the payment of an award to a public servant inventor by virtue of section 10 of the Public Servants Inventions Act.

The Award Plan for Inventors and Innovators Policy was intended to support deputy heads in this activity by providing guidance on methods of calculating amounts of awards to be given to successful inventors and innovators.

• (1545)

[English]

As part of the secretariat's review of all management policies, we have begun consultations with the interdepartmental science and technology community to determine whether the award plan for inventors and innovators policy is achieving its intended purpose, or if there could be a better way.

Early indications are that the functional community could be better placed to establish guidelines in relation to awards. More specifically, the Federal Partners in Technology Transfer Assistant Deputy Minister Committee may be best positioned to lead the development of these guidelines. That committee's secretariat has begun a consultation process to evaluate the options, which will be presented to that committee for its decision.

We think the guidelines set by this group may be a more appropriate instrument to ensure a coherent approach across federal science-based departments and agencies. This approach would have the added benefit of ensuring that deputy heads have the flexibility they need to address the unique needs and situations of their own employees.

Thank you. Of course I'll be pleased to respond to any questions from the committee.

**The Chair:** Thank you very much, Ms. Meredith.

We're now going to hear from Dr. Pierre Coulombe, president of the National Research Council of Canada.

**Mr. Pierre Coulombe (President, National Research Council Canada):** Mr. Chairman, members of the committee, thank you for the opportunity to speak to you about IP.

As Mrs. Fraser's report points out, the National Research Council is by far the federal government's largest producer of inventions. NRC's mandate is to transform science and technology into social and economic well-being for Canada. NRC does this by working directly with industry across Canada in sectors from aerospace and construction to bio-pharma and alternative energy. Indeed, NRC has done so throughout its 93 years of history.

Creating IP and extracting value from it for the benefit of Canadians is our main business line. So it was not unexpected to read in the OAG's report that NRC was found to manage its IP very well. I can assure you that this has not come about just by happenstance.

[Translation]

Rather, it has come about through years of deliberate investment, process improvement and by placing a high priority on getting results from the intellectual property we create. And we are not only strong in comparison with other producers of intellectual property in Canada, but we can also hold our own internationally.

At the NRC, we have deliberately invested heavily into the infrastructure that is essential for the management of intellectual property. We are unique within the federal government in that we have our own team of patent agents.

[English]

We have invested in expert business development staff throughout our organization. We also have set up a team of business experts, located in our new corporate business office, who are skilled in putting together the large and complex collaborations NRC is involved with.

Imagine the challenge of sorting out IP and business issues in an agreement involving three government departments, four universities, and five firms. NRC does this all the time because such large cooperative, multi-player collaborations are what drive science today.

[Translation]

We have also invested in training, orienting and rewarding our staff right down to the lab bench. Our intellectual property orientation course is given across Canada in all our labs. Our rewards and recognition programs, in particular, our royalties awards program, and our promotion system for researchers also place a premium on participating in commercially oriented activities.

[English]

We certainly have lots of successes to point to. However, a key question is, could NRC do better?

The OAG found that we rated high marks for how we handle the IP that our scientists create; however, we need to improve when it comes to identifying whether IP is expected to arise from procurement contracts. NRC agrees with the recommendation, and our procurement office is already working with our central business office to review existing procedures in this area with a view to implementing improved practices, training, and guidelines.

Over the years, NRC has worked hard not only to strengthen its own technology transfer activities, but also to show leadership in the federal community. We are the home agency for the Federal Partners in Technology Transfer, the umbrella organization that supports all technology transfer activities in the federal government.

To finish, I would like to say a few words about something that is of fundamental importance in looking at the strategic management of IP: the question of whether we are producing and protecting the right IP.

• (1550)

[Translation]

Disclosure review is a new tool, which the Office of the Auditor General found to be noteworthy and which we find very useful. Under this program, intellectual property and business experts carry out both patentability and marketability assessments at the stage when a scientist invents something. Even at this very early stage, we ask not only whether an invention could be patented, but also whether we should invest in protecting and perfecting it.

[English]

Our records show that we are very successful in creating value for Canadians from science and technology. Last year, we signed over 100 new licence agreements for technological innovations and generated close to \$9 million in royalties. Our spinoff companies have attracted close to half a billion dollars in investment and accounted for over 600 full-time jobs.

A great example of this success is IMRIS, an NRC medical devices spinoff firm that develops interoperative magnetic resonance technologies, or MRI. Earlier this month, this Manitoba-based firm, which is traded on the Toronto Stock Exchange, reported third-

quarter 2009 financial results highlighted by record sales and growth in revenues and profit.

[Translation]

In closing, NRC is committed to not only maintaining this record, but also improving it. Creating intellectual property, protecting it and transferring it—this is NRC.

Thank you, Mr. Chair.

[English]

**The Chair:** Thank you, Mr. Coulombe.

Now we are going to hear from Morris Rosenberg, the Deputy Minister of the Department of Health.

**Mr. Morris Rosenberg (Deputy Minister, Department of Health):** Thank you, Mr. Chair, and good afternoon to you and members of the committee.

I want to thank you for the opportunity to provide an update on progress being made at Health Canada to address the Auditor General's recommendations regarding the management of intellectual property.

[Translation]

I first want to thank the Auditor General and her staff for their report. The consultations and recommendations have served to sharpen our focus at Health Canada on improving our processes in order to produce better results in intellectual property management.

At Health Canada, the research we undertake directly supports our role in policy and regulation to fulfill our mandate of helping maintain and protect the health and safety of Canadians.

[English]

While not a primary objective of this work, intellectual property can support our policy development and decision-making. Intellectual property arising from public investment is a public good, and we therefore have a responsibility to ensure that we have the policies and procedures in place to maximize its value to serve the public good.

We understand the need to improve our management of intellectual property, which is why we welcomed the Auditor General's recommendations. We have accepted all six recommendations pertaining to Health Canada, and we are now implementing an action plan to see them through.

[Translation]

We have shared our plan with the Office of the Auditor General. I would like to provide just a few of our plan's key highlights.

[English]

First, our plan puts strong emphasis on training managers and procurement specialists so they will be well equipped to identify and properly report on intellectual property expected to result from contracts. We've already developed a standardized procedures package for officials dealing with procurement, one of which focuses on application and reporting of intellectual property in contracts.

•(1555)

[Translation]

In addition, we are committed to providing enhanced training to cost centre managers in the fourth quarter of this fiscal year. For example, we are introducing a mandatory questionnaire on intellectual property as part of a manager's training. This will raise the awareness of managers concerning their obligations regarding intellectual property. As well, a section on intellectual property will form part of the contract review process within the department.

[English]

Second, the Office of the Auditor General recommended that we develop a department-wide intellectual property policy. Work has started on advancing our existing draft policy on internally generated intellectual property. We're working to ensure that this policy will meet Health Canada needs before putting it in place throughout the department. The policy is due to be implemented in the next fiscal year. This is an important initial step in meeting the Auditor General's recommendation.

In closing, I'd like to reiterate my commitment to implementing our plan to make sure that Health Canada has the processes and procedures in place to manage intellectual property.

I'll be pleased to answer any questions members may have today.

**The Chair:** Thank you very much, Mr. Rosenberg.

Last, we are going to hear from the Deputy Minister of Fisheries and Oceans, Claire Dansereau.

[Translation]

**Ms. Claire Dansereau (Deputy Minister, Department of Fisheries and Oceans):** Thank you, Mr. Chair, for the opportunity to provide you with information on the progress that Fisheries and Oceans Canada (DFO) has made since receiving the Auditor General's report concerning intellectual property. We at DFO recognize that intellectual property developed by and for the department can contribute to Canadian innovation, which can provide both social and economic benefits to Canadians. We thank the Auditor General and her staff for their work.

[English]

First, let me say that a very large portion of the science and technology performed by the department is used to support its regulatory mandate. As such, it contributes indirectly to economic prosperity in the maritime, fisheries, and aquaculture sectors. In fact, a large portion of the departmental scientific output has traditionally focused on management of the fisheries and of the oceans rather than commercialization per se.

That being said, DFO fully agreed with and welcomed the Auditor General's recommendations on how to better manage intellectual property. We responded with a specific action plan to address those recommendations, all six of which were accepted by us. The plan is premised on developing a comprehensive departmental intellectual property policy and creating an office dedicated to its management.

I want to emphasize that while the department did not have a department-wide intellectual property policy, as identified by the Auditor General, it did manage its intellectual property assets. Many

of its inventions and innovations were successfully commercialized for the benefit of Canadian industry and Canadians. Several continue to perform extremely well in the marketplace.

I'm glad to report that since the release of the Office of the Auditor General's results, two department-wide policies on intellectual property have been developed. The first is a policy for the management of intellectual property. The second is for the payment of incentive awards to DFO employees who contribute to the successful commercialization of intellectual property.

Both of these policies were referenced in our action plan. They demonstrate our progress to date on enhancing our IP management. Clearly, next steps will be required in training and education of our people and in establishing appropriate guidelines.

An intellectual property office will be set up over the next few months to address the issues of education, training, and implementation. It will serve as the centre of expertise for the department's intellectual property management. It will guide and support implementation of both policies within existing resources.

The IP management policy provides specific measures and procedures to address the problems identified in the Auditor General's report, starting with the consolidation of existing IP management expertise as a foundation for the IP office. The IP office will launch a department-wide awareness campaign on the IP policy. It will include information bulletins, face-to-face discussions, workshops, and training.

We will ensure that staff and management understand that reporting intellectual property is an obligation and a first step to good IP management. In the process, a department-wide network will be set up to assist the IP office in ensuring that the IP management principles and the procedures in the policy are followed.

Beyond delivering on our departmental commitments to the Auditor General, the new DFO IP policy also provides a solid framework to manage activities involving intellectual property by people and organizations other than DFO employees, including that which is produced in the context of partnerships with the private sector, by DFO's many volunteers, by visiting scientists, and so on.

I strongly believe that the identification of intellectual assets is the first step to rigorous IP management. Therefore, the new policy underscores the obligation of staff to report on all intellectual property they create.

To conclude, I want to assure you that the Department of Fisheries and Oceans has taken the recommendations of the Auditor General very seriously. We have already implemented several steps towards enhanced accountability and improved management of our intellectual assets for the benefit of Canadians.

As the department's chief accounting officer, I am committed to the new policies and will be asking senior departmental staff to report to me on compliance.

Thank you, Mr. Chair.

• (1600)

**The Chair:** Thank you, Madam Dansereau.

We're now going to go to the first round of eight minutes.

Mr. Lee, you have eight minutes.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you.

This is kind of a dry subject until you get into the NRC's envelope, where they're talking about actual widgets and aerospace designs and things, so I can understand that when the Auditor General comes knocking, asking if anybody's home, there's nobody home.

Anyway, I congratulate the department on responding. It sounds like everybody's in agreement.

For the record, can I get an example? I don't know who to direct this to. I'm not going to ask a question; I'm just going to ask for verification. When all the witnesses talk about IP, they're talking about patents, industrial processes, copyright, and industrial design. Is there anything else?

Have I missed anything, Ms. Dansereau?

**Ms. Claire Dansereau:** We use data sets as well. We gather a lot of data.

**Mr. Derek Lee:** Data sets? Okay. Good.

Now, are we talking about the same set of rules and policies for dealing with employees of government and actual government departments as we are for contractors? Or is there a different set of policies in terms of recognizing the intellectual property in the timing that it's recognized or the way it gets recorded as an asset?

Could I direct that to Industry Canada?

**Mr. Paul Boothe:** Basically the policy we're talking about here is around what happens when we have a contract with a private sector contractor and some IP is created.

**Mr. Derek Lee:** Okay, so that's with a contractor. I understand that envelope.

**Mr. Paul Boothe:** That's right.

**Mr. Derek Lee:** What about employees of government?

**Mr. Paul Boothe:** With employees of government, it's a different policy.

**Mr. Derek Lee:** Okay. Do you know how that operates?

**Mr. Paul Boothe:** Yes, I can say a couple of words about it.

**Mr. Derek Lee:** Okay, fire away.

**Mr. Paul Boothe:** Basically the intellectual property belongs to the crown, but we have an awards program that is used to encourage public servants to do that.

Maybe I could just give you an example. Not all the great inventions come from the NRC, although many do.

In Industry Canada we have something called the Communications Research Centre at Shirleys Bay. You may have heard of it. It has won two Emmy awards for work on high-definition TV. It generates about \$1.5 million a year in IP revenue, and through the awards policy we have awarded about \$375,000 to current and past scientists working there.

**Mr. Derek Lee:** Okay, it's cash for ideas. It works, and the employees like it. Somebody figures out a better way to sharpen a pencil and there is a bonus award.

• (1605)

**Mr. Paul Boothe:** That's it.

**Mr. Derek Lee:** That's great.

For contractors, it's different.

Have we reached the point where all government departments know what to do with it when an asset of intellectual property has been innovated, found, or recognized? Have we reached that point yet, or are we still working on it?

**Mr. Paul Boothe:** We're definitely still working on it. That's partly why we're sitting here today in front of you.

**Mr. Derek Lee:** Okay. I don't want to be too hard on anybody, but that was my impression when the Auditor General shows up and says, "Hello, what are you doing?" and nobody knows. We don't even have a dynamic working definition yet.

If I'm a contractor with the government, I may come up with something. I have a \$10 million contract and I come up with it, and you guys in government may not recognize it.

**Mr. Paul Boothe:** May I answer that?

The problem with it is that intellectual property has such a broad definition.

**Mr. Derek Lee:** I know. It's air.

**Mr. Paul Boothe:** Just to give an example, inventions, literary works, designs and models, patents, trademarks, copyrights, industrial designs, circuits, plant breeders' rights, all those are under the broad umbrella of intellectual property.

**Mr. Derek Lee:** Why don't you go for the easy stuff first, the low-hanging fruit, and get that out of the way? In the second tier, go for something else; and in the end, deal with the literary innovation.

**Mr. Paul Boothe:** Industry Canada is now maybe a bit farther along than some other departments because the laws around intellectual property are in our portfolio, but basically the way it works is that you get a contractor to do something, you agree that there is some intellectual property there, and then the policy is that, all other things being equal, the contractor has the right to exploit and commercialize that property.



But as the Auditor General said, there are some exceptions to that. Last year was the first year that we got really good data on this, so we looked at the Industry Canada data. We had 222 contracts of over \$25,000. Of those, 50 contracts were identified as having some intellectual property associated with them: 32 in which the contractor wanted to keep that intellectual property and try to commercialize it; and 18 in which the crown retained the ownership.

The Auditor General said we had to make sure we had good reasons to do this. Just in round numbers, 44% of the ones we retained were kept because we had to disseminate them publicly, and if we gave ownership of the IP to the contractor, we couldn't do that. So it was in the interests of transparency that we kept this relatively small number of IP rights with the government.

**Mr. Derek Lee:** I see how complex it is.

I will close with this question: does there exist within any one department, or in government generally, a central listing of these IP assets, or are they just scattered all over Ottawa and the country? As a citizen, or if I were the Auditor General, where could I check to see how many IP assets existed in a particular department, and in what categories? Could I find that anywhere?

**Mr. Paul Boothe:** I think you'd have to go department by department.

**Mr. Derek Lee:** Some departments don't even have anybody looking after this, right?

**Mr. Paul Boothe:** They are catching up fast.

**Mr. Derek Lee:** Okay, I'll stop there. Thank you.

**The Chair:** Thank you, Mr. Lee.

Go ahead, Madame Faille, for eight minutes.

[Translation]

**Ms. Meili Faille (Vaudreuil-Soulanges, BQ):** Thank you, Mr. Chair.

I want to thank all of you for appearing before the Standing Committee on Public Accounts.

I have a number of questions. There appear to be different ways to improve intellectual property management. Among other things, the Auditor General said that Public Works and Government Services Canada seemed to be doing a good job when it is the contracting authority regarding the various external contracts and when it is a matter of identifying intellectual property. The report also states that the department negotiates before entering into a contract.

As for NRC, it says in the action plan that you take the time—probably with each contract—to ensure that appropriate contracting language is used. I am not sure if you do it on a case-by-case basis. But, as far as the other departments go, it says that you prefer to use a strategy rather than standardized clauses.

So, depending on where you are in the department, there seem to be different strategies for identifying intellectual property in contracts. I would like to hear Ms. Fraser's thoughts on that.

• (1610)

**Ms. Sheila Fraser:** Mr. Chair, this situation reflects the fact that intellectual property management was decentralized in 1993-94. Every department is responsible for its own management; in other

words, each establishes its own policy and method for training its staff in terms of identifying these things and, obviously, managing them afterwards.

**Ms. Meili Faille:** I am asking because here we are 20 years after decentralization and the departments are all managing their intellectual property identification practices differently.

I have read up on what the private sector expects regarding intellectual property. It expects a departmental coordinating committee. Here, we are talking about setting up a centre of expertise in the different departments.

How is all that being coordinated? Could you explain how it works, Ms. Fraser?

**Ms. Sheila Fraser:** I believe there is or will be a committee of associate deputy ministers who would see to the coordination. In addition, to avoid a situation where each department is re-inventing the wheel, it would be a good idea to consult with National Research Council Canada, for instance, as it has a number of policies and so forth. I am certain that during the audit, the council indicated that it was happy to share its experience and available materials, rather than having each department re-create policies and such. Obviously, they would need to be adapted to the context of each department, but the more information that is shared, the better off everyone will be.

**Ms. Meili Faille:** In terms of coordination, the committee has not been around long enough to adequately manage.... It is not that advanced, unless I am mistaken.

**Ms. Sheila Fraser:** When we did our audit, that coordination was not in place; every department was doing its own thing.

**Ms. Meili Faille:** My other question has to do with the current economic climate. Of course, when you put policies in place during an economic downturn, you expect that the federal government's contract management activities will create jobs or, at least, an emphasis on intellectual property that will in turn create jobs, economic activity.

I was wondering if you could tell us how many spin-off companies had been set up to commercialize new technologies identified at National Research Council Canada.

You mentioned an economic contribution of \$500 million and 600 jobs, but how many actual spin-off companies were created? And how many innovation licences went to existing companies? I am talking about licences that went to existing SMEs or big companies, permitting them to use a new technology. Do you have that information?

**Mr. Pierre Coulombe:** Over a period of almost 10 years, the National Research Council Canada has created about 65 companies as a result of its researchers' work. In my presentation, I gave the example of IMRIS, now well established in Winnipeg. It was set up to bring to market a technology, developed by the council, that enables magnetic resonance imaging to be brought into operating rooms. That is one example, but there are many others. In the same period, the companies have been able to raise half a billion dollars in venture capital.

Among the companies we create, some are very successful; others unfortunately less so. IMRIS is an example of a successful company. Novadaq is another example. Those two companies are now publicly traded.

We also grant licences each year. Last year, we signed just over licence agreements with Canadian companies for technologies developed by NRC. We grant the licences so that the companies can bring the work done by NRC researchers to market. Averaged over a number of years, we grant about one hundred licences per year.

• (1615)

**Ms. Meili Faille:** If you had more money, do you feel that the potential would be greater still? We are talking about what you are doing at the NRC, but we are also dealing with a report from the Auditor General indicating that other departments are doing less well. We are talking about outside contracts of about \$1 billion. Would it be possible to do much more?

**Mr. Pierre Coulombe:** You used the term "outside contracts". That is what the Auditor General highlighted in her remarks. I have to say that the NRC is not a big player in those contracts because the majority of the contracts we award are not about intellectual property. That property belongs to us to a greater extent than to the contractors who work with us.

However, it may be possible to generate technology through those contracts, which is why we have implemented the Auditor General's recommendations in that regard.

As to what would happen if the NRC had more money, I have to tell you that there is not necessarily a correlation between more budget and more inventions. Inventions come from researchers, right? I am not about to say that if you double or triple the budget you will get twice or three times the number of inventions.

**Ms. Meili Faille:** According to your report, you seem to have done a lot with very little. That is why I was asking: if you had a little more, could you help other departments?

**Mr. Pierre Coulombe:** Help other departments? That is a slightly different question. I should tell you that, in terms of the protection of intellectual property, we are already working with the Canadian Space Agency; we provide our services for their property. We are also working with Health Canada on their process of awarding patents. We also work here and there with other departments, helping them as they work to gain access to intellectual property.

**Ms. Meili Faille:** Thank you.

[English]

**The Chair:** Mr. Christopherson, please.

**Mr. David Christopherson (Hamilton Centre, NDP):** Thank you, Chair.

Thank you all for your attendance today. I know next to nothing about this subject, other than what I've read. I'll say that right up front.

I have a couple of macro questions for the Auditor General.

It's hard to project, but is it your sense that we might have been better off if we had not decentralized?

**Ms. Sheila Fraser:** I really can't respond to that. This is a policy decision that was made some 15 years ago, and clearly responsibilities were given to individual departments and agencies. We would have expected to see more management of intellectual property throughout government.

**Mr. David Christopherson:** Do you have any sense of what they do in other jurisdictions, other countries?

**Ms. Sheila Fraser:** No. We didn't look at that.

**Mr. David Christopherson:** Okay.

It was interesting. When I was reading through all of this, I have to admit that my own politics kept coming through, because the emphasis was always on justifying why the crown was keeping it, while my starting point was always that if the Canadian taxpayer paid for it, the pressure ought to be the other way; it ought to be to justify why we're giving it away, given how much money is at stake.

I have two questions for anybody who wants to jump in, and don't leave too long a lag. First, what criteria are used? Is there a rule of thumb, or what are some of the things you look at to determine whether ownership will remain with the crown and with the Canadian people or go to private interests?

Second, are there specific areas that automatically go to the private sector? In other words, is something given because of the nature of the work or perhaps because it's historical, or is everything examined in a one-off?

As well, if intellectual property is created as a result of a contract that's paid for by the Canadian people, is that reflected in the money paid to the contractor, or is it a bonus situation if they come across something and convince the government to let go? There's a nice little bundle that generates money for them over and above the contract.

• (1620)

**Mr. Paul Boothe:** First of all, I'll go back to one of my earlier comments, that when people think about intellectual property, they think about some great invention or something, and often when, for example, the NRC or the Communications Research Centre creates intellectual property, that's actually what it is. However, the main goal for many of the contracts that we have isn't to create IP; they're to get something done. Some IP may be created, and that's an extra that comes from it.

Those kinds of things are not our core business. That's not why we entered into the contract, and I think that's why we believe the policy should be for it to go to the private sector unless there is a good reason to do otherwise. Basically, the process is that we ask whether this fits into any of these exceptions, whether it is a national security issue, and whether we have to publicly disseminate it.

**Mr. David Christopherson:** I'm sorry to interrupt, but help me understand why the starting point is to give it away and why it's by exception that you keep it, rather than the other way around.

**Mr. Paul Boothe:** What I would say is that most departments, in the normal course of their business, are not in the business of commercializing intellectual property.

**Mr. David Christopherson:** I appreciate that, but it's money; it's value. It just seems to me that if the people's money paid for it—if Canadian taxpayers paid for it—and there's a benefit derived, then the starting point ought to be that it stays with the Canadian people, and only by exception would it go back to the other. I don't understand why you would give away.... It looks to me as though we just give away money if it doesn't fit into certain pigeonholes or certain needs that we have. Our desire is to get it out the door and let it go to someone. It's worth money, why?

**Ms. Sheila Fraser:** Chair, could I try to give some element of response?

From what I understand from the policy, I think government recognizes that government itself is perhaps not the best to commercialize things. As was being explained earlier, many of these contracts don't say they are to develop an intellectual property; they're maybe to develop a new computer system or a new whatever. If there can be further use and commercialization that can go on beyond what government may need, it's better that the private sector do it.

There is an issue, though, that we're bringing up. When these contracts are made, there should be, to the extent possible, some identification of potential intellectual property, so that the government protects itself. In this way the complete title doesn't rest necessarily with the private sector, and if government wants to modify something, it doesn't end up paying the private sector for something it has already paid for, and it has access to those rights. There could be other considerations that go into that. It's very important that this be recognized up front and that there be some thought given to what will actually happen to intellectual property that comes out of these things.

**Mr. David Christopherson:** As we say in Hamilton, do we always retain a piece of the action? When there's an IP recognized, is there always a licence? If there's money being made somewhere, is there always some of that money being paid back to the Canadian treasury through licensing or some other fee?

**Ms. Sheila Fraser:** In the contracts we looked at, there was not always a clause that outlined what would happen to intellectual property, which could mean that eventually there could be disputes with contracts.

**Mr. David Christopherson:** But what a great opportunity, if you have a nice big chunk of money, for bright people to sit down and say, "One of the ways we can do this is to find a new way of blah-blah", with the intent of doing that, recognizing that in many cases

the government's not going to ask for their piece of the action. Is that not possible?

**Ms. Sheila Fraser:** It's possible.

**Mr. David Christopherson:** And is that part of your concern?

• (1625)

**Ms. Sheila Fraser:** I would say yes. Our concern is that there needs to be management over intellectual property and management in these contracts. This is an issue that needs to be thought through up front, and the government needs to protect itself in this process.

**Mr. David Christopherson:** When you say "protect" I understand "without duplicate cost". I'm going to listen carefully to what others have to say, but it seems to me we're approaching this the wrong way. There's a huge benefit to the Canadian people who are paying the freight for the work to be done. We ought to get a piece of the action if we don't actually hold control outright. I'm not hearing that from any of you.

I understand that it may not be part of core government, but if Canadian taxpayers' money has developed it and there's money to be made, they should get their piece of the action. I'm repeating myself, but your approach is the opposite. It's that we'll only keep it internally for the Canadian people by exception.

Does anybody have any idea how much money may have already gone out there because there was no licensing, control, or ownership? Does anybody have any idea how many entities have made more money through the IP end of it than on the original contract?

Thank you.

**The Chair:** Thank you very much, Mr. Christopherson.

Mr. Saxton is next, for eight minutes.

**Mr. Andrew Saxton (North Vancouver, CPC):** Thank you, Mr. Chair.

Thank you to all of our witnesses for coming here today.

My first question is to the Auditor General. Is this the first time your office has done an audit on this subject?

**Ms. Sheila Fraser:** I believe this is the first time we've looked at IP specifically. It is an issue that has come up in previous audits, which is what provoked this audit. I know the question of IP came up when we did an audit in Agriculture in 1999.

**Mr. Andrew Saxton:** So since 1993 when the processes were changed, some audits have been done on this subject.

**Ms. Sheila Fraser:** This is the first comprehensive audit that has been done of IP management.

**Mr. Andrew Saxton:** Thank you.

My next question is for the chief human resources officer of the Treasury Board, Ms. Meredith. On page 8, paragraph 2.11, the Auditor General states:

in 1993, the federal government decentralized the management of intellectual property and did not provide coordinated central guidance or support to federal entities.

Can you tell us why that support was not given after 1993?

**Ms. Daphne Meredith:** I think the intent was to put the management of IP into departmental hands, where we felt the interests of departments were aligned with managing it well. As we know, there was a policy in place that called for tracking in relation to IP in a way that wasn't done, and the Auditor General's useful report pointed that out. That's something we're responding to now. Our view is that with adjustments to the reporting we can very much improve the way we're managing this activity and this resource.

**Mr. Andrew Saxton:** In hindsight, do you think decentralizing it was a good idea?

**Ms. Daphne Meredith:** I think the decentralized approach can certainly work, and through our diligence and response to the Auditor General's report we can certainly make it work well.

The area I'm primarily interested in as chief human resources officer is the awards to public servants for their activities as inventors and innovators in the public service. That's one area where again, quite justifiably, the Auditor General has suggested that we're not tracking those awards adequately. I completely agree. To me, though, the issue is who should be primarily responsible for setting some guidelines around awards.

As I mentioned in my remarks, we're working with groups of public servants who are primarily interested in innovation and invention, so that they can provide guidance in that regard. They have the greatest interest in tracking it and the greatest interest in advising their deputy ministers on what the guidelines should be. We think proper management could well call for them to take a more active role in that regard rather than through our dictating from the centre and managing it very much in a centralized approach.

•(1630)

**Mr. Andrew Saxton:** Since deputy heads have the responsibility to administer these policies, what role does Treasury Board play?

**Ms. Daphne Meredith:** I think we're a cheerleader. In the case of awards, providing awards to public servants who achieve is very much a deputy head responsibility. We would encourage them to offer awards, because we think that's part of sound management. With a well-motivated and mobilized community of innovators, scientists, we think deputies will be encouraged to offer awards to those who are achieving.

**Mr. Andrew Saxton:** Thank you.

My next question is for the president of the NRC, Monsieur Coulombe.

The Auditor General seemed quite satisfied, for the most part, with the approach the National Research Council took in managing its intellectual property assets. Based on your experience, what advice would you have for other federal agencies and departments?

**Mr. Pierre Coulombe:** We are already collaborating with many departments. As I mentioned, we do the work on IP for the Canadian Space Agency, we work with Health Canada, and from time to time we provide advice to other departments on the way to manage IP.

As the Auditor General mentioned, we are quite willing to increase our collaboration with other science-based departments. As I mentioned in my remarks, we are the organization in government that creates the most IP, because of the very nature of our work. I recognize that, as Health Canada mentioned, some of the research

activities that science-based departments have are connected to the regulatory function. I can understand that it's not often obvious to connect regulatory science with IP and patents. So in that context, NRC already offers the capacity to support those departments in managing their IP in a better way.

**Mr. Andrew Saxton:** Thank you.

What are some of the challenges the NRC faces in working with the private sector on intellectual property, and how do you overcome those obstacles?

**Mr. Pierre Coulombe:** As was mentioned, industries want to have access to IP. So when we license them, it's quite important that we can guarantee those companies that we are the owner of the IP so that in future litigation we're not going to be at play. One has to realize that when we conclude a licence agreement with a company, it's not that they won that matters a lot. But if that the company is making a lot of money out of that technology, competitors may be looking at where this technology has come from—who the real owner is. So it's very important that we are in a position to demonstrate to companies that have licences from us that we are the true owner, and that we did due diligence to make sure there is no possible way the licensee will be sued by their competitors on the basis that the IP does not belong to us. So these are complex negotiations, and access is one aspect.

Sometimes a company will want to have exclusive access to our technologies. That can be a matter of debate, because some of the IP we own can have applications in many industry sectors. I'll give you an example of a technology we could license to the aerospace sector. They could ask for exclusive rights to that technology, but if we know that this piece of technology could also have application in the automotive sector, we will refuse to give them exclusive rights on the whole of the technology. We may claim that we'll give them exclusive rights for aerospace, but we will retain the right to license this technology to the automotive sector, which obviously is not the same line of business. Therefore we're not penalized by adding restricted access to the technology. We keep the right to offer the technology to other industry sectors if we believe it has applications in other sectors.

These are the challenges we face with the industry.

•(1635)

**Mr. Andrew Saxton:** Thank you.

**The Chair:** One more question.

**Mr. Andrew Saxton:** This is somewhat related to Mr. Christopherson's question. What steps is the NRC taking to increase revenue from licensing of intellectual property?

**Mr. Pierre Coulombe:** We would start with a good agreement with the industry that is the licensee. That would mean negotiating good royalty rights that take into consideration what is usually paid in each of the industry sectors in which we play. Secondly, if we want to increase revenue from licences, we need to increase the number of licences we sign. That's why we are very active in making sure that patents we own find their way into the industry.

So increasing the number of licences is a good way for us to increase revenue. Once we license, it is then the responsibility of the company to exploit the technology. We have other rules. For instance, if you have not been successful in generating revenue from this technology within a given timeframe, we may remove the licence and give the technology to another company that can potentially have a better outcome by exploiting it.

**Mr. Andrew Saxton:** Thank you very much.

**The Chair:** Thank you, Mr. Saxton.

Before we go to the second round, I have a couple of questions.

**Ms. Meredith, paragraph 2.11 of the report talks about the decentralization that occurred in 1993. It goes on to state:**

...the federal government decentralized the management of intellectual property and did not provide coordinated central guidance or support to federal entities. This presented challenges for federal government organizations, which had to develop their own infrastructure, including internal policies...

When I look at the whole advent of events since 1993—and I would support that decentralization policy—it seems to me that in developing the internal policies.... And now we have the auditor's report that a lot of the departments did not have any policies and weren't aware of the situation. It was a hodgepodge. Certain other agencies or departments seemed to have policies. But when I look at it from a pan-government point of view, Treasury Board would have been responsible for developing these pan-departmental policies on IP. I acknowledge that certain departments used it more than others, but they all should have been aware of it.

Your evidence here today is that you're a cheerleader. But I would have thought you would be a band leader in this whole thing over the years, not only in developing the policies but in making sure that all departments were adhering to the policies.

Do you not see the same role for Treasury Board as I do?

**Ms. Daphne Meredith:** I was speaking specifically of our role with respect to awards for innovators and inventors.

The policy on intellectual property is, in a sense, one that we're a partner in with Industry Canada. They are the subject matter experts in that area and, as you can imagine, have an interest in IP being managed well across government. So it's one of those few policies among the Treasury Board suite of policies that actually have a highly interested ministry attached to them, which is Industry Canada. So when we create the policy and provide guidance to departments, much of the input comes from Industry Canada, which is why Mr. Boothe was talking about the policy on title today.

**The Chair:** Industry Canada is not a central agency, so who is it there in the central agencies or in the overall machinery of government to assist the departments—acknowledging that some departments do not have a large IP presence? But someone should be there to assist them and make them aware of the importance of this

issue, to tell them that they should have a policy and that they should be following the policy.

Perhaps I can direct this question to Mr. Boothe. Who in the machinery of government is responsible for doing this? Up until the Auditor General's report, it hadn't been done. So who is it? Is it Industry Canada, Treasury Board, or someone else?

**Ms. Daphne Meredith:** I would say it's both. For example, in 2007, when we recognized that the data were not being collected as they should have been against procurement contracts and IP contained therein, we started to address that jointly. I think it helps to have a joint approach, because we use our interdepartmental networks to get the message out. For example, we have one that meets on contracting. Assistant deputy ministers get together to discuss contracting, and we can talk to them about changes to this policy through that forum. But there are also science and tech fora that would be chaired more by Industry Canada, and we use that, as well, as a network to help manage the issue.

• (1640)

**The Chair:** Ms. Meredith, from my years on this committee, I'm always a little concerned when I hear the answer that it's a shared responsibility. My experience is that anytime a responsibility is shared, it's shirked.

In terms of other departments following this, Mr. Boothe, do you see Industry Canada having an overall responsibility to see that Fisheries and Oceans or some of the agencies have a policy and are following a policy? Do you see that as a role of your department?

**Mr. Paul Boothe:** First of all, the reason we are involved in this, separate from other departments, is that the Minister of Industry has responsibility for national legislation related to IP. That's why we are subject matter experts in intellectual property. But basically we have improved the data collection. We have revised the implementation guide. We've added FAQs to teach people in all departments how to make this work, and we're developing another tool where people can go online and figure out in a specific practical case whether the particular circumstances warrant an exception or not.

Who is responsible? Deputy heads are responsible, but with the Treasury Board, we will be measuring, starting with the 2008 data, whether they're doing it. All the deputy heads will get these reports, which will go to the Treasury Board, and they will know whether they're up to snuff.

So we have an important role to play. We're not there to wag our fingers at other departments or ourselves if we're not doing a good job; we're there to measure whether it is being implemented. We're there to help people learn how to implement it. Then the deputy heads are accountable to the Treasury Board and ultimately to Parliament on whether they're doing what they're supposed to do.

**The Chair:** One final question I have relates to the issue of data sets, and we've talked about that before. The government creates horrendously large numbers of data sets and the Deputy Minister of Fisheries indicates that is part of the IP.

Everything that Statistics Canada produces I would classify as IP, but in some cases it's released to the public, and that would be in the national interest, in the public interest. In other cases it's sold to the public, the interested public. Is there any policy that differentiates what is sold and what is released without any charge? Is that policy out there? How do we know what gets out for free and what is sold? The government does create, as you all know, a tremendous amount of information.

**Mr. Paul Boothe:** There is a policy, but I don't know it well enough to state it to the committee. I'm sure we could get the chief statistician to answer that question in writing and provide it to you.

**The Chair:** I wasn't just talking about Statistics Canada. I was talking about data sets that the fisheries department has, some of which I assume you sell and some you release to the public in the public interest. Is that correct?

**Ms. Claire Dansereau:** I can take a stab at it. I don't have the specific answer.

The general distinction would be that if we're doing a fisheries assessment, a stock assessment of some type, and it's used as basic information in an advisory process, that's simply information that the department uses.

On the other hand, if we're doing charting and underwater mapping and that's information that could have a commercial purpose, could have some commercial value to other sectors and other industries, then we could potentially, if there's an interested contractor, license that to them and they could turn it into something else. They could do the commercialization of it.

That would be the distinction.

• (1645)

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

We're now going to go to the second round.

Ms. Crombie, you have five minutes.

**Mrs. Bonnie Crombie (Mississauga—Streetsville, Lib.):** First of all, thank you, Madam Fraser and all our witnesses, for your fulsome and numerous presentations on this. I think this is the most numerous we've had on any one audit, so thank you.

My first question follows from the chair's question. The policy on the title to intellectual property had been approved in 2000 and was to be evaluated in 2003, but you waited another eight years. I realize the difficulties in the central reporting system, but why a delay of eight years, and what steps have been taken to improve the data collection, reporting of data, that didn't exist then?

**Mr. Paul Boothe:** The short answer to this question is that we began the process in 2001. We got to 2004 and realized that the policy was not being uniformly implemented. The data we were collecting was therefore not of a quality that could produce a useful evaluation.

At that point we went back to the drawing board and developed a new plan, which we brought to the Treasury Board in 2007. It was approved and we began the improved data collection, but we also began working on improved dissemination among departments of what they should be doing and how they should be doing it. When

we went to Treasury Board with this revised plan, we targeted 2011 in terms of collecting enough data to be able to evaluate the policy. We now have the data for 2008. It's good quality, and we believe we'll be able to provide an evaluation by the end of 2010.

**Mrs. Bonnie Crombie:** Thank you.

Since a national inventory of the IP that the crown holds doesn't exist, do we know what licensing revenue is generated, do we know the value of the IP that is catalogued, and do we know whether the full commercial potential is being realized?

I don't know who that question should go to—probably the NRC or Industry Canada, or perhaps Treasury Board, the band leader.

**Mr. Paul Boothe:** Dr. Coulombe is the furthest ahead of us on this.

In the case of Industry Canada, as I said, our CRC inventors are the main source of IP that is actually commercializable, if I could put it that way, and we are generating about \$1.5 million per year in revenue for that.

Do we know the value of the asset that generates that revenue? I can look for an estimate of it, but I think it's important to recognize that it's always just going to be an estimate. The value of these things is not established until they're actually sold. The only hard number we have is the revenue that's generated.

Likewise, do we know whether this is the maximum possible value that could be produced? The truth is that we don't know. Basically what we do is rely on the private sector to commercialize these things. In the case of inventions that we believe are going to be potentially commercializable, we negotiate terms that we think are fair and in accord with industry standards to make sure the crown gets a share of it, but I couldn't say whether it's the absolute maximum we could get.

• (1650)

**Mrs. Bonnie Crombie:** Further to Mr. Saxton, we notice that NRC maintains the lead position in R and D expenditure but is ranked third in licensing revenues on your own chart here. Would you like to comment?

**Mr. Pierre Coulombe:** Thank you.

First of all, let me say that NRC has a good understanding of the patents that we own. Currently we own about 850 patents in our portfolio. We now have about 1,300 patent applications, because there is a delay between the patent application and the granting of the patent by a patenting agency.

Every year we drop about 150 patents as a result of our annual review of the status of our patents. Patents are costly to maintain, so if we conclude, after an analysis, that a given patent is not going to be exploited because it's distant in time—a patent has only 20 years of history, and after that it's going to be coming into the public domain—then we remove that patent from our inventory.

The value of those assets is very difficult to measure, but NRC invests about \$3.7 million a year to maintain its position on all those IPs that we own—our portfolio of 850 patents and 1,200 applications—and we collect about \$9 million in royalties every year, so it's a good relationship. Obviously the value of a patent per se is very difficult to establish. It's all a matter of who is going to exploit it, what the real value is, and how competitors are moving. I would say time is of the essence here: the quicker you are in transferring technology to the marketplace, the better you are in getting yourself a strong market position and getting a lot of royalties out of it.

**The Chair:** Thank you, Dr. Coulombe.

Go ahead, Mr. Kramp, for five minutes.

**Mr. Daryl Kramp (Prince Edward—Hastings, CPC):** Thank you, Chair.

Madam Fraser gave a generally good-news report. It appears that with the NRC holding the lion's share of the activity, the government is committed to protecting its intellectual property by the relative success of NRC—but less so with some departments, as you've shown. So I think your report is certainly a wake-up call to the areas that are defined as having some weaknesses,

In particular with Health and DFO, I am very pleased—and I think our committee will be very pleased—that you've taken prompt action. Your actions are appreciated. But I would like to put you on notice from this committee that we look forward to having you back a year from now to see if the results match your intentions. That is something you can consider as you move forward. You can anticipate that kind of response so we can evaluate the success of your actions and activities.

I'm a little confused in one area. Back in 1993 we went to decentralization. Property and policies were approved to 2000 and evaluated in 2003. There was an action plan in 2004, and in 2007 a central reporting system was modified. What is the actual difference between the action plan initiated in 2004 and what is suggested now? Why didn't you do, in 2004, what is being asked now? Are there different demands? Are the recommendations you're suggesting right now dramatically different from the recommendations that came forward from the action plan in 2004?

•(1655)

**Ms. Sheila Fraser:** I think one of the big issues, as was mentioned earlier, was the quality of the data. An evaluation was going to be done, but then it was realized that the data was inaccurate, to put it mildly. We looked at the data from 2006, and you will see in the report that a number of contracts were identified as containing intellectual property when they clearly had no intellectual property in them. So there was no point in proceeding with an evaluation if that was the quality of the underlying data. Work has been done since then to try to improve the quality and then do the evaluation of the policy.

**Mr. Daryl Kramp:** Specifically, in your statement you said there were significant errors in the data due to a lack of understanding of the entire issue. As we move forward, if we can't embrace the mistakes that have been made and learn from them, we're bound to repeat them. You further state that these errors will undermine the future evaluation of this policy. What are these errors specifically,

and what measures are now in place to prevent this from happening again?

**Ms. Sheila Fraser:** I can talk to the kinds of errors we found.

I'll refer to paragraph 2.35 of our report. We looked at contracts that were purported to contain intellectual property, and we found contracts for acquisition of a vehicle, event planning, catering, medical services, and language training. Obviously event planning doesn't contain intellectual property, so there was miscoding of things. When you have this kind of incorrect data, it's necessary that people are trained afterwards and understand, and that more rigour is placed.

We have not audited the data set after that, and the departments are telling you that work has been done since then to try to improve that data quality. We also expect that before going ahead with an evaluation, some check will be done to make sure the data quality has improved.

**Mr. Daryl Kramp:** Thank you.

**The Chair:** Thank you, Mr. Kramp.

Madam Faillie.

[*Translation*]

**Ms. Meili Faillie:** Ms. Fraser, in paragraph 2.2, you point out that copyright infringement costs the country a lot. You mention that the government has been forced to pay for rights to use intellectual property that it developed itself, but you give no figures. Are you able to do so?

**Ms. Sheila Fraser:** We are not able to do that.

We had to present the information in quite a general way, because, as you can imagine, several of these cases are before the courts. There are restrictions on publishing information on specific cases or out-of-court settlements. That is why we were not able to provide examples. However, we are aware of some situations, which is why we presented the information in this general way.

**Ms. Meili Faillie:** For the Treasury Board, can you give us an idea?

[*English*]

**Ms. Daphne Meredith:** Excuse me. *Pour quel...?*

[*Translation*]

**Ms. Meili Faillie:** I mean all situations, copyright infringements or situations where the federal government has had to pay for intellectual property that it developed itself.

[*English*]

**Ms. Daphne Meredith:** We don't have an estimate of that.

[*Translation*]

**Ms. Meili Faillie:** Is that information published in the public accounts? Can we get it?

**Ms. Sheila Fraser:** Mr. Chair, I seriously doubt that the information is published as such in the public accounts.

**Ms. Meili Faille:** You use the word “qualitative” a lot. So I was wondering if the problem is serious, very serious or very very serious.

● (1700)

**Ms. Sheila Fraser:** We do not know.

**Ms. Meili Faille:** You do not know.

Does the government intend to handle the situation better, or to focus its actions better?

[*English*]

**Ms. Daphne Meredith:** As we said in our management response, we're taking measures to collect data and report better on intellectual property that's related to contracting and other activities. So to that extent we're improving our understanding of it.

[*Translation*]

**Ms. Meili Faille:** So should we find goals for improving the management of intellectual property in your performance management plans?

[*English*]

**Ms. Daphne Meredith:** As far as departmental performance reports are concerned, the departments are the ones that should be reporting it. Deputy heads are managing it.

[*Translation*]

**Ms. Meili Faille:** I have some other questions.

Ms. Fraser, in your review, you point out that the NRC spends \$1.6 million on managing intellectual property, and that brings in about \$5 million annually. That is how I understand it. Other departments invest exactly the resources that they have at the time.

Do you have any comment on that? Should more money be spent on the management of intellectual property? As I said before, if it is being managed less well, or not at all, it costs the country and the taxpayers money. We do not even know the extent of the problem, either. The federal government has no way to calculate how much it costs taxpayers.

**Ms. Sheila Fraser:** I think that the NRC is in a different position from the departments, because, for most departments, this is not a major part of their operations. However, we do note that some departments indicate in their action plan that they are going to set up an office to manage intellectual property.

Perhaps that answers your question.

**Ms. Meili Faille:** In their action plan, they say that they will make do with their current resources. So I said to myself that, if the NRC can invest \$1.6 million, it is because they have clearly defined the amounts spent to manage intellectual property.

Could we recommend that other departments do it by themselves?

**Ms. Sheila Fraser:** I think that depends on the scope of the activities. If you compare the NRC's activities with other departments, it is not such a significant part of their operations.

**Ms. Meili Faille:** Thank you.

**The Chair:** Thank you, Ms. Faille.

Mr. Shipley, five minutes.

[*English*]

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you, witnesses.

I'd like to follow up a little bit on the question that was just raised by Madame Faille. My question is for the official from the Department of Fisheries and Oceans.

In your report, Ms. Dansereau, it said, “Furthermore, an intellectual property office”—and actually the Auditor General just mentioned that—“will be set up over the next few months. It will serve as a center of expertise.”

The comment is that you will do this within your own resources. What does that actually mean? I'm assuming you have the money and the people. Would that be correct?

**Ms. Claire Dansereau:** We certainly have the people, and we have the money to pay for them at the moment. What we mean by “within existing resources” is that there is no new source of funds to do this.

**Mr. Bev Shipley:** Okay. Can I follow up on that? I don't mean to cut you off, but he will, you see; that's the problem.

I want to follow up on my question. If you have the management and resources within your department now and you're going to set up a new office—this is all about the ability to manage intellectual property—what is the efficiency of those people now if they haven't been doing this job and now, actually, you're going to set up an office and you have those resources and the people? It raises a concern.

The other part of the concern would be, no, we're going to build another bureaucracy around it. But there has to be some explanation, quite honestly, to that question if you're going to be able to do it within it. I'm assuming your business plan will lay that out for us.

And I apologize for cutting you off.

● (1705)

**Ms. Claire Dansereau:** Thank you, Mr. Chair.

What we mean by “within existing resources” is that we currently have people who have a certain expertise in this matter. They are in an area and they have not been provided with the tools to provide education to the rest of the department, to share the information in terms of how they're managing it. They currently are the experts, and they're doing it in addition to other work, so it would be a matter of realigning priorities within a sector, workloads within that sector, to make sure the people are more freed up to be able to do this kind of work in a concerted manner.



I also said in my opening remarks that we have been doing management of intellectual property within the department, but not within one framework policy, so there was more of a sector-by-sector approach. What we are doing now with the policy is making sure we have one consistent approach across the department. We will, therefore, have certain people who will be the experts in that policy and then will provide the tools to the remainder to implement the policy as written.

We are not, as has been mentioned by the Auditor General, a department for whom this is our primary reason to exist. Most of the intellectual property we generate is as a result of something else that we are working on. The policy itself will ensure that people will even recognize when they're creating intellectual property in a way that is more consistent.

**Mr. Bev Shipley:** Thank you.

Mr. Coulombe, when you look at the licences, and you mentioned you do 100-plus a year, is there an impact depending on the economy? Does the economy affect the innovation, the intuition, of inventors to come forward with licensing? Have those numbers varied very much? I don't think they have, but I wanted that on the record.

**Mr. Pierre Coulombe:** From time to time...what we observe is that we conclude about 100 licence agreements per year. We do not have the data for this current year, when Canada is supposed to be in a recession, so that could be a reflection if we observe a significant shift down in the licensing agreements that we have. But so far I don't think we have observed that, so this is about the number we transfer every year.

**Mr. Bev Shipley:** It would be a concern if it was, because we've put significant dollars into research to NRC and research in science and technology, and I would hope that putting in, I think, a little over \$5 billion would result in not having a decrease. I think everyone here recognizes the value of what we have to do to move ahead, and that was around the question, just wanting to make sure those licensing numbers continued.

**The Chair:** Thank you very much, Mr. Shipley.

We're going back to Mr. Christopherson for five minutes.

**Mr. David Christopherson:** Thank you very much, Chair.

I have to say that the more I'm hearing and learning, I'm really surprised at how loosey-goosey the whole system is, especially given that we are talking about potentially of millions of dollars that could be generated for taxpayers. I'm really surprised that we're at this state of affairs. I'm going to get into this a little more in the short time I have.

Again, at the stroke of a pen, literally millions of dollars will either go to a private entity or back to the Canadian taxpayer, and that process is not at all uniform. Notwithstanding stereotypes, I don't necessarily think centralizing or decentralizing, in and of itself, is right or wrong; it depends on the case at hand. Boy, this sure looks to me like a case where we ought to be recentralizing, getting control of the processes, making sure the criteria are the same, and then putting in safeguards to make sure there's no potential abuse, because it's not an area that we traditionally think of in terms of potential conflicts of interest and the sorts of things we deal with at this committee.

What is the current process for determining the criteria for what constitutes IP; and further, the criteria for determining whether it stays in the possession of the taxpayer or goes to private enterprise? If it goes to private enterprise, what are the criteria for determining a licensing fee? If there is to be a licensing fee, what are the criteria for determining how much it will be?

There's that pregnant pause again.

Mr. Coulombe, you probably have the most refined system, I would think.

• (1710)

**Mr. Pierre Coulombe:** We certainly have a system.

Let me first try to discriminate a bit about IP arising from procurement and the notion that industry will own that in some circumstances.

I think we have to realize that owning an IP and making a lot of money out of that IP are two very different things. Exploiting IP is a complex process. It is also a very expensive process. It's not because you own a patent that the next day you're getting rich. Even for companies getting that IP from procurement, it's one thing to have that IP and it's another thing to exploit it. Therefore, if an industry is able to make money out of that IP, I would submit to the attention of the committee that most likely that company has invested a lot of money to get access to the market coming from the particular IP that they got from procurement.

That said, it is complicated to exploit IP. Just because you own it doesn't mean you're making a lot of money. In fact, I would say it is the exception rather than the rule.

I would give you the example in the pharmaceutical sector where pharma companies own thousands and thousands of patents, but they make money on one patent in every few thousand that gets rewarded and results in a drug that will go into the marketplace. So it's complicated.

At the NRC, it is technology that we own because we generated it. We try to have a comprehensive analysis, and when we come to the conclusion that a company is interested in our IP and it fits into their business plan, it becomes a matter of how we define the royalty rates that we get. Obviously, being a producer of technology, our first impression would be that we need to get a lot of money from that technology, so we would be looking for high royalty rates, and sometimes from the start we can see that as a little bit unrealistic.

Let's suppose we would be licensing a technology in the field of energy. First, since some of that information is in the public domain, we would have access to the licensing contracts that took place in the field of energy. So we try to determine broadly what the industry is paying in the field of energy for a particular technology. Then we assess the value of our technology compared to what has been negotiated over the last few years. Is it technology that is much more advanced and therefore would carry higher royalty rates? Is it a technology that we'll be licensing exclusively to a company?

With exclusive licences, you have higher royalty rates because you do not have the possibility of finding other licensees. Therefore, the company wanting an exclusive right will agree to pay more.

If the company was satisfied with a non-exclusive licence, obviously they would ask to pay less because we have the possibility of licensing that technology to competitors. The company may say they do not really care as they feel that they are better than their competitors and they do not want to pay extra money to get exclusive rights and are satisfied with non-exclusive rights.

Once you define that sector as exclusive or non-exclusive, you will come to the conclusion that your technology has  $x$  per cent of royalty that you can generate. That's how we finally decide.

**Mr. David Christopherson:** Thank you for the answer. That's what I was looking for.

I just wanted to say that, number one, the money that's generated is still being paid by the taxpayer to do the R and D in the first place; and number two, even if it's expensive to market a better mousetrap, having the better mousetrap is still the best starting place to make all that money. Again, I just want to make sure Canadians are getting their share. They need their cut.

Thanks, Chair.

**The Chair:** Thank you, Mr. Christopherson.

Go ahead, Mr. Weston, for five minutes.

[Translation]

**Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC):** Thank you, Mr. Chair.

I want to thank our guests for being with us today.

[English]

To pick up where Mr. Lee left off, these may be the driest of times, but they are also perhaps the most exciting of times to have you all here today, as we look at Canada asserting itself on the international stage in novel ways and our Prime Minister going to Singapore and China and India and Korea in upcoming days. We're also competing on the international stage with people around the world, and much of our success in years to come will be generated by how we innovate.

I have a question for you, Monsieur Coulombe, and also for you, Mr. Boothe. Can you give us three ways you think we, as a nation, can do better in innovating?

• (1715)

**Mr. Paul Boothe:** I'd better start, and the reason is that things like NSERC and SSHRC—the granting councils—are under the Industry Canada umbrella. We have a number of different programs to encourage both fundamental basic research and the commercialization of research.

One of the things we can do better is come to grips with the actual process that leads from discovery to commercialization. This is something all countries are grappling with. We have great public expenditures on fundamental research and we have great results on fundamental research; our results on commercializing research are not as good as they should be.

In terms of something that we need to do better, we need to figure out how that process works. We've invested a lot of effort into it. I think we are coming to the conclusion that the way to go at it is from the demand side—that is, start with firms and their problems and

then go towards the researcher, rather than start with the researcher and ask if you've discovered anything commercializable today—but it is certainly an open question, and it's something we need to improve on.

That is the first thing I would say.

**Mr. Pierre Coulombe:** I will follow on what Paul just mentioned. From our point of view and in terms of our activities at NRC, if you want to increase innovation, I would say we need to have a constant dialogue with industry in order to know the needs of the industry and how R and D can support those needs and bring new technologies into the marketplace.

For us it means doing research and development programs that are relevant, compared to what you just described. We're not going to ask researchers what they are inventing today. We would rather go the other way around: understanding the needs of the industry, trying to define whether our science and technology can contribute to solving those needs, and building up research programs to address the specific needs of the industry. Obviously the best way to quickly transfer technology to the industries so that they will improve their productivity and build up new markets is to work hand in hand with those industries.

This is something we at NRC do as well. NRC's language to describe some of our activities includes building up pretty competitive research programs whereby, through working with one industry or a series of industries, we will identify common problems, take the responsibility of developing solutions to those problems, and through being paid jointly by the industry, transfer that technology or those technologies to people who can very quickly exploit them in the marketplace.

That would be a way whereby we could facilitate innovation: by facilitating the transfer of technologies.

**The Chair:** Sorry, I'm going to have to move on. Mr. Young has a five-minute slot. He may want to come back to that. I know it was a very interesting and informative discussion, but I do have to move to Mr. Lee here.

You're sharing, Mr. Lee? Five minutes, and then Mr. Young.

**Mr. Derek Lee:** Yes, indeed, thank you.

I sense a dichotomy here. I'd like you to help me resolve it. I may be in error, but on the one hand, we have the NRC, whose bread and butter is to invent and identify and licence and do that research. On the other hand, the general government policy is that when IP is created, we leave it out there for the general benefit of Canadians and we don't want to capture it. We don't want to manage it. We don't want to licence it.

So has NRC been identified as an exception to the general policy or have I misunderstood the general policy? Or have I not expressed myself well?

• (1720)

**Ms. Sheila Fraser:** Chair, can I respond?

I think the difference is when we talk about the private sector retaining ownership, and that is on contracted activities, when government contracts with the private sector. When government itself, through its own employees, develops IP, then it will license it as at the National Research Council. So there are two distinct ways.

**Mr. Derek Lee:** But what about when we ship out \$50 million to NSERC, that type of thing? What happens to all those IP items that are generated there? Is that the same as the NRC rubric or is that like dealing with government employees?

**Ms. Sheila Fraser:** I really can't answer that, because it's not something—

**Mr. Paul Boothe:** With NSERC, money goes to university researchers, and individual universities have IP policies and they have offices that manage IP. And there's a range. So for example, at the University of Waterloo, the IP results rest with the researcher. At other universities, for example, the benefits from IP are shared between the researcher and the university, if they're licensed.

**Mr. Derek Lee:** What about the \$10 million that came from the taxpayer?

**Mr. Paul Boothe:** What about the \$10 million that came from the taxpayer? What we do is send this out, and the benefit that we get is the fundamental research. The benefit that the taxpayer gets is the fundamental knowledge that's created and is disseminated through academic journals and taught to students. That's the benefit we get.

**Mrs. Bonnie Crombie:** Thank you.

We're going to share our time, so I'm going to get three questions out and then I'm going to ask you to respond, because I know I'm going to run out of time.

If you look on page 24, there's a chart on the number of invention disclosures and the expenditures from 2003 to 2006.

So to Fisheries, Ms. Dansereau, you've only got one invention, yet an expenditure of \$274 million in R and D spending. I don't know what the value of that one invention is, but your expenditure is greater than that of Health Canada, National Defence, and the Canada Space Agency, which have a greater number of inventions. The best return, of course, is at National Defence, with 18 inventions for only \$229 million in expenditures. Would you comment on that.

Then, quickly, to Treasury Board or NRC, has a public servant ever made an invention and failed to disclose the invention or a patent? Has that ever happened, and what would be the penalties for something like that? Termination, I would suppose.

Finally, have there ever been any legal liabilities resulting from the improper management of the IP inventory? For instance, earlier in the chapter we mention that possible negative outcomes could be termination of contracts, contractors developing competitive products, inability to license IP to other departments, and inability to guarantee title.

I got three out.

**The Chair:** Give relatively brief answers, please.

**Ms. Claire Dansereau:** I'll be very brief.

We are a science-based department. The bulk of our work is not designed for creating or inventing new products really; it's about

gathering information to allow us to make decisions. So that's where the bulk of our science investments go. The year 2003 was not a period when we were doing a lot of management, so we have much better data now for our inventions and our licensing, but we can get you that information.

**The Chair:** Is there anyone else?

Mr. Young, you have five minutes.

**Mr. Terence Young (Oakville, CPC):** Thank you, Mr. Chair.

My first question is for Mr. Boothe.

I understand that back in 2000, to increase the potential for commercial exploitation of intellectual property, we decided to let companies that did procurement business with the government keep their intellectual property, within those limitations. That was to create economic activity, I guess, and it recognized that they were the ones who could benefit from it, because they were the ones who'd go out and market it.

I wonder, as Mr. Christopherson did, why don't you make licensing deals with those companies? If they come to consult and do a contract with you for a year, they are on retainer. If they come up with, say, a great software program that benefits your organization and they want to go out and sell it, why don't you just cut a deal and make a licensing agreement?

• (1725)

**Mr. Paul Boothe:** I guess the important thing to say here is that in cases where we think there is a high likelihood that some valuable intellectual property will be produced, we will do that. I think the thing people need to understand is that in the case of this procurement, the vast number of these contracts never produce IP, and that's not what they're about.

**Mr. Terence Young:** I understand that, and Madame Fraser is doing her job in making sure there's process in the system and it's all tracked, etc.

Madame Meredith, what kinds of rewards might an employee get? What would they get if they came up with some kind of invention that assisted their department or wherever? In practical terms, what is it, a cash award or a small bonus?

**Ms. Daphne Meredith:** The policy sets out cash awards.

**Mr. Terence Young:** How much?

**Ms. Daphne Meredith:** It depends.

I'll refer to the policy here. We have awards for government use of inventions, and there could be an award of up to \$5,000 for that.

**Mr. Terence Young:** So it's a one-time award. It's like a big thank-you. Nobody is getting rich or anything, right? It's recognition.

**Ms. Daphne Meredith:** Yes. It's recognition more than anything else.

**Mr. Terence Young:** Thank you.

Mr. Coulombe, what is the cost of administering a patent? You said that sometimes you will drop a patent when you realize that it doesn't have commercial value.

**Mr. Pierre Coulombe:** A patent, broadly speaking, is expensive to manage. A patent could cost about \$150,000, not per year but over the lifetime of the patent. It could be \$10,000, \$15,000, or \$20,000. It depends on where you have the patent, in which countries, and in how many countries you maintain a patent.

**Mr. Terence Young:** So you have to pay fees in other countries.

**Mr. Pierre Coulombe:** Yes, you have to pay fees and translate them.

**Mr. Terence Young:** If somebody builds a better mousetrap, the value of that patent no longer exists anyway. There's going to be too much competition, etc.

**Mr. Pierre Coulombe:** That is why, as I mentioned before, every year we have a look at our patent portfolio and we decide to drop some patents because we judge that the cost of maintaining it compared to the cost of licensing it is not in our favour.

**Mr. Terence Young:** Mr. Chair, may I share my time with Mr. Weston?

**The Chair:** There's one minute left.

**Mr. John Weston:** Great.

To take up where we left off, I noticed that in answering the question you didn't go into the classrooms or the education system, how we generate a nation of innovators. I wonder if you care to continue that discussion on how we compete more effectively by bringing innovation into part of the national culture and education program.

**Mr. Paul Boothe:** I'm going to look to Pierre in a second because they have a great program for this, but basically we provide assistance for graduate students to be interns in companies, and that's where they get to marry up their scientific and technical knowledge with the business side. There is a range of programs, but the NRC actually has a fantastic program for that.

Maybe Pierre could say something on it.

**Mr. Pierre Coulombe:** Briefly, I think Paul is making reference to IRAP. There are two components to that program. One basically addresses the issue that Paul mentioned, providing capacity to bring young scientists into companies. It's called the youth employment program, whereby we fund companies to hire new graduates.

Broadly speaking, though, IRAP is also very good in the sense that it is moving technology companies into being more technology friendly, being more active in the field of science and technology. That's the whole concept of IRAP, providing direct support to companies to build up more advanced technologies and more advanced products.

**Mr. John Weston:** Which program is that?

**Mr. Pierre Coulombe:** It's the industrial research assistance program.

**The Chair:** That concludes the first and second rounds of questions. Before I adjourn, I want to ask if any of the witnesses have concluding comments they want to make to the committee.

I'll start with you, Ms. Fraser.

•(1730)

**Ms. Sheila Fraser:** I would just like to thank the committee for their interest in this report.

Thank you.

**The Chair:** Does anyone else have closing remarks—Mr. Boothe, Ms. Meredith, Mr. Rosenberg?

Again, on behalf of the committee, I want to take the opportunity to thank each and every one of you for all your work. This is probably not the biggest issue talked about at Tim Hortons, but it's a tremendously important one that will probably become more important in the future.

I want to thank you for your work, Madam Auditor, and the other departments and agencies. Thank you very much.

The meeting is adjourned.

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